

Prison crisis: One year and counting

Trials

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fair trial," he adds.

Wagner was unavailable for comment this week, the DA's office says.

District Attorney Michael Eakin says the failure to turn over the plea agreement was simply an "accident." Lauer learned of the plea on his own well in advance of the trial and Lauer "got his remedy" — an acquittal.

Eakin admits law enforcement officials have had problems with turning over discovery evidence to defense lawyers.

Discovery is the disclosure by either the defense or the prosecution of facts, documents or other evidence that is in the sole possession of one party and necessary for the other party's case.

Eakin says the evidence is in many different places handled by different people.

"Discovery is a mess," Eakin says. "With dozens and dozens of troopers and thousands of inmates, there have been problems with it because there is no way to pick up the file and say this is everything."

"It's a major logistical nightmare," he says. Many defense lawyers "have no concept of what it takes to get this stuff and they say it's our fault if we don't."

An overwhelming number of motions have been filed by defense lawyers attempting to cover all of the bases so that they won't be accused of providing an inadequate defense for clients, Eakin says.

The siege of requests has slowed paper traffic but Eakin says his staff has not ignored any court orders directing them to act.

"The word is out that this is a weak spot for us, and they (defense

lawyers) are responding," Eakin says. "The court has ordered us to provide many things that the defense is normally responsible for. If we have ignored a judge's order, he will take us to task."

"Some things have not been turned over (until defense lawyers get) right up to the courtroom door, but nothing of significance. It's because of the sheer volume of cases."

"There's no trooper who can look you in the eyes and say this is all there is because there are boxes and boxes" of documents.

Lauer obtained a statement from Donelson in which he said state police investigators took several statements from him. Lauer subpoenaed the files and discovered "half those statements weren't there" and no explanation was given about why they weren't.

When asked, Wagner allegedly told Lauer he didn't know the statements existed.

Lauer doesn't buy that. He says the DA's office was "fighting tooth and nail" to keep those statements out of the trial as "hearsay."

Lauer claims at least two of four Rules of Professional Conduct under "Rule 3.8 Special Responsibilities of a Prosecutor" were violated.

The rules state, "The prosecutor in a criminal case shall:

"refrain from prosecuting a charge that the prosecutor knows is not supported by probable cause...

"make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense, and, in connection with sentencing, disclose to the defense and to the tribunal all unprivileged mitigating information

Lawyer sympathizes with DA's plight

Some may be unhappy with efforts to prosecute convicts for last year's prison riots, but many defense lawyers find it hard to condemn the district attorney's office.

Allen Welch of Kollas, Costopoulos, Foster and Fields in Lemoyne says the DA's office is "overworked" and "swamped."

The bulk of the prosecution should have been done by the attorney general's office, he says.

The district attorney's staff "gets my sympathy," says Welch, who defended two inmates. "I think they were dumped on."

He believes the volume of "jumbled information" is putting the DA's office in "a bad situation. It's a nightmare."

known to the prosecutor, except when the prosecutor is relieved of this responsibility by a protective order of the tribunal..."

"Before the trial even began," Lauer says, "I walked into the courtroom with several pieces of exhibits in my hand. Shawn said, 'You are not going to get away with any of that stuff with me. You are not messing with John Birbeck or Syndi Norris; you are messing with me.'"

After Green's trial, Wagner allegedly told Lauer he had not wanted to pursue the case once the jury heard the exculpatory evidence. Wagner allegedly said he told Eakin that, but Eakin told him to pursue it anyway.

"Mike Eakin is ultimately responsible for this when his own attorney said he didn't want to prosecute any

"There are a lot of people in the DA's office who I have the utmost respect for," says defense lawyer Robert Mulderig, who practiced law in New York and worked in the Army's judge advocate general's office for 20 years before establishing a practice in Carlisle.

"And I'm not so sure some of the stuff isn't being doled out to them at the last moment" by state police investigators.

But state police are overwhelmed, too, because of the lack of physical evidence and because most witnesses are inmates, District Attorney Michael Eakin says.

"I don't mean to criticize the state police because they have literally had to put Humpty Dumpty back to-

further," Lauer says.

"I'm not here to prosecute the DA's office — I just want a fair trial," he says. "I have to try other cases there. I just hope I'm not treated with ill repute."

"But if the people don't know what's going on, how can you stop it?"

Eakin denies having directed any assistants to pursue cases that lacked evidence.

"Just because they say it's insufficient, that doesn't end the reading lesson — I might disagree," he says. "If the evidence is insufficient, we drop it."

Still, "sometimes you know it's a loser, but we owe it to the victim to prosecute."

Lauer claims Green asked for a lie detector test, at his own expense. But

gether again and some have been put together very well," he says. "There have been huge numbers of witnesses.

"But there have been incomplete files, which are almost unavoidable, and we have suffered because of it."

Keeping track of hundreds of witnesses, investigators, lawyers, victims and defendants while scheduling meetings, trials, arraignments and hearings has been an enormous task, Eakin says.

It's bad enough sorting through mountains of testimony, investigative reports, pleas, affidavits and transcripts. But arranging security, housing, transportation and meals for inmates who are making court appearances complicates matters, he

the DA's office, which is not required to accept such offers, rejected the request.

Prior to the trial, Lauer says the DA's office offered Green a two-year minimum sentence for a guilty plea, but he refused. "At that point I knew he was innocent," Lauer says.

He says Wagner told him he did not want to prosecute any more cases where inmates testified against inmates because they "couldn't win those cases."

Eakin admits the conviction rate has been much lower than usual and attributes most of that to cases based on inmate testimony.

When one inmate has testified against another, "there have been acquittals. When it came from guards, it's convictions."

Another defense lawyer, Robert J.

says. It has been "stressful and frustrating."

"If we had to go back there things we would do? Yes," Eakin says. "Some things we could have done."

"Some criticisms are avoidable because we're blessed with perfect faith to do the best good faith with the resources we have."

About six more inmates expected to be charged by Eakin expects most cases disposed of by the end of the year.

Then appeals will be made. Appeals are like diamonds forever," Eakin says.

Mulderig of Carlisle said he countered his share of the handling seven riot cases.

He isn't certain who caused the apparent delays, mistrial and procedural problems.

Although "no one admitted it," Mulderig has "suspicions" about deals being made with witnesses for the prosecution. He expects inmates are told they can be charged if you don't cooperate.

Eakin denies his promise of immunity to witnesses in exchange for information.

"If you make that deal with an inmate, you're

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