

Prosecutor not 'vindictive,' says appeals court

By Tim Richard
Staff writer

A state Court of Appeals panel has reversed Oakland Circuit Judge James Thorburn's finding that prosecutor L. Brooks Patterson's office was "vindictive" in a drunk driving case.

The ruling came late in December, in the final, argumentative days of Thorburn's 25 years on the bench and Patterson's 16 years as prosecutor.

"Our policy," said Dick Thompson, Patterson's successor and formerly his chief assistant, "is that after a first offense, that person is charged with second offense drunk driving."

THE APPEALS panel sent the case of George A. Goeddeke back to 48th District Court for trial, a victory for Patterson and Thompson, who had appealed Thorburn's dismissal.

Ironically, Thompson, who had read the appeals court decision, was unaware that Thorburn had made the ruling which his office appealed because that decision failed to use any lower court judges' names. Thorburn's name appeared next to the case number on a cover sheet given to the press.

Goeddeke, then 40, of Union Lake, was arrested in February of 1985 in the city of Orchard Lake and charged with operating a motor vehicle under the influence of liquor (OUIL) in violation of city ordinance.

"Although the defendant had been previously convicted for operating a motor vehicle while impaired (OWI), the city attorney did not originally charge him with OWI or OWI-second offense," the appeals court said.

GOEDDEKE REFUSED refused to plead guilty, and the case was set for trial. Four days before the trial, the city attorney dismissed the charge. Patterson's office immediately filed a two-count complaint, including OWI-second offense, a violation of state law for which punishments can be more severe.

Thompson explained: "After the actual arrest, the police learned the defendant had a prior conviction. The city attorney lacked jurisdiction to bring that (second count). We could bring it as a second offense."

The appeals court said the district judge, Bernard Friedman, "dis-

missed this count, holding that enhancing the charges against defendant after he refused to plead guilty, without giving him notice that the charges would be enhanced, gave rise to a presumption of prosecutorial vindictiveness . . . and therefore violates due process."

The decision was appealed to Thorburn, who upheld the finding of vindictiveness.

BUT THE APPEALS court said: "The crucial fact is that a defendant refuses to plead guilty and forces the government to prove its case is not sufficient to warrant presuming that subsequent changes in the charging decision are vindictive."

"In such cases, a defendant must affirmatively prove actual vindictiveness."

The appeals panel said the Goeddeke case was unlike other cases where prosecutors had threatened to enhance charges if defendants refused to plead guilty — and actually did so when the case went to trial.

The opinion was signed by Judges Michael J. Kelly, Barbara B. MacKenzie and Stephen B. Miller.

Michigan's drunk driving law was the subject of heated state Senate debate when it was passed. A minority argued that second and third offense charges would rarely be filed; that prosecutors would make repeat charges of first offense drunk driving in order to avoid time-consuming trials.

"We do not do that," Thompson said.

He said Goeddeke has yet to be retried.

THE CASE was one of the final Thorburn-Patterson battles. Both retired Dec. 31 after not seeking re-election.

The most notable clash was Thorburn's overturning of a jury conviction of William G. Herbert, former chairman of the Detroit Water Board. The jury convicted Herbert on 21 counts of bilking \$140,000 from a subsidiary of Blue Cross/Blue Shield.

A Patterson aide called it "just one in a long line of cases Thorburn has thrown out." The judge once was quoted as saying Patterson would sacrifice his own mother for gain.

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"In some areas, we're at the maximum use of golf courses," said Ralph Richard, manager of the nine-park system, which includes four golf courses.

"Last year our users played 260,000 rounds (nine holes) of golf. There was not one rainfall day," he said. During the long, hot summer of 1988, rainfall was a trace for weeks on end, and temperatures hit the 90s and 100s for weeks at a time.

OAKLAND HAS four golf courses — at Red Oaks (in Madison Heights), Glen Oaks (Farmington Hills), White Lake Oaks and Springfield Oaks.

"The Springfield one is gaining in popularity because of the great layout," Richard said.

"In the United States, we could build one course a week from now until the year 2000 and still not be able to meet the great demand for golf."

In part it's due to the popularity of the outdoor game. In part it's due to the redevelopment of golf courses — particularly public ones — for other purposes.

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"Our prices (to golfers) are in the middle of the line. We try to stay at the average," he said, noting there are discounts for youth (age 17 and under) and senior citizens (62 and older).

Oakland's green fees in 1988 will go up by 25 cents to \$8.25 for nine holes and 50 cents to \$10.50 for 18 holes for Oakland residents.

THE TORRID 1988 summer discouraged camping but brought a record 199,000 people to the parks' two wave pools, Richard said.

The Waterford Oaks pool west of Pontiac drew 72,000. In only its second year of operation, the Red Oaks

pool in Madison Heights drew 117,000.

Camping was down a bit — by 3,000 camper days to a total of 199,000, he said. That was expected in the heat, but the numbers held up because Oakland parks caught some of the overflow from a national campers convention in the Highland State Recreation Area, Richard said.

Picnic and general use of county parks was at 80 to 100 percent of capacity many weekends last year, he added.

IN 1989, he said, Oakland residents will see:

• A replacement for the "showmobile" that provides entertainment 125 times a season at various recreation programs across the county.

• Restrooms cleaned oftener, and facilities opened earlier, in response to public use.

• Hiring of 300 high school and college students as seasonal workers, 100 as lifeguards alone.

• Continued planning and development of Orion Oaks County Park, the ninth in the system, and the one designated to serve handicapped and special group populations.

• The same vehicle entry fees as last year — \$3 for residents weekdays, \$4 on weekends and holidays; \$5 for non-residents on weekdays, \$6 on weekends and holidays.

The park system is financed by a five-year, 0.25-mill property tax. It is due to expire at the end of 1991. Richard said a renewal probably will be sought in the 1990 August primary.

Property taxes provide about \$5 million and user fees \$4.3 million each year.

OAKLAND PARKS has a budget of \$9.3 million — \$7.6 million for operations and \$1.6 million for capital.

For the \$18 million Orion Oaks development, cooperative funding will be sought over eight to 10 years, with help from the Oakland Parks Foundation, Lions Clubs, Oakland County Special Olympics, corporations, community organizations and individuals.

During 1989, architectural plans will be completed, and a maintenance center will be constructed, said Lewis Wint, chairman of the parks commission.

Golf space Oakland runs short of land — parks chief

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County board meets tonight

Oakland County commissioners will take their oaths of office, select a chairman and see a slide show about landfills this evening.

Their first meeting of 1989 will start at 6 p.m. in the board auditorium in the County Service Center at 1200 N. Telegraph, Pontiac. Usual meeting time is 9:30 Thursday mornings.

The consulting firm of Rogers, Golden & Halpern of Philadelphia will present a slide show at 7 p.m. on the processes of siting a landfill, county Executive Daniel T. Murphy said.

THE BOARD hired the firm to aid a committee of county residents who will recommend a site for a new landfill that will accommodate both ash and municipal wastes. The landfill will be used in conjunction with the incinerator and recycling centers to reduce Oakland County's solid waste.

"It is important that we continue to move in a timely fashion on this issue," said Murphy. "We hope to select the committee as soon as possible and to begin committee meetings by mid-February."

The Landfill Siting Advisory Committee will consist of 25-30 residents representing all corners of Oakland geography. Business, residential and environmental interests are to be represented. It will be appointed by the board of commissioners.

THE BOARD, with a 20-7 Republican majority, is expected to re-elect chairman Roy Rowold, R-Rochester Hills.

Rowold is recommending abolition of the transportation committee after two years and folding its functions into the general government committee.

A Republican caucus last month decided against reappointing Fred Houghten of Rochester Hills to a third six-year term on the Oakland County Board Commission, opting for outgoing county commissioner James E. Lanni, R-Royal Oak. That decision could be confirmed this evening.

This year's 27-member board will have seven new members, for an unusually high turnover rate of 26 percent. Two of last year's members sought other offices, two didn't seek re-election, and three lost re-election bids.

clarification

Last week's issue contained an incorrect telephone number for the Michigan Paralegal Institute Inc., of Detroit.

Enrollment information is available from the institute at 964-4080 during weekday business hours and at 965-7234 after 5 p.m.

Home heating aid available

Eligible people should apply soon after Jan. 9 for home heating assistance funds, the Oakland Living Assistance Human Service Agency announced.

State aid is available for low-income, elderly and handicapped households. OLSB will determine eligibility of applicants, who may re-

ceive \$50 to \$200 toward home heating cost.

OLSB's toll-free number is 1-800-482-9250 to ask for applications. Applicants will need proof of the last 12 months income, SSA award letters, copies of SSA check and a copy of the heating bill. No shutoff notice is necessary.

25%-33% OFF ORIGINAL PRICES ON SELECTED FALL AND WINTER FASHIONS

Clearance prices have been marked on the price tag.

THE CLEARANCE

Look for the and green THE CLEARANCE signs for merchandise included in this event.

CLARIFICATION

Clearance Return Policy: Clearance items are final sale. No refund, however, no exchange. Refund will be made in any currency.

Make a home improvement.

Your generous donation to the Torch Drive can make a difference in troubled homes.

HUDSONS

NEW YEAR'S HOURS: ALL STORES OPEN SUNDAY, 12-4