OPEN AND SHUT - EPISODE 1 - THE FIRE

Prosecution included questionable witnesses, racial stereotype, in 2000 arson trial of Dale Chu

*The Outagamie County case featured District Attorney Vince Biskupic who called one of his key witnesses ‘credible’ — then charged him with perjury 10 days later*

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*This is the first installment of Open and Shut, a seven-part podcast and online series investigating the virtually unchecked power of prosecutors. See the entire project at* [*wpr.org*](http://wpr.org)

In the spring of 1999, Dale Chu was just about to graduate from high school in Appleton, Wisconsin. His parents had lost their income and their home after the family’s dry cleaning business went up in flames the year before. So he was crashing on friends’ couches.

Chu had been in and out of trouble for years. Truancy, driving without a license, disorderly conduct. And that spring, he learned that he was going to be a father.

“That's where, I guess for me, my life really started spiraling out of control,” he says.

In October of that year, Chu was picked up for selling cocaine.

“And I'm like, ‘Oh my God, I’m, I mean, I screwed up big time.’ You know, like huge, I mean, I’m facing a felony here,” Chu recalls.

Whenever he had faced charges in the past, Chu would take the plea deal.

“Why would I ever go to trial and face more time instead of taking the deal? I’m guilty, I did it,” Chu says. “It’s like, ‘Yeah, give me the lowest amount of sentence you’re going to give me because I was bad.’ ”

Chu was spending his nights in jail and his days as an assistant manager of a gas station as part of a work-release program in early December 1999 when two police officers showed up at his work. They handcuffed him and read him his rights.

The whole thing seemed like a bad joke.

Chu was charged with arson for the fire at his family’s business. A judge set his bond at $10,000. “Are you kidding?” he recalls thinking. “This isn’t even, this isn’t even — I didn’t do this.”

People tend to think that what happens next is in the hands of the jury. But in a lot of ways, it’s in the hands of the prosecutor. In this case, that was Outagamie County District Attorney Vince Biskupic.

Biskupic decided he had enough evidence to move forward. As the case headed towards trial, Chu just kept thinking, at any minute, this whole thing would go away.

But that’s not what happened.

“Most people that are adults, they’ll know their Social Security number by heart. I know my Department of Corrections number … 4-0-1-9-7-3,” says Chu, who is now in his early 40s.

A joint investigation by Wisconsin Watch and WPR found questionable behavior in Chu’s case and six other prosecutions by Biskupic during the 1990s and 2000s. The investigation also probed a case handled by Biskupic and disgraced former Winnebago County District Attorney Joe Paulus, Biskupic’s first boss.

The impact of those prosecutions continues to reverberate for defendants like Chu — and others who remain behind bars more than 20 years later.

Wisconsin Watch and WPR sent registered letters with lists of questions and left phone messages and emails for Biskupic, who is now an Outagamie County Circuit judge, and his attorney. They did not respond. Paulus did not respond to efforts to reach him through phone, email and certified letter with lists of questions.

**Chu family builds successful business**

Chu’s parents emigrated from South Korea, and they opened a dry cleaning business in Appleton, part of northeast Wisconsin’s Fox Valley. In the 1990s, Appleton was very white. It still is.

“My brother and sister and I were like the only Korean family,” Chu says. “So we didn't really fit in racially. We didn't fit in with anybody.”

By the mid ‘90s, the Chus’ business had grown. They had a central store near downtown Appleton with dry cleaning equipment and a handful of satellite locations for drop-off and pickup.

Chu and his two siblings helped out at the business. Although they worked together, Chu says he and his parents weren’t close. They rarely ate together as a family, and weeks would go by when he wouldn’t see his dad, who was “always working.”

He remembers one time his father became angry with him. It involved a friend, Nick Wales. Chu got Wales a job at the dry cleaners — and even covered for him when he stole a pair of Tommy Hilfiger jeans. But that friendship would later sour in a big way.

Chu claimed he had given the jeans to Wales.

“And my parents were like, ‘Why would you ever do that for somebody?’ And I remember my dad saying, ‘I want you to remember something, son. You have black hair, brown eyes — you are different than everybody else.’ ”

**Fire leads to charges**

On Jan. 4, 1998, the Chus’ main Appleton dry cleaning business was destroyed by fire. This was the fire Biskupic accused Dale Chu of setting.

Chu and his brother, cousin and some friends had spent the afternoon working at the main dry cleaning store, moving things from one room to another because they say Chu’s dad planned to repaint. When they finished, they returned home. But soon after, the young men returned in Chu’s little blue 1986 Chevy Spectrum. Ironically, this part of the story begins with a fire extinguisher.

The expired extinguisher was at one of the satellite locations. Chu’s dad had asked him to replace it. Chu and his friends returned to the main location to pick up a new fire extinguisher. They took it from a delivery van and say they never went inside the building.

Chu and his friends later returned to the main store to drop off the expired extinguisher — and saw the brick building surrounded by fire trucks.

“My parents really couldn’t provide for their family anymore at this point,” Chu recalls. “We had an eviction notice on our house. We had to pack up and get out of there. They lost their business. They lost everything.”

Two years later, Chu was arrested — for arson.

“And I'm like arson for what? Arson for where?”

Investigators couldn’t track the source of the fire to something accidental — like faulty wiring –— so they concluded it was arson. This old practice in fire investigations is known as “negative corpus.” It’s kind of like saying, “We can’t figure out how this guy died. So it must be murder.”

A decade after Chu was convicted, the National Fire Protection Association fully rejected that approach, saying it was “not consistent with the scientific method.”

**Prosecutors wield plea power**

The standard for conviction is proof beyond a reasonable doubt. But the standard for charges is much lower.

This gives prosecutors a lot of leverage. A person facing five counts and 50 years if convicted at trial might agree to plead guilty to one count and only 10 years.

“But you can see how even an innocent person would take that deal because going to trial is risky business,” says Angela J. Davis, law professor at American University. “And so we have a system of pleas. We have a system in which 95% to 98% of all criminal cases are resolved by way of a guilty plea.”

Prosecutors do all of this — charging, not charging — with little oversight. Davis and others describe this process as a “black box.”

“They don’t have to report to a judge or anyone or explain to anyone why they’ve made the choices that they’ve made,” she says. “And so that’s an incredible amount of power.”

Forty-five states, including Wisconsin, [elect their top local prosecutors](https://s3.documentcloud.org/documents/21410650/national-study-prosecutor-elections-2020.pdf). That makes the United States the only country in the world to do that. And in theory, the ballot box should provide a check. But, says Davis, “that system doesn’t work that well.”

In Wisconsin, these district attorneys run as Democrats or Republicans. And many people just vote on party lines. That’s one reason why prosecutors go largely unchecked.

Aside from Dale Chu, the defendants in the cases examined by Wisconsin Watch and WPR are all white. That’s partially reflective of Outagamie County, which is about 90% white.

But that’s not reflective of the larger criminal legal system. Across the United States, Black men are incarcerated in state prisons five times more than white men. And Wisconsin actually imprisons [Black people at the highest rate of any state](https://wisconsinwatch.org/2021/10/wisconsin-imprisons-1-in-36-black-adults-no-state-has-a-higher-rate/).

Racism and racial inequities are endemic to the criminal legal system, meaning any flaws are, statistically, worse for people of color.

**Biskupic uses race-based argument**

And race definitely came into play in Dale Chu’s case.

When Dale Chu was charged with arson, Biskupic offered him a plea deal. Chu’s lawyer urged him to take it. But Chu refused because, this time, he said he was innocent. So the trial began in September 2000.

Arson investigators could not agree on how the fire started. So they presented multiple theories to the jury. And Biskupic pointed to Chu’s criminal record.

Neighbors said they saw a man who “generally” fit Chu’s description going into the dry cleaners the night of January 4. Biskupic also presented damning testimony: two witnesses who said Chu confessed to them.

And there was more: Biskupic said the dry cleaning business was in financial trouble. Just days before the fire, Dale Chu’s dad, So Man Chu, had taken out an additional $80,000 insurance policy. A police officer testified that So Man Chu had submitted an insurance claim of almost $500,000 — but that the burned inventory in the store was, in his estimation, not worth nearly that much.

Biskupic also told the jury that because of Chu’s Korean heritage, “he was very devoted and loyal to his father” who had “put him up to it.”

Chu was convicted — heading off to prison at 19 years old.

“I guess I don't understand to this day how I’d lost that trial. The only thing I can think of is Vince (Biskupic) portrayed me as a bad enough person, that it didn’t matter if I was guilty or not,” he says.

Chu’s father was later charged with defrauding the insurance company. He pleaded no contest, which meant he didn’t admit or deny guilt but accepted there was enough evidence to convict him.

Asked whether his father asked him to set the fire, Chu responds: “Absolutely not.” He adds, “If they could only see how hard a time my parents had after losing the business.”

**Friend turns foe**

But what about those two witnesses who said that Chu had confessed to them?

One of them was Nick Wales. At trial, Wales testified that Chu told him he’d set the fire.

But here’s what the jury didn’t hear.

Before trial, Wales changed his story multiple times.

He signed an [affidavit](https://s3.documentcloud.org/documents/21410648/nick-wales_affidavit_20000628.pdf) alleging that an investigator in Biskupic’s office offered to help “get rid” of some pending criminal charges if Wales would tell police what he knew about the fire. So Wales said that Chu confessed.

Later, that same investigator helped Wales even further — [quashing a warrant for his arrest](https://s3.documentcloud.org/documents/21421112/chu_wales_quash-warrant_20000331.pdf).

Wales claimed in his affidavit that the investigator told him to keep this all a secret, because it would “look bad for the case.” He also said the investigator told him to lie on the stand if questioned about the promised favors.

In a 2005 [Wisconsin State Journal story](https://s3.documentcloud.org/documents/21410649/dale-chu-state-journal-story.pdf), the investigator, Steve Malchow, said he never asked Wales to lie. But he did suggest that Wales not tell his attorney about the help he had received. Malchow did not respond to repeated calls and letters from Wisconsin Watch and WPR.

The judge prevented jurors in Chu’s case from hearing the full Nick Wales saga. They just heard Biskupic call Wales a “credible witness.” Ten days later, Biskupic’s office [prosecuted Wales for allegedly lying in that original affidavit](https://s3.documentcloud.org/documents/21421156/chu_wales_false-statement_criminal-complaint_20000929.pdf).

Dale Chu says he ran into Wales at the Outagamie County Jail before he was sentenced to seven years in prison and ordered to repay the insurance company more than $100,000.

Chu told him, “ ‘You realize that you just sent me to prison for a long time? Why would you do something like that?’ He’s like, ‘Well, they gave me a deal.’ ”

Efforts to reach Wales were unsuccessful. No working phone, email or address could be located for him.

The second witness was a woman close to Chu, JoAnn Weiss. She told jurors Chu confessed to her, too. But two other witnesses testified that Weiss was facing legal trouble of her own. They said Weiss had told them police had threatened to put her in jail if she didn’t “bring something up against” Chu. Weiss declined an interview and did not respond to detailed questions sent by email seeking to verify the claims in that testimony.

**Appeals court OKs use of stereotypes**

In 2001, Chu brought his case to the Wisconsin Court of Appeals, arguing, among other things, that Biskupic withheld evidence about the credibility of the two witnesses who claimed Chu confessed — and that the cause of the fire was never determined. The court ruled against him, and Chu’s sentence stood.

Chu got out of prison in 2004. He’s since gotten married and had more kids. He was part owner of a popular restaurant in Appleton for a while. In the last year, he moved to Virginia and opened a food truck.

He says he’s really turned his life around.

But even though Chu has moved on, there’s one aspect of the case that still really bothers him. Biskupic told the jury that Chu’s Korean background — and purported loyalty to his father — was evidence of motive to burn down the dry cleaners. Weiss, a white woman whom Chu sometimes called “Mom,” told the jury that Chu had described Korean culture this way: “To my understanding, if his father asked him to do something, he would do it.”

The [Court of Appeals said that type of racial testimony was allowed](https://www.wicourts.gov/ca/opinion/DisplayDocument.pdf?content=pdf&seqNo=4200). “Although there is no place in a criminal prosecution for ‘gratuitous references to race,’ ” the court found, “the state may properly refer to race when it is relevant to the defendant’s motive.”

That became legal precedent in Wisconsin. It’s even [cited in a footnote](https://s3.documentcloud.org/documents/21421308/screen-shot-2022-03-16-at-100651-am.pdf) in a document available to lawyers when interpreting the state constitution.

Just south of Outagamie County in Winnebago County, the impact of cases brought by then-District Attorney Joe Paulus — Biskupic’s former boss — continue to reverberate.

That legacy will be explored in the next installment of Open and Shut.

“Vince would follow Joe around like a puppy dog,” says Mike Balskus, a former assistant district attorney under Biskupic. “Joe was his mentor.”

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