

**STATE OF IOWA,**

Plaintiff,

Vs.

**JOHN WEST SICKELS**

**FECR055372**

**JAMES ALAN CHRISTENSEN**

**FECR055373**

Defendants

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BEFORE: The Honorable Arthur E. Gamble  
Chief Judge, Fifth Judicial District

AT: Woodbury County Courthouse

COMMENCING ON: March 3, 2009

ENDING ON: March 12, 2009

*The prosecutor has more control over life, liberty, and reputation than any other person in America. His discretion is tremendous...While the prosecutor at his best is one of the most beneficent forces in our society, when he acts from malice or other base motives, he is one of the worst.* --Former U.S. Attorney General Robert Jackson

Dear Sir or Madam:

I am writing this letter on behalf of John Sickels and Jamie Christensen, two police officers from Creston, Iowa who were unfairly convicted of sexual abuse in the second degree in March of 2009 and sentenced to 25 years in prison with a 70% mandatory minimum. The sentence means that we are required to serve a minimum of 17 ½ years before being eligible for parole. Currently, the average time of sentence for the crime that we were convicted of is approximately 23 years. Since being charged and convicted we have steadfastly maintained our innocence even while suffering numerous injustices at the hands of the Iowa legal system and several state agencies that are tasked to ensure the fair treatment of the citizens of Iowa.

The unfairness began with the initial investigation conducted by the Iowa Division of Criminal Investigation, proceeding through to the Iowa Attorney General's Office and the 5<sup>th</sup> Judicial Court, and finally concluded with the Iowa Court of Appeals and the Supreme Court of Iowa. The higher courts in Iowa have continuously failed us by outright denial, refusal to review, and ignoring key details and facts of the case that would have proven our innocence.

Taken as a whole, the case is mediocre at best. When all of the misstatements, lies, and inaccuracies are added together, the case is full of reasonable doubt. Since the original complaint was made against Sickels and Christensen, the complainant has offered numerous lies and fabrications regarding the night in question, her past, and most recently, a completely different story from what she testified to at trial in 2009.

One Iowa Assistant Attorney General was forced into a deposition regarding the case and her actions during the trial where she reluctantly admitted that her closing rebuttal argument was not a part of Iowa law. Additionally, when she stated to the judge that nothing was intentional, she was being dishonest. She later testified that she had prepared her rebuttal in advance, thus making it intentional.

Since our conviction, there have been numerous aspects of the case uncovered that have pointed directly towards our innocence. Unfortunately there is no way to get all of the information in front of the courts. We have followed every step in the judicial process to the best of our ability. After being convicted, we both filed timely appeals with the Supreme Court of Iowa. The Iowa Court of Appeals denied any type of relief. We then asked for further review to the Supreme Court of Iowa. They denied any type of further review.

We both filed for post-conviction relief actions against the state in the hope that our situation could be remedied. Again, the Iowa Court of Appeals denied any relief and once again, the Supreme Court of Iowa refused any further review.

There have been multiple complaints made by Sickels, Christensen, our families and numerous friends and supporters, all who know us well, regarding all of the offending agencies. Unfortunately, they have all been for naught. It is impossible to estimate how many letters of support have been sent to representatives at every level of state government. Most are ignored or sent back with the terse reply that they can do nothing.

Apparently, the DCI and the Iowa Attorney Generals' Office are above reproach and are in no way held accountable for any of their actions. Generally, the complaints are stonewalled or outright ignored by the boards and commissions that are tasked to investigate any alleged wrong doings. More often than not, the findings are not released and complainants are referred from agency to agency where they are told that they cannot be of any help to the complainants at all. Transparency is a word that is not uttered in the Iowa Judicial system.

We know full well that all of the agencies that have been involved in this case have done many things wrong over the years. We have the unglamorous benefit of being imprisoned and a vested interest in bringing this case to the forefront of conversations once again. One can only speculate how many others are wrongly imprisoned in Iowa but do not have the resources or knowledge to call the offending agencies to task. Our case is one that should be studied so it will never be repeated.

Currently, our judicial system is in shambles. As a society, we expect perfection from the services that we pay for and use. If a plumber were to work on your house and the pipes continue to leak, you would have the reasonable expectation that they would return and fix the problem. If they did not, there are avenues to pursue to ensure that as a homeowner, your problem would be rectified. We expect perfection when they leave. The same would pertain to the meals that we order at a restaurant, the mechanic that works on our vehicles, and the doctors that we visit. Therefore, perfection should not be too much to ask from prosecutors and judges who have at their disposal the tools and the power to send defendants to prison for decades at a time. We would not continue to make excuses in any of the above examples in the same fashion that the higher courts and the committees that are given the responsibility to oversee the judges and prosecutors in Iowa do.

We believe that we were never afforded the opportunity of a fair trial and our rights have been violated at every step of the judicial process. We were never afforded the constitutional right of innocent until proven guilty. There was a rush to judgment and a convict at all costs mentality by the DCI and the Iowa Attorney General's Office. It seems that the higher courts in Iowa are more concerned with rubber stamping a conviction than they are with the pursuit of the truth and justice.

The following pages describe in great detail the numerous miscarriages of justice that have befallen us since June of 2008. We have backed up our allegations with trial transcripts, depositions, court filings, letters, and e-mails. We sincerely hope that there is an avenue of relief that you can advise us on or assist us in our quest for justice. We have both been incarcerated at the Iowa Medical and Classification Center in Coralville Iowa since 2009.

If there is any information that you would like expanded on please do not hesitate to ask. Thank you in advance for any assistance or guidance that you may be able to offer.

Respectfully

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John W. Sickels #0079450  
Iowa Medical and Classification Center  
2700 Coral Ridge Avenue  
Coralville, Iowa 52241

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James A. Christensen #6076835  
Iowa Medical and Classification Center  
2700 Coral Ridge Avenue  
Coralville, Iowa 52241

**Responsibility in the  
Criminal-justice  
system is so diffuse  
that no one has to take  
responsibility, except  
the defendant...**

**Ronald Kuby  
New York City Attorney  
GQ Magazine August 2014**

*Rape is...an accusation easily to be made and hard to be proved, and harder to be defended by the party accused, tho never so innocent.*

Matthew Hale, The History of the Pleas of the Crown 1778

In June of 2008 John Sickels and Jamie Christensen, two Creston Police Officers, were charged with Sexual abuse in the 2<sup>nd</sup> degree and arrested. After a nine day trial, the two men were convicted of the charges and sentenced to 25 years in prison with a 17 ½ year mandatory minimum sentence. Currently, the average time of sentence for the crime that we were convicted of is 23 years.

The initial investigation conducted by the Iowa Division of Criminal Investigation was flawed from the beginning and full of inaccuracies and lies. Elisa (Lisa) Smith, our accuser, stated in her first statement to the DCI that Sickels and Christensen had arrived at the club late and already intoxicated because they had been at a comedy club. The state was forced to admit that was incorrect, Smith had Sickels and Christensen confused with two other patrons that were also in the club that night.

Smith originally told Christensen in a recorded conversation that Sickels had raped her and she wanted him fired. Christensen insisted that he was there and that was not the case. She never included Christensen in her accusations until much later.

Iowa Division of Criminal Investigation S/A David Dales failed to record or transcribe the follow up interview with Smith after Sickels and Christensen had been interviewed. Why any interview with the most important witness and the complainant for the state was not recorded is a mystery. A one page report was generated from the interview and any notes taken at the time have either been lost or destroyed.<sup>1</sup> Dales testified at a later post-conviction hearing for Sickels that it was his decision not to record the follow up interview. It seems strange or rather convenient that the decision not to record the interview and have it transcribed verbatim would be made on a case with the potential life altering ramifications that Sickels and Christensen faced. One can only wonder what was said in that interview and if there was exculpatory evidence that would have proven that Sickels and Christensen were indeed innocent.

The DCI failed to act when they were notified that there was an active warrant from Union County for Smith. Instead, they ignored the warrant completely. They did not refer the information to any other law enforcement agency or the Union County Attorney's Office.

The DCI and the Iowa Attorney General's Office failed to investigate or act on an alleged domestic assault that occurred between Smith and her paramour, Larry Will, about 6 months prior to this case. Leisha Clark gave a statement to the DCI that Will had physically beat Smith and sodomized her with the barrel of a shotgun threatening to shoot her if she was unfaithful to him in the future. Although evasive, Smith confirmed this in a later deposition. Clark's word was sufficient to testify against Sickels and Christensen but somehow she was not as believable when it came to any type of testimony against Larry Will.

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<sup>1</sup> Trial Testimony of S/A David Dales trial transcript Pg. 607 Ln 3 – Pg. 608 Ln 23

S/A Dales testified at the post-conviction hearing for Sickels that the DCI had not investigated or passed on any of the information regarding the alleged domestic abuse and sexual assault to any law enforcement entity in Union County where the assault occurred. However, Dales conceded that Larry Will could have been charged with the exact same crime that Sickels and Christensen were convicted of. Had the DCI investigated Larry Will for domestic and sexual assault, his credibility as a witness for the state would have been zero. The Attorney General's Office outright ignored any of the accusations against Larry Will. The fact that two state funded agencies chose to ignore a credible complaint can only be viewed that they are allowed to choose who they will investigate and prosecute and two police officers are apparently a higher priority than Larry Will.

After being arrested Sickels and Christensen posted bond and were released from jail. Shortly thereafter, a preliminary hearing was scheduled in Union County in front of Judge Joy. Both men waived their right to the hearing in writing and entered a written plea of not guilty like the overwhelming vast majority of criminal defendants in Iowa do. Judge Joy was unsatisfied and forced both men to appear at the hearing regardless of the written waivers. Most astonishingly, Christensen was forced to appear before the judge without his lawyer present.

Assistant Attorney General Andrew Prosser petitioned the court to refer to Smith as a "victim" during the trial. The Court refused and stated that she would be referred to as the complainant or a witness. Prosser further argued that it was the states position that she was a victim in the same sense that Sickels and Christensen were "alleged to be innocent." Not innocent until proven guilty or with any interest in their Constitutional rights.

Larry Will contacted the AG's Office approximately two weeks before the trial and informed them that he needed to change his earlier statement.<sup>2</sup> During his earlier deposition, Will testified that he had not left the house and was home when Smith got there on the night in question. Will rescinded the earlier statement and now admitted to the fact that he had left their residence at about 3:30 am to go and get cigarettes. He admitted to driving by the country club that was on the opposite side of town from where he would have purchased cigarettes and saw Smith's car in the parking lot but denied going in. Will gave no explanation why he initially lied during his deposition. We are left to believe that a man who beat, sodomized and threatened his girlfriend with a shotgun, would merely drive across town, through the parking lot, and not go in the building to check on her.

The Court refused to hear testimony regarding an event that occurred approximately six months prior to this incident where Smith had been drinking with another member of the club after hours and then had been observed kissing him in the parking lot by the man's wife. When confronted by her boss, Smith lied and claimed that the man was the aggressor. The similarities are remarkable, Smith lied when confronted about her actions to protect her job. The defense did not want to use the incident as a way to explore the past sexual history of Smith, only as a way to convey to the jurors that Smith was prone to drinking while at work and then lying in order to protect her job.

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<sup>2</sup> Paul Scott Deposition 06/18/13 Pg. 62 Ln 11 – Pg. 63 Ln 23

Leisha Clark testified that she checked Smith's drink about 999 times to make sure that there was no alcohol in it. She did not say that she had to check any other employee's drinks but did say that Smith was her right hand gal. Smith punched out early on the night in question and was drinking heavily with Sickels and Christensen. Similar to the night with the other club member where Smith was forced to lie to protect her job and actions.

Smith also testified that she never said no, stop or anything similar and waited over a week to report the alleged assault.

S/A Dales testified during the trial that Christensen never admitted anything to him even though that is what the Complaint and Affidavit stated that was written by Dales.

S/A Dales testified that Smith refused to talk to Sickels in an attempt to gather evidence. Smith testified that it did not matter who she talked to.

The prosecution attempted to submit a jury instruction that was based on a statement that told the jury that in order to find the defendants not guilty, they must believe what they say. Judge Gamble denied the proposed instruction because it switched the burden of proof, was not part of Iowa law, and completely ignored the Constitutional rights of innocent until proven guilty and that the state must prove guilt beyond a reasonable doubt.

Perhaps the most vexing aspect of the entire case are the lies and misstatements of Iowa law perpetuated by assistant Iowa Attorney Generals Andrew Prosser and Becky Goettsch. During her closing rebuttal argument, Assistant Attorney General Becky Goettsch made numerous misstatements of the law that switched the burden of proof to the defense that were clearly prosecutorial misconduct. Most were objected to and sustained, two were overlooked by the defense. They were pervasive and inflammatory in nature and denied Sickels and Christensen any chance of a fair trial. Unfortunately, the higher courts may not be aware of the outright lies that have been told by the prosecutors that have come to light.

At the very onset of her closing rebuttal argument, which is the last thing that a jury hears before being sent to deliberations, Ms. Goettsch initiated and displayed a power point slide as part of her argument that said:

***“Not guilty requires you to believe defendants and not believe Lisa Smith.”<sup>3</sup>***

The slide was immediately objected to because it switched the burden of proof to the defense and was a clear misstatement of Iowa law. The objection was sustained by the court and ordered removed. However, the necessary objection to the slide drew the jury's attention to it and gave them ample time to read and digest the offending statement before it was removed.

Not satisfied with the slide alone and with complete disregard for the court's previous ruling, Ms. Goettsch repeatedly made remarks that were similar in nature throughout her entire rebuttal. Two of her statements were somehow overlooked by the defense attorneys and not objected to even

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<sup>3</sup> Trial Transcript State's Rebuttal Closing Argument Pg. 1290 Ln 10-12



though they mirror the slide that was ordered removed. The two that were not objected to are as follows:

***“To give the defendants a not guilty verdict as they have asked you for, you have to essentially disbelieve, forget Lisa Smith.”<sup>4</sup>***

And:

***“The other aspect or conclusion that you must come to to find reasonable doubt here is you have to believe the defendants, believe the defendants and give Lisa Smith a motive to lie or some combination thereof.”<sup>5</sup>***

As a final snub to the court and all of its rulings Ms. Goettsch persisted with the same type of argument by saying:

***“In order to find the defendants not guilty there has to be some element in you to believe what the defendants have told you in their statements and in their testimony.”<sup>6</sup>***

Ms. Goettsch offered another argument into her rebuttal that was clearly inflammatory and was another attempt to put law into the jurors’ minds that is inconsistent with Iowa law. Again, her only purpose was to sway the jury and prejudice Sickels and Christensen. In her zeal to gain a conviction at any cost Goettsch stated:

***“Plus whether she’s intoxicated, not intoxicated. I mean Mr. Sickels wants us to believe that, she was drunker than me. She was really drunk. If that’s the case, he’s a police officer, he should have known she couldn’t consent.”<sup>7</sup>***

Once again, the defense objected and the jury was removed by the court. When the jury was reseated the objection was sustained, and a curative instruction was given by the court.

Ms. Goettsch again mislead the jury by stating:

***“The other thing that we have heard some mention of about is the warrant. She has lots of motives I think is what we heard. We hadn’t heard about the warrant. There was some discussion that maybe there was a warrant out.”<sup>8</sup>***

Ms. Goettsch’s statement was deceitful at a minimum. During Lisa Smith’s deposition, Andrew Prosser informed both defense attorneys and Smith that there was an active warrant for her from Union County. Goettsch was present at the deposition and knew beyond a doubt that there was a warrant. However, she chose to deceive the jury by minimizing her knowledge about the actual facts.

In total there were six objections during Assistant AG Becky Goettsch’s closing rebuttal, which is the last thing that the jury hears before going into deliberations. All of the objections but one were

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<sup>4</sup> Trial Transcript State’s Rebuttal Closing Argument Pg. 1255 Ln 25 –Pg. 1256 Ln 2

<sup>5</sup> Trial Transcript State’s Rebuttal Closing Argument Pg. 1256 Ln 22 –Pg. 1257 Ln 2

<sup>6</sup> Trial Transcript State’s Rebuttal Closing Argument Pg. 1286 Ln 14-17

<sup>7</sup> Trial Transcript State’s Rebuttal Closing Argument Pg. 1262 Ln 3 - 7

<sup>8</sup> Trial Transcript State’s Rebuttal Closing Argument Pg. 1285 Ln 23 – Pg. 1286 Ln 2

sustained, the jury was removed twice, and there was one bench conference. The only thing denied by the Court was the motion for a mistrial because Judge Gamble did not feel that Ms. Goettsch's misconduct during the rebuttal was intentional.

Individually, each statement is a misstatement of Iowa law and are contrary to the previous rulings of the court. Combined, the constant and repetitive nature of the argument unfairly polluted the jury's mind with the argument that they must believe the defendants or return a guilty verdict. Regardless of how many times the court attempted to correct the improperly introduced matters Sickels and Christensen were unfairly prejudiced and the fundamental constitutional right to the presumption of innocence was violated.

These statements persistently made, despite the courts rulings, told the jury to disregard the law given to them by the court in all of its instructions and forced them to consider law suggested by Ms. Goettsch. The entire foundation of her argument was based on an erroneous power point slide. When the slide was ruled improper, Ms. Goettsch ploughed forward at all costs to implant the unlawful statements in the jurors' minds.

A California Appellate Court observed that...A statement of the prosecutor...is weighted with the authority of his office. It...cannot fail to make an impression upon the minds of jurors. Thus, the prosecutor, for a variety of reasons, commonly has more influence with the jury.

Because of the repetitive misstatements of the law a mistrial was requested by the defense mainly citing prosecutorial misconduct. Defense attorneys stated that it was the fifth time in the rebuttal argument that counsel had made a misstatement of the law causing the Court on one occasion to have to do an instruction to the jury. Defense counsel further stated there had been an ongoing attempt during the rebuttal, even in the opening statement as well, to shift the burden and they are misstatements of the law of a constitutional proportion and that they could not be remedied.<sup>9</sup>

Assistant AG Prosser attempted to defend the rebuttal argument by saying; "I think the substance and intent of the counsel's comment has to do with the statements of the defendant's that the untruthfulness of the statements of the defendants and the potential effect that those statements may be having on the jurors' mind." He further argued that "It was a perfectly proper argument by the State and it had not been done five times."<sup>10</sup>

Once the jury was removed Judge Gamble reviewed the slide in question. He agreed that "*Not guilty requires you to believe defendants and not believe Lisa Smith.*" And "*In order to find the defendants not guilty there has to be some element in you to believe what the defendants have told you in their statements and in their testimony.*" Is the same thing. He also stated that he was "troubled" by the fact that the Court sustained the objection, struck the argument, and then at the conclusion of the State's rebuttal we have exactly the same argument that the Court previously struck.<sup>11</sup>

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<sup>9</sup> Trial Transcript State's Rebuttal Closing Argument Pg. 1287 Ln 7 – Pg. 1288 Ln23

<sup>10</sup> Trial Transcript State's Rebuttal Closing Argument Pg. 1289 Ln 1 – Pg. 1290 Ln 2

<sup>11</sup> Trial Transcript State's Rebuttal Closing Argument Pg. 1290 Ln 10 – Ln 24

Ms. Goettsch could only say that she was not stating the law and it was a common sense argument. She also stated that she did not understand why she couldn't comment on it and that she was "Shocked."<sup>12</sup>

Again, Sickels defense attorney argued that the offending statements had shifted the burden of proof and it wrongly implied to the jury that the defendants have to prove something when all the instructions and the law is contrary. Ms. Goettsch argued that's not what it says and I took it down. Judge Gamble stated that you put it right back up. To which Ms. Goettsch argued that she did not put it back up. Again, Judge Gamble said that she stated exactly the same thing in conclusion of your argument after being told by the Court not to do it. Ms. Goettsch apologized.<sup>13</sup>

Defense Attorney Scott further argued that; "In addition to that line on the Power Point presentation and the closing argument that was made, I do believe that - - well, I believe that it is prosecutorial misconduct and I believe one other thing that indicates that, Your Honor, is that this is the exact same language that was presented in their proposed jury instructions that you denied that they have been trying to get in throughout this entire closing argument. And I think that that adds to the - - well, to the point that this should be mistried because it's not just some sort of slip of the tongue and it's not just some sort of slip of the power points. I mean these are intentional acts that are attempting to put in the jurors' mind law that the Court - - law that is not of the State of Iowa, law that is against the constitution, and law that was told to these prosecutors would not be part of the law of this case based on their requested jury instructions."<sup>14</sup>

Judge Gamble erred when he denied the motion for a mistrial even though he himself stated on two separate occasions that Ms. Goettsch's statements were the same thing and her little shorthand left out some fairly important constitutional law, and that she was not being careful or setting a good record for appeal.<sup>15</sup> Even after he heard Mr. Scott's statements regarding the intentionality of the prosecutors all he could say was:

*"And I believe you that it wasn't intentional and that's why I am not going to grant a mistrial."<sup>16</sup>*

Judge Gamble must have believed that Ms. Goettsch prepared the power point as the jury was waiting for her to begin her rebuttal argument. Ms. Goettsch apologized for her actions and stated that:

*"Nothing was intentional."<sup>17</sup>*

Webster defines "*Intentional*" as: Done by intention or design, not accidental. "*Intention*" is defined as: A determination to act in a certain way, what one intends to do or bring about.

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<sup>12</sup> Trial Transcript State's Rebuttal Closing Argument Pg. 1291 Ln 1 – Ln 20

<sup>13</sup> Trial Transcript State's Rebuttal Closing Argument Pg. 1292 Ln 1 – Ln 16

<sup>14</sup> Trial Transcript State's Rebuttal Closing Argument Pg. 1295 Ln 3 – Ln 22

<sup>15</sup> Trial Transcript State's Rebuttal Closing Argument Pg. 1293 Ln 9 – Pg. 1294 Ln 21

<sup>16</sup> Trial Transcript State's Rebuttal Closing Argument Pg. 1294 Ln 12-14

<sup>17</sup> Trial Transcript State's Rebuttal Closing Argument Pg. 1294 Ln 3-4 & 9-10

**“Intend”** is defined as: To have in mind as a purpose or goal, PLAN to design for a specified use or future.

*As a matter of logic, a prosecutor’s attempt to intentionally distort the fact-finding process is relevant to the reliability of the verdict. The most obvious reason a prosecutor would intentionally strike a foul blow is to strengthen his case. In any such instance a court should examine the prosecutor’s case skeptically. It is not unreasonable for the court to infer that if a prosecutor acts like it is necessary to violate procedural or evidentiary rules in order to win the case, then perhaps the prosecutor’s case is vulnerable.<sup>18</sup>*

During jury deliberations that stretched on until about 10:15 pm, a note was sent out from one of the jurors saying that they were scheduled to leave on a vacation the following day. The scheduled vacation was not mentioned when the prospective jurors were questioned during selection. Judge Gamble’s answer to the note was; we will have a verdict tonight. Shortly thereafter, the jury returned a guilty verdict.

During a victim impact statement that was read before Sickels and Christensen were sentenced, Lisa Smith claimed that she had never used anything harder than aspirin prior to the alleged assault. During a later deposition for a civil case that Smith filed against the city of Creston, it was learned that she had been to an inpatient rehabilitation center, was a user of numerous illegal narcotics, and was a blackout drinker.

Judge Gamble and the Iowa Court of Appeals stated that they did not **“condone”** the prosecutors conduct during her closing rebuttal, they felt that she had prepared her rebuttal in advance and was unable to adjust when the first line was stricken by the Court. In reality, the prosecution had almost ten months to prepare their case. The closing rebuttal argument was not a spur of the moment or a in the heat of an argument type of statement. It was an intentional action that had been prepared, reviewed and most assuredly practiced.

The Iowa court of appeals affirmed the conviction in November of 2010 echoing Judge Gamble’s ruling from the post-trial motions by saying that: *“While this court does not condone the prosecutors conduct during her rebuttal closing.”* They further opined that: *“It was only on rebuttal that the prosecutor erred in the formulation of her argument. She prepared her rebuttal in advance and was not able to adjust after the court sustained the first objection.”<sup>19</sup>*

Clearly the court’s own opinion that declares the rebuttal was prepared in advance only lends credence to the fact that Ms. Goetsch’s actions were intentional in nature and she knowingly deceived the court by saying anything to the contrary.

Webster defines **“Prepared”** as: To make ready beforehand for some purpose, use, or activity, to work out the details of, plan in advance. **“Advance”** is defined as: Made, sent, or furnished ahead

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<sup>18</sup> United States V. Boyd, 55 F.3d 239, 242 (7<sup>th</sup> Cir. 1995) (“If the prosecutors did not think their case airtight (and so they tried to bolster it improperly), this is some indication that it is indeed not airtight.

<sup>19</sup> Court of Appeals Opinion filed 11/24/10 Pg. 14-15

of time. According to the definition, it would seem that it is impossible to prepare something in advance and then have it not be intentional.

Apparently, the Supreme Court of Iowa does condone the prosecutors conduct during her closing rebuttal and prosecutorial misconduct in Iowa Court rooms because they refused to grant further review in the case.

How is it possible that an Assistant Iowa Attorney General who is at the pinnacle of her career as a prosecutor and is responsible for the administration of justice and the lives of defendants who are facing lengthy prison sentences, is able to prepare an argument in advance that is a blatant misstatement of Iowa law, not be able to adjust after it is correctly stricken by the court? And, how is it possible that over the next fifteen minutes, that very same prosecutor is allowed to continue her argument with very similar statements and not face any consequences by the judge?

The prosecutor's role in our adversarial justice system – to obtain convictions, regardless of a defendant's guilt or innocence – necessarily creates competitiveness in terms of winning cases. But as stated by the United States Supreme Court:

*“While he may strike hard blows, he is not at liberty to strike foul ones. It is as much his duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one.”<sup>20</sup>*

A complaint was filed by the families of Sickels and Christensen with the DCI, most especially against S/A Dales. The findings of the DCI were not released. The DCI simply stated that the results of this investigation have been carefully evaluated and it has been found that there is not sufficient information to clearly prove the allegation. Therefore, the allegation is not sustained.<sup>21</sup>

A complaint was filed by Sickels and Christensen with the Prosecutorial Standards and Conduct Committee against Becky Goettsch for her repeated misconduct. The complaint was denied and Goettsch's written statement regarding the incident is not considered public record and therefore, was not released.<sup>22</sup> There is no way to appeal a ruling by the committee, their word is final.

A complaint was filed by Sickels with the Judicial Qualifications Commission against Judge Gamble. The complaint was denied by David Boyd, the chair of the commission with no reason as to why. The minutes to the meeting where the complaint was discussed and any other information was denied by Boyd.<sup>23</sup>

Judge Gamble did not recuse himself and refused to grant a continuance for the restitution issues that were overturned by the Court of Appeals even after the complaint had been filed against him. The judge ruled in the Crime Victims Program favor, allowing them to pay Lisa Smith and in turn

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<sup>20</sup> Berger V. United States, 295 US 78, 88 (1935)

<sup>21</sup> Complaint filed with the Iowa Division of Criminal Investigation dated 06/29/09 and accompanying correspondence.

<sup>22</sup> Complaint filed against Iowa Assistant Attorney General Becky Goettsch with the Prosecutorial Standards and Conduct Committee and accompanying correspondence. Exhibits A – M were taken from the Trial Transcripts

<sup>23</sup> Complaint filed against 5<sup>th</sup> Judicial Judge Arthur Gamble with the Commission of Judicial Qualifications and accompanying correspondence. Exhibits A PG. 33 -44 were taken from the Trial Transcripts

forcing Sickels and Christensen to reimburse the CVP, even though they had failed to have the proper waiver signed because the alleged assault was not reported in a timely fashion as dictated by the Iowa Code. The waiver has never been introduced to the Court. The statement of the CVP saying that they were sure it was done was good enough for the judge. A second complaint was filed against Judge Gamble for not recusing himself from the restitution issues. It was also summarily dismissed.<sup>24</sup>

A Des Moines TV station requested an interview with Sickels and Christensen. The Attorney General's Office and the Iowa Department of Corrections would not allow the interview. John Quinn, the Director of the DCI stated in an e-mail that when the requested interview is allowed, the allegation of a wrongful conviction will garner publicity.<sup>25</sup> In follow up e-mail correspondence between Janet Jackson and Jannay Towne, the reporter who requested the original interview with Sickels and Christensen, Jannay wrote that she had requested interviews about a half dozen times and been denied. Fred Scaletta, Assistant Director of the Iowa Department of Corrections wrote there had been no media requests for several years.<sup>26</sup>

Not one time in almost ten years of incarceration have Sickels and Christensen been allowed to talk about the events of the night in question, the trial, sentencing, and our treatment by the Iowa Department of Corrections. There is only one reason for the denials. The Attorney General's Office, the DCI and the Iowa Department of Corrections are concerned that the allegation of a wrongful conviction will garner publicity and could possibly lead to an exoneration. If they were comfortable with their investigation, prosecution, sentencing, and defense of each other over the past ten years, then there would be no reason to block an interview. However, the surest way to silence a person is to keep them locked away.

An e-mail was sent to all of the Iowa Legislatures by Matt Somers, owner of Precision Optical and a prominent businessman from Creston, expressing his concerns with the case and Judge Gamble. David Boyd forwarded the e-mail to the judge and titled it "*With friends like this.*" Instead of examining the accusations in the original complaint against Judge Gamble, Boyd decided a better course of action was to warn the judge about the e-mail. An explanation was never provided as to what kind of friend it was that had written the e-mail.<sup>27</sup>

In June of 2013 during a deposition of Paul Scott, Jamie Christensen's trial attorney, Scott stated:

*"I'm telling you right now that prior to the jury instructions being submitted Ms. Goettsch told me, and I don't know who else was present, that she was going to attempt to get in this instruction that said that if you believe the victim beyond a reasonable doubt you must convict the defendants. Something to that effect. Apparently it's a Nevada instruction. I think that I looked it up and I think I think that I researched it. We had a discussion about it. I thought*

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<sup>24</sup> Complaint filed against 5<sup>th</sup> Judicial Judge Arthur Gamble with the Commission of Judicial Qualifications and accompanying correspondence.

<sup>25</sup> Request for Interview and accompanying e-mail dated 02/08/2011

<sup>26</sup> E-mail correspondence between Janet Jackson, Fred Scaletta, and Jannay Towne.

<sup>27</sup> E-mail correspondence between David Boyd and Judge Arthur Gamble dated 06/27/2011

*there is no possible way she's going to attempt to bring this in because that's not what the Iowa law is. She did attempt to get it in as a jury instruction. Judge Gamble excluded it.*"<sup>28</sup>

Paul Scott further stated that:

*"It was an intentional act. It was an intentional act for one and only one purpose, and that was to sway the jury to prejudice the jury. I don't know how it could be reviewed—seen as anything but that."*<sup>29</sup>

Also during his deposition, Paul Scott testified directly towards Andrew prosser saying:

*"Frankly even right now, I have no reason to believe that you looked at that slide and Okayed it."*

Prosser replied:

*"You're right, I didn't."*<sup>30</sup>

Throughout post-trial motions, direct appeals, and the post-conviction process, the state, represented by Andrew Prosser for the most part, has always insisted that Ms. Goettsch's statements were not intentional. That is simply not the case and their intent has always been to mislead the higher courts regarding Prosser and Goettsch's culpability.

On September 8, 2014, after an unsuccessful attempt by the state filling a protective order to keep her out, Ms. Goettsch was forced into a deposition. During her testimony, she admitted under oath that she had; *worked together with Prosser, discussed and showed him the power point the night before her rebuttal argument and that prosser did not make any corrections to the slides.*<sup>31</sup> Nothing could make her argument more intentional than it's preparation in the days, weeks, or even months before the trial and discussions with her co-prosecutor. By telling Judge Gamble during the trial that *"nothing was intentional"* Ms. Goettsch lied directly to the 5<sup>th</sup> Judicial Chief Judge during a criminal trial where she was a representative of the state of Iowa. There is no other way to explain her actions.

It is also apparent that Andrew Prosser chose to lie to Paul Scott when he said that he had not looked at the slide. Obviously he agreed with the information that was going to be presented to the jury knowing that it was inconsistent with Iowa law and had been previously denied by Judge Gamble. Prosser did nothing but sit idly by while Ms. Goettsch lied to the judge, other than attempt to defend her actions.

One can only wonder what Judge Gamble's ruling might have been with regards to the motion for a mistrial if he had been told the truth by Ms. Goettsch during the trial and he had known that she had worked on the power point previously and had shown it to Mr. Prosser the night before instead of saying: *"nothing was intentional."*

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<sup>28</sup> Paul Scott Deposition 06/18/13 Pg. 46 Ln 19 – Pg. 47 Ln 7

<sup>29</sup> Paul Scott Deposition 06/18/13 Pg. 47 Ln 19 -23

<sup>30</sup> Paul Scott Deposition 06/18/13 Pg. 79 Ln 13 - 15

<sup>31</sup> Becky Goettsch Deposition 09/18/14 Pg. 11 Ln 25 – Pg. 12 Ln 16

Ms. Goettsch's further testimony revealed that the original power point is missing and she does not have a copy of the slide and does not know what happened to it, nor does she know why it was not preserved.<sup>32</sup> She was evasive throughout her entire deposition. However, when pushed she admitted that she may have spoken with Paul Scott regarding her attempt to introduce the offending statement into her argument. Conveniently, she had no memory of when that may have occurred.<sup>33</sup>

Ms. Goettsch further stated that the slide "*came from her head and that she did not copy it from anything.*"<sup>34</sup> However, under advice from Andrew Prosser, she flatly refused to answer any questions about research that she may have done about the slide and rather it was based on Iowa law.

Ms. Goettsch's evasive and unclear answers coupled with Prosser's numerous objections are clear indicators that the two Assistant Attorney Generals know full well that their actions during and after the trial are immoral, illegal, and not in conjunction with the laws of the state of Iowa and the United States Constitution. Based solely on the context of the testimony, it is evident that they are attempting to cover up all of their wrongdoings and hide behind "work product."

Prosser further objected to a direct question that was asked if the power point was put up intentionally. Ms. Goettsch admitted that she "*Pushed the button on the computer to put it up there intentionally.*" But, she denied any attempt to misstate Iowa law. Prosser objected again saying:

*"Wait, we're not going into what her knowledge of Iowa law was with respect to this slide."*<sup>35</sup>

It would seem that her knowledge of Iowa law would be a prerequisite to be an assistant Iowa attorney general who has the authority to prosecute and imprison criminal defendants in Iowa for lengthy prison sentences, up to and including life. Apparently Ms. Goettsch believes that it is acceptable to pull something out of her head and put it up for a jury to see, even though it has not been researched or based on any laws of the state of Iowa.

Andrew Prosser was successful in getting a protective order granted to ensure that he was not forced into a deposition.<sup>36</sup> One can only speculate what his answers may have been as to why he originally stated that he had not seen the power point only to have Ms. Goettsch completely refute his statement and testify that they had worked on the slides together and she had shown them to him the night before her argument. It is crystal clear to all those concerned that the two assistant attorney generals have been evasive and dishonest when it comes to the argument introduced by Ms. Goettsch.

It is worth mentioning that Andrew Prosser has represented the state during all post-trial motions and the entire post-conviction action knowing all the while that Ms. Goettsch lied to the court saying her argument was not intentional. Prosser's complicity in the matter is without question

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<sup>32</sup> Becky Goettsch Deposition 09/18/14 Pg. 13 Ln 18 – Pg. 14 Ln 7

<sup>33</sup> Becky Goettsch Deposition 09/18/14 Pg. 38 Ln 5 – Pg. 43 Ln 17

<sup>34</sup> Becky Goettsch Deposition 09/18/14 Pg. 16 Ln 25 – Pg. 20 Ln 16

<sup>35</sup> Becky Goettsch Deposition 09/18/14 Pg. 26 Ln 4 – 22

<sup>36</sup> Motions regarding Protective Order of Assistant A/G Andrew Prosser



and his full and complete cooperation is necessary to answer any and all questions regarding the intentionality of the slides and the major part he has played.

In March of 2015, after being denied post-conviction relief by the district court, John Sickels' appeal was also denied by the Iowa Court of Appeals. The appeal was heard by two judges from the Court of Appeals and a senior judge. The opinion was authored by the senior judge who was never appointed to or served on the Court of Appeals of Supreme Court during his tenure as a judge. Essentially, the case from the district court was decided in part by a semi-retired district judge that is only required to work 13 weeks a year.

An e-mail was sent to Attorney General Tom Miller by Janet Jackson, mother of John Sickels expressing her concerns against Andrew Prosser and Becky Goettsch. The reply from the Attorney General's Office states in part that Andrew Prosser or Becky Goettsch did not lie at trial or during a deposition and that Sickels and Christensen were properly convicted.<sup>37</sup>

There have been numerous questionable actions by the prosecutors throughout this entire case. Their convict at all costs mentality is apparent for all to see. Complaints have been filed to the appropriate boards or commissions. All have fallen on deaf ears and the results are not released in their entirety. The complainants are given limited information or passed from one agency to the next. In this age of government transparency one would hope that there would be more oversight of the attorney general's office, apparently they answer to no one and lying to get a conviction is an acceptable practice.

All too often, after a complaint has been properly filed to the offending board and denied with very little reason there is no way to appeal or continue the process. Numerous letters have been sent to the Governor's Office requesting aid. That office refers complainants to the Iowa Ombudsman's Office who on numerous occasions state that they have no jurisdiction over the DCI, or the Iowa Court System.<sup>38</sup> There is no further step and the word of their respective boards is final. There are several instances where the complaints have been shuffled back and forth between agencies and offices. At best, it is confusing for any complainant and it is obvious that there is no help to be had. In essence, any complaint made appears to be a waste of time and paper. The offending parties are reviewed by their peers.

There are numerous unanswered questions and conflicting statements that have surfaced since the depositions of Paul Scott and Becky Goettsch. I believe that it was, and still is a conflict of interest for Andrew Prosser to so vehemently argue against any type of post-conviction relief for John Sickels or Jamie Christensen now knowing that he was aware of and defended Ms. Goettsch and her improper arguments.

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<sup>37</sup> E-Mail from Janet Jackson to AG Tom Miller on 9/2/15 and response from the Iowa Attorney General's office on 9/28/2015.

<sup>38</sup> Correspondence between complainants and the Iowa Governor's Office and the Iowa Ombudsman's Office.

When Paul Scott was asked during his deposition to compare and rank, in terms of the most egregious, the rebuttal closing argument in this case compared to any others that he had heard during his career, he stated:

***“Absolutely unequivocally the most egregious conduct I have ever read, researched, heard, witnessed in my career. I cannot believe that a mistrial was not granted. I cannot believe that a supreme court allowed it to go on. I reviewed the, briefly reviewed the transcript, reviewed my motion for a new trial and the memorandum in support of it, and I couldn’t—I didn’t even remember that it had occurred as many times as it did.”<sup>39</sup>***

It is difficult at best to list all of the inaccuracies and injustices that have befallen Sickels and Christensen. They are so flagrant and numerous that they almost seem unbelievable. We believe that the investigation was flawed, the trial was fundamentally unfair with prosecutors “convict at all cost” mentality. The Iowa Court of Appeals seems to make excuses for the bad acts of the District Courts and prosecutors while the Supreme Court of Iowa will not review in most cases, even when they know that there was misconduct. The same Supreme Court that refused further review on two separate occasions where they knew there was prosecutorial misconduct is the same court that allowed a sitting county attorney in Iowa to return to work after numerous complaints of sexual misconduct by employees of the county.

The evidence is without refute that Andrew Prosser and Becky Goetsch lied to protect themselves. It is obvious by their evasive answers during follow up depositions that they know full well that their actions during the closing rebuttal, and in the years since then, were not only wrong but illegal. Becky Goetsch refused to answer the simple question if the original slide displayed for the jury was based on Iowa Law during her deposition. One would think that if a prosecutor for the state of Iowa creates a power point during the prosecution of a citizen of Iowa that it would have to be based on Iowa law.

John Sickels and Jamie Christensen have each repeatedly asked for new trials in the hope that they would be fair trials as the Constitution guarantees. At each step of the process, they have been failed. There is no recourse and a defendant or a convicted inmate’s only hope is the Court. When the Courts fail, there is nowhere else to turn. Coupled with the complete lack of accountability for the prosecutors and the excuses that are generated for their bad acts, a fair trial may only be a dream.

On June 14, 2015 Lisa Smith made several phone calls to Renee Hoyt of Creston. One of the calls was recorded. During the conversation Lisa Smith stated that she was under duress when she testified at trial and she was only doing what she was told to do by the DCI. What she was under duress from is anybody’s guess. Smith also stated that she did not care what she said during the trial, she was there and knew what happened. Most shockingly, Smith changed her story again and claimed that Jamie Christensen raped her as well, completely changing what she had said during the trial where she testified that Christensen did not sexually assault her and she respected him for that.<sup>40</sup> There were also numerous pages entered into evidence from Elisa Smith’s

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<sup>39</sup> Paul Scott Deposition 09/18/13 Pg. 45 Ln 19 – Pg. 46 Ln 2

<sup>40</sup> Recorded telephone conversation between E. S. and Renee Hoyt.

Facebook page. On one of those pages, Smith wrote: "People are so easily lied to and guillible..."<sup>41</sup>

It was also learned that Smith had been severely beaten by Larry Will, so bad that she was forced to travel back to Iowa from Oregon to have facial reconstructive surgery. During the trial in 2009, the prosecutors had chosen to ignore all mention of domestic and sexual abuse at the hands of Larry Will. Instead, they chose to prosecute Sickels and Christensen who as part of their defense insisted that Lisa Smith had made her allegations out of fear for what Larry Will had done to her in the past.

Based on the recorded phone conversation and further abuse allegations, Christensen asked for a second post-conviction hearing. After multiple requests for continuances filed by the state including one filed on October 14, 2015, the day that the brief was due and gave little time for Christensen's attorney to respond. The state correctly assumed that their request would be granted even though the judge had previously ruled that there would be no further time extensions past October 14, 2015.<sup>42</sup> Again, the court did nothing and allowed the state to further ignore Christensen's right to due process.

The evidence was presented in front of 3<sup>rd</sup> Judicial District Court Judge Jeffery L. Poulson on September 20<sup>th</sup> 2018. The Court denied Christensen a post-conviction hearing saying among other things that the recording was hearsay and would not have changed the result of the trial. The Court further opined that the recording is inherently untrustworthy and unreliable. Lisa Smith was apparently trustworthy and reliable enough in March of 2009 when her earlier and different testimony led to a conviction.

There are numerous instances that can be ripped from today's headlines where prominent sports figures and politicians have been reprimanded or even lost their jobs for not reporting acts of domestic or sexual abuse. How is it that a Special Agent from the Iowa Division of Criminal Investigation and two Iowa Assistant Attorney Generals cannot be held accountable for failing to investigate or at a bare minimum refer the allegations against Larry Will to another law enforcement entity?

When the totality of the miscues, denials and outright lies by the investigating agency, the prosecutors, and the courts amount to as much as there is in this case, it is hard to see that there is any other way than to cast doubt on the conviction. The case reeks of reasonable doubt. Before, during, and after, the complainant and her paramour have lied on numerous occasions. The prosecutors have been misleading and evasive. There is little doubt that there was prosecutorial misconduct and there is even less doubt that they will ever be held to the high standards that the citizens of Iowa deserve.

Society should demand accountability from the judges, prosecutors, and investigators in the same way that they demand accountability from criminal defendants. Unfortunately, that does not happen. Defendants are required to follow strict timelines when filing briefs, the states' attorneys

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<sup>41</sup> Elisa Smith's Facebook Page.

<sup>42</sup> Applications for extension of time dated 09/14/15 and 10/14/15 and accompanying resistance too.

are given the latitude from judges to give themselves continuances. The Assistant AG's in this case were allowed to create and display an erroneous power point presentation, switch the burden of proof to the defendants, misstate Iowa Law on several occasions, violate our right to due process, ignore rulings from the court, put law into the jurors' minds that was inconsistent with Iowa law and then make everything OK under the guise of an apology and by saying that it was "not intentional."

There is only one reason that the prosecutors would create an erroneous power point that was a clear misstatement of Iowa Law and then revisit the offending statement so many times. They were not confident in their case and they were attempting to sway the jury any way that they could. They distorted the truth seeking process on several occasions by intentionally misleading the jury into believing that it could properly decide our guilt on the basis of inadmissible and highly prejudicial evidence.

Ms. Goettsch was confident enough that she would never be held accountable or questioned that she told Paul Scott that she was going to try and introduce into her argument law that was not of the State of Iowa, law that was against the constitution, and law that was told to her would not be part of the law of the case based upon the states' requested jury instructions. She knew that it was illegal and immoral and made the conscious choice to offer the argument because she was comfortable enough to know that she would not have to answer to anyone. All she had to say was "nothing was intentional."

The closest that Becky Goettsch and Andrew Prosser came to being held accountable for their actions was when the Iowa Court of Appeals stated that they did not condone the prosecutors conduct during her rebuttal closing and It was only on rebuttal that the prosecutor erred in the formulation of her argument. She prepared her rebuttal in advance and was not able to adjust after the court sustained the first objection. It would be unheard of for the courts to accept an apology from and determine that a defendant was not acting intentionally, and then was unable to adjust to their statements after the first one was stricken.

In most cases, prosecutors have the protection of absolute immunity for actions taken within the scope of their prosecutorial duties therefore, they cannot be held civilly liable. In theory, this is to protect prosecutors from vexatious and frivolous litigation that could distract them from their responsibilities and make them less inclined to vigorously prosecute criminal cases.

Prosecutors wield an enormous amount of power. They have the ability to decide who to charge and what charges to bring, including rather to seek sentence enhancements. But, with that power comes responsibility and prosecutors should not be able to enjoy absolute immunity unless they are absolutely able to refrain from wrongdoing. Becky Goettsch and Andrew Prosser were not able to refrain from any wrongdoing.

Any prosecutor who intentionally manipulates the legal process and misleads or influences a jury into making a decision unrelated to guilt needs to be held accountable, because they not only deny the defendant a fair trial, but they undermine public confidence in the fairness and rationality of the judicial system. Society recognizes that prosecutors play a central role in vindicating the rule of law. Most generally they trust the prosecutor to perform their role properly. When prosecutors

intentionally flaunt legal and ethical rules in order to secure a conviction, and the courts take no action, people will lose faith in the justice system. As is often noted, the appearance of justice is as important as its actuality.<sup>43</sup>

The Supreme Court opined in *United States v. Kalfayan* (“in a situation like this, the judiciary—especially the court before which the primary misbehavior took place—may exercise its supervisory power to make it clear that the misconduct was serious, that the government’s unwillingness to own up to it was more serious still and that steps must be taken to avoid a recurrence of this chain of events.”)<sup>44</sup>

Judge Gamble should have presumed that Ms. Goettschs’ conduct and closing rebuttal were planned in advance and used that presumption in considering her intent. Just as the Supreme Court opined in *United States v. Hardy* (“in his closing argument, the prosecutor had constructed an analogy based on the facts of the case, with certain rhetoric significantly repeated, which appeared to be planned.”)<sup>45</sup> She was well trained and experienced in criminal law, her summation was created in advance and reviewed by co-counsel before she ever entered the court. Sadly, neither of the above cases were taken into consideration by Judge Gamble or the Iowa Court of Appeals.

We believe that we were never afforded the opportunity of a fair trial and our rights have been violated at every step of the judicial process. We were forced to adhere to all procedural rules imposed by the courts. The state was not. We were never afforded the constitutional right of innocent until proven guilty. There was a rush to judgment and a convict at all costs mentality by the DCI and the Iowa Attorney General’s Office. It seems that the higher courts in Iowa are more concerned with rubber stamping a conviction than they are with the pursuit of the truth and justice. We utilized the proper avenues for relief through the Court of Appeals, the Supreme Court, and post-conviction relief and have been stymied at every juncture.

As of this writing we have both been incarcerated at the Iowa Medical and Classification Center in Coralville, Iowa for almost ten years. Recently, the Cedar Rapids Gazette stated in an article that the average cost per inmate per day is \$96.<sup>46</sup> The cost of or confinement to date has been approximately \$700,000.00. This figure does not include the cost of a nine day trial and all of the appeals and post-conviction relief actions that we have filed based on the misconduct of two Assistant Iowa Attorney Generals. Additionally, this does not include the cost of the lifetime supervision that we were sentenced to as well.

It is our hope, and we now formally request, that an independent outside organization be tasked to investigate and question, under oath, Andrew Prosser and Becky Goettsch to determine if they are at fault for knowingly creating a power point presentation in advance and then misleading the courts into believing that it was not intentional. The commissions and committees that are tasked to ensure the equal and fair treatment of all Iowa’s citizens refuse to be of any assistance. Perhaps questions should be asked of them as well.

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<sup>43</sup> *Offutt v. United States*, 348 U.S. 11, 14 (1954) (“Justice must satisfy the appearance of justice.”)

<sup>44</sup> *United States v. Kalfayan*, 8 F.3d 1315, 1325 (9<sup>th</sup> Cir. 1993)

<sup>45</sup> <sup>45</sup> *United States v. Hardy*, 37 F.3d 753, 758 (1<sup>st</sup> Cir. 1994)

<sup>46</sup> Cedar Rapids Gazette 11/2/18

The depositions and transcripts that have been cited with this letter are voluminous in scope and therefore have not been provided in their entirety except for the deposition of Becky Goettsch. However, we will be more than willing to provide them in their entirety if requested.

Thank you for your attention in this matter and taking the time to read it. We look forward to any questions or suggestions as to a further course of action that you may have.

Respectfully

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John W. Sickels #0079450  
Iowa Medical and Classification Center  
2700 Coral Ridge Avenue  
Coralville, Iowa 52241

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James A. Christensen #6076835  
Iowa Medical and Classification Center  
2700 Coral Ridge Avenue  
Coralville, Iowa 52241

**Cited  
Footnotes  
And  
Reference  
Material**

Trial, March 9, 2009

1 IN THE IOWA DISTRICT COURT FOR WOODBURY COUNTY

2

STATE OF IOWA,

3

Plaintiff,

FECR055372

FECR055373

COPY

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vs.

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Trial

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JOHN WEST SICKELS,  
JAMES ALAN CHRISTENSEN,

Volume 5

7

Defendants.

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9

10 . BEFORE: The Honorable Arthur E. Gamble  
Chief Judge, Fifth Judicial District

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12 AT: Woodbury County Courthouse  
620 Douglas Street  
13 Sioux City, Iowa 51101

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COMMENCING ON: March 3, 2009  
15 ENDING ON: March 12, 2009

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Reported by: MISTY L. BUBKE, CSR, RPR, CRR  
21 Official Court Reporter  
Woodbury County Courthouse  
22 620 Douglas Street, #210  
23 Sioux City, Iowa 51101

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David Dales

1 interview to refresh your recollection?

2 A. Yes, it would.

3 Q. I will get that in a minute. But do  
4 you remember her saying to you at the time that you  
5 did that subsequent interview when you were talking  
6 to her about the fact that they indicated that she  
7 had flashed, pulled up her top, that she said, "If  
8 that happened that night, it was before I felt any  
9 discomfort with them"? Do you recall that?

10 A. Yes, I believe what you just read is a  
11 quote from that interview.

12 Q. And it does have quotation marks around  
13 that whereas a lot of things are summaries. Is  
14 there a reason the quotation marks would be in  
15 there?

16 A. When we don't record -- audio record an  
17 interview, we simply take notes and then we dictate  
18 up a summary of that interview. If we think things  
19 are important or notable, oftentimes an agent will  
20 put it in quotes to make it clear that that wasn't  
21 a paraphrase, that was actually what was said.

22 Q. I apologize, sir, excuse me.

23 When you complete the interview, does the  
24 interview contain everything that's in the notes or  
25 just what you feel is pertinent from the notes?

David Dales

1           A.    Again, it's a summary of the interview  
2           so it doesn't include everything that was said as  
3           far as an audio recording would be, but it includes  
4           the summary of the interview.

5           Q.    And what happens then to the notes?

6           A.    The handwritten notes?

7           Q.    Yes, sir.

8           A.    They are destroyed after -- after we  
9           get the dictation back from headquarters. We  
10          review it to make sure it's accurate and then after  
11          we decide that that is accurate, or if it isn't we  
12          have corrections made. Once we have an accurate  
13          reflection of the summary of the interview then the  
14          handwritten notes are destroyed.

15          Q.    How do you know then that if there are  
16          other things that are mentioned that you don't  
17          think are proper to go in the summary or need to go  
18          in the summary, how do you recall whether or not  
19          those other things were discussed or not discussed?  
20          Or would the summary include everything that was  
21          discussed, just not be in quotes?

22          A.    The summary would include what was  
23          discussed during the interview.

24          Q.    Do you have any recollection on that  
25          interview that she also told you that there was

David Dales

1 some general harmless flirting going on that  
2 evening between these folks?

3 A. Yes.

4 Q. Now, I mentioned to you that I would  
5 let you look at this page again to help you refresh  
6 your recollection.

7 MR. MCCONVILLE: May I approach the witness,  
8 Your Honor?

9 THE COURT: Yes.

10 MR. MCCONVILLE: And I think the document  
11 that I have here is the copy of the May 7th  
12 interview and it's all marked up because it's my  
13 copy for my use. But at any rate, I would like you  
14 to look at -- right here, the first sentence or two  
15 of that second paragraph.

16 THE WITNESS: Okay.

17 Q. Have you had an opportunity to review  
18 that?

19 A. I have.

20 Q. Now, now that you have had an  
21 opportunity to review that, do you have a  
22 recollection as to whether or not Ms. Smith told  
23 you she started drinking about the time when  
24 Mr. Tamerius left and that was about 11:00?

25 A. Yes, that's what it says.

IN THE IOWA DISTRICT COURT FOR WOODBURY COUNTY

-----X  
 JOHN WEST SICKELS, :  
                   : Plaintiff/Petitioner, :  
 vs.                  : Law No. PCCV147060 :  
 STATE OF IOWA,      : :  
                   : Defendant/Respondent.:  
 -----X  
 JAMES ALAN CHRISTENSEN, :  
                   : Plaintiff/Petitioner, :  
 vs.                  : Law No. PCCV145074 :  
 STATE OF IOWA,      : :  
                   : Defendant/Respondent.:  
 -----X

DEPOSITION OF PAUL SCOTT, ESQ.

taken by the Plaintiff/Petitioner before Ann T. Moyna, Certified Shorthand Reporter of the State of Iowa, at the Hoover State Office Building, O'Connor Conference Room, Des Moines, Iowa, commencing at 1:30 p.m., Tuesday, June 18, 2013.

ANN T. MOYNA - CERTIFIED SHORTHAND REPORTER

PETERSEN COURT REPORTERS, INC.  
500 SW Seventh Street Suite 205  
Des Moines,  
(515)

2, 28, 29, 30, 39

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Assistant Attorney General  
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Des Moines, Iowa 50319

1 gave a specific instruction at the time that the  
2 evidence came in that this was only to be considered  
3 in regard to Mr. Sickels. I don't know if that  
4 happened, or not.

5 Q. Okay.

6 A. I believe--I don't know. Again, I don't  
7 recall. The record will say what it says. I think  
8 that that would have been part of what we would have  
9 done in chambers.

10 Q. Okay. Now, if I could, let's switch to, not  
11 to kind of get you upset, and that is the rebuttal  
12 argument. I started with Mr. McConville along this  
13 line.

14 You've tried a lot of difficult criminal  
15 cases. If you had to compare the rebuttal closing  
16 argument in this case with any others that you've  
17 heard in your career, how would you rank this as  
18 the--in terms of the most egregious?

19 A. Absolutely unequivocally the most egregious  
20 conduct I have ever read, researched, heard,  
21 witnessed in my career. I cannot believe that a  
22 mistrial wasn't granted. I cannot believe that a  
23 supreme court allowed it to go on. I reviewed the,  
24 briefly reviewed the transcript, reviewed my motion  
25 for a new trial and the memorandum in support of it,

1 and I couldn't--I didn't even remember that it had  
2 occurred as many times as it did.

3 Q. You objected each time, did you not?

4 A. There were multiple objections. It was  
5 either me or McConville objected to each and every  
6 one. At least that's my recollection. I mean, I  
7 think that that's the case. The reason why I think  
8 that it's so bad, and the reason why I think that  
9 Judge Gamble's opinion that--

10 Q. Of no prejudice?

11 A. Well, I want to start out with the fact that  
12 it was unintentional because he says that in his  
13 opinion--or his ruling. I don't remember where that  
14 was, whether it was at the trial or whether it was at  
15 the hearing on the posttrial motion. At one point he  
16 makes the comment that it was misconduct, but that he  
17 doesn't think there was prejudice, No. 1.

18 No. 2, that he didn't think it was  
19 intentional. I'm telling you right now that prior to  
20 the jury instructions being submitted Ms. Goettsch  
21 told me, and I don't know who else was present, that  
22 she was going to attempt to get in this instruction  
23 that said that if you believe the victim beyond a  
24 reasonable doubt you must convict the defendants.  
25 Something to that effect. Apparently it's a Nevada

1 instruction. I think that I looked it up and I  
2 think--I think that I researched it. We had a  
3 discussion about it. I thought there is no possible  
4 way she's going to attempt to bring this in because  
5 that's not what the Iowa law is.

6 She did attempt to get it in as a jury  
7 instruction. Judge Gamble excluded it. The first  
8 slide of her Power Point presentation in her rebuttal  
9 argument was, the first line said something to the  
10 effect of in order to acquit the defendants you must  
11 believe what they say--or vice versa that you  
12 must--in order to convict you've got to believe the  
13 victim. You have to believe the victim beyond a  
14 reasonable doubt.

15 She made comments like that three or four  
16 times throughout the course of her rebuttal.  
17 That's--I mean, we've all been on the, obviously,  
18 defending people, and we know that in Iowa that you  
19 intend the consequences of your act. It was an  
20 intentional act. It was an intentional act for one  
21 and only one purpose, and that was to sway the jury,  
22 to prejudice the jury. I don't know how it could be  
23 reviewed--seen as anything but that.

24 Q. Well, let me ask you this. I asked  
25 Mr. McConville this question. Having heard that and



1 now having read the State's rebuttal closing argument  
2 a few times, do you think you exhausted all of the  
3 remedies in presenting your case on that issue to  
4 Judge Gamble during the course of the trial?

5 A. You know, I knew you were going to ask me  
6 that question. I suppose that I should have had--I  
7 should have called Ms. Goettsch to the stand.

8 Q. All right. Why didn't you or make her make  
9 a professional statement and cross-examine her on her  
10 professional statement?

11 A. Honestly, I didn't think of it. It just  
12 didn't occur to me to call her to the stand to say  
13 why did you do this.

14 Q. Why didn't you call Mr. Prosser and ask him  
15 about it and then establish through him that he had  
16 never done it. That he was aware that she wanted to  
17 do it, that he had reviewed the slide, that he was  
18 aware that the judge had admonished her not to do it,  
19 and explain his opinion from being her cocounsel and  
20 lead counsel in the case, why did he allow her to get  
21 away with it?

22 A. Again, I didn't think of it. That's just  
23 the--you know, I've--it was something that did not  
24 occur to me to call opposing counsel to the witness  
25 stand. I regret the fact that I didn't do it.

1 Q. That his good friend had put him in a very  
2 difficult position?

3 A. Absolutely.

4 Q. Did you remember during the trial, did you  
5 consciously try to emphasize that circumstance to the  
6 jury?

7 A. I don't remember that.

8 Q. Okay. Do you recall the complaining  
9 witness' live-in boyfriend, Larry Will?

10 A. Yeah.

11 Q. Okay. Do you recall that it came up not too  
12 long before trial that Mr. Will was making a change  
13 in his testimony?

14 A. That seems-- Yeah, maybe.

15 Q. Maybe Mr. Prosser or Ms. Goettsch informed  
16 you that Mr. Will wanted to make a change in his  
17 testimony, or intended to change his testimony. Do  
18 you remember anything like that?

19 MR. PROSSER: May I help?

20 MR. SIMMONS: Sure.

21 MR. PROSSER: Regarding having been out to  
22 the club on the night of the incident.

23 THE WITNESS: Oh, yes, I do remember.

24 MR. PARRISH: Ask Andy. We've learned how  
25 to do that. That move like that, may I help, and to

1 do it so nicely.

2 A. Yeah, I do remember that. I don't remember  
3 the specific details about that because, you know, I  
4 can't remember now what his original statement was.  
5 I think maybe his original statement was that he was  
6 at home and he was waiting for her, and then he says  
7 that he went out to the club to see whether or not  
8 her car was there. I can't remember.

9 BY MR. SIMMONS

10 Q. Okay.

11 A. Yeah, I do remember that coming up.

12 Q. Okay. Do you recall having any thought  
13 about whether he should have a supplemental  
14 deposition just to see what the change was and why?

15 A. No, I don't recall. I mean, we didn't do  
16 that.

17 Q. Okay. As best you can recall, and it seems  
18 you may not recall, did the State, at least in  
19 summary, advise you as to what the change in  
20 testimony was going to be?

21 A. I think so. But I'll tell you what, I don't  
22 know if we got something in writing about that. I  
23 honestly don't remember that.

24 Q. Okay.

25 A. Or too much about it anyway.

1 question.

2 A. Well, yeah. Again, my experience with that  
3 has been in federal court. I think that, I think  
4 this is the first state case that I have been  
5 involved in where a prosecutor has presented a Power  
6 Point. I'm going to tell you right now that in other  
7 trials that I have been involved in in state court  
8 where the prosecutor is going to have, for instance,  
9 the Caesars Palace arson, there was a diagram of the  
10 building and how the--I was shown that about, I mean,  
11 this is what we're going to do. I should have looked  
12 at them. I believe that.

13 Now, at the time I'm going to tell you that  
14 I just didn't think about it. I didn't think about  
15 looking at the slides because, frankly, I had no  
16 reason to believe that that would be brought up.

17 Q. All right. Now, are you familiar with Judge  
18 Gamble?

19 A. Yes.

20 Q. Is he the kind of guy that you think  
21 attorneys would make statements to on the record and  
22 if they turn out to be wrong that he doesn't really  
23 care one way or the other about it? Is he the kind  
24 of judge who is likely to cut your head off if you  
25 should happen to make false statements to him on the

1 just never seen--everything that I've seen in a Power  
2 Point has been demonstrative rather than persuasive.

3 MR. PROSSER: Okay. Well, my question was:  
4 Have you ever seen that done before? Because I never  
5 have. It doesn't mean it doesn't exist, I'm just not  
6 familiar with that practice. I think if somebody did  
7 it to me I would say that's work product, I'm not  
8 going to show them what my closing argument is. The  
9 judge might disagree with me and then I would show it  
10 to you.

11 MR. PARRISH: For a point of clarification,  
12 I don't want to change your question, it would be the  
13 product the jury is going to see, is the context of  
14 my question. The product that the jury is--not just  
15 the closing argument, but my question focuses on  
16 items that the jury is going to see. Like you can't  
17 just stand up and show an autopsy photograph that's  
18 been excluded because of 403 issues. You can't do  
19 it.

20 If you have got a stack of photographs  
21 there, the defense lawyer or the prosecutor is  
22 entitled to take a look at that before it's presented  
23 to the jury on an ELMO.

24 BY MR. PROSSER:

25 Q. Have you ever seen it done? That's my

1 record about a case?

2       A.     You're kind of putting me in a bad spot  
3 here. Here's what I think. I don't think that he  
4 would put up with making false statements. You know,  
5 my recollection on this was that you defended her in  
6 front of the judge. I don't know, and, you know,  
7 Mr. Parrish's point about me asking you what you saw,  
8 whether you knew that those slides were going to come  
9 up. As lead attorney I probably should have done  
10 that. I mean, again, I suppose this is naive, but I  
11 trusted that--I trusted you and I didn't think that  
12 anything that was inappropriate was going to come in.

13             Frankly, even right now, I have no reason to  
14 believe that you looked at that slide and okayed it.

15       Q.     You're right, I didn't. And my next  
16 question is this: I made a number of statements at  
17 the trial, Ms. Goettsch made a number of statements  
18 at the time. In the motion for new trial I made a  
19 number of statements about those arguments.

20             I guess my question is: Do you feel that  
21 was insufficient or because I wasn't sworn in that  
22 somehow I could--or she could be making--feel that we  
23 could be making further false statements to the  
24 Court? I mean, I guess that's my question. Because  
25 it's raised in the context of well, shouldn't you put

1 us under oath. Here we are making statements to the  
2 Court. Don't you think attorneys have an obligation  
3 to be candid and honest with the Court when  
4 addressing the Court?

5 A. I definitely think that attorneys have an  
6 obligation to be candid, frank and honest when  
7 addressing the Court.

8 Q. Do you think there is any actual ethical  
9 question between an attorney addressing the Court  
10 having first said I make a professional statement, or  
11 I swear to tell the truth, and the same attorney  
12 saying the same thing without making those  
13 preparatory statements?

14 A. No. However, I'm telling you, and, you  
15 know, I know she's a magistrate now. I don't think  
16 she's telling the truth. I don't believe she's  
17 telling the truth about it.

18 Q. You can have your opinions, but--

19 A. It's infuriating to me.

20 Q. All right.

21 A. I don't think that you--I don't think  
22 you're--

23 Q. We understand your opinion on the subject.

24 A. All right.

25 Q. But my question was really directed toward

1 whether--it's as simple as this--whether you  
2 considered that the statements that both I and  
3 Ms. Goettsch made, whatever they were, couldn't  
4 be--couldn't have been considered by the Court just  
5 the same as if they had been sworn statements.

6 A. No. I agree with that. I would agree that  
7 if you make a professional statement to the Court  
8 that that is presumed to be an honest statement.

9 Q. If you make any statement to the Court, I'm  
10 not sure you could be held in contempt. I'm not sure  
11 you could be charged with perjury if you were not  
12 under oath. I suppose that could be a difference  
13 there.

14 A. I would guess that-- I mean, I wouldn't  
15 guess absolutely if you're an attorney you make a  
16 statement to the Court you're presumed to be telling  
17 the truth. If you lie to the Court, you're going to  
18 lose your license.

19 Q. If you do and you get caught you would  
20 expect to get a ticket pulled; right?

21 A. Absolutely.

22 Q. Okay. All right. I'm not sure how relevant  
23 this was. Was it your investigator who actually went  
24 out and talked to some of the jurors, or one of the  
25 jurors?



1 A. Yes, the jurors were interviewed.

2 Q. And were they or weren't they specifically  
3 asked about the potential impact that this closing  
4 argument had on them? Wasn't that one of the areas  
5 of inquiry that your investigator made?

6 A. My recollection is that, yes, that is.

7 Q. Me too. I wish I had that investigative  
8 report. I'm paraphrasing, but am I right that the  
9 juror that the person talked to basically said about  
10 that whole thing, well, we thought Ms. Goettsch was  
11 in trouble, but we really didn't have any idea why.

12 A. Here's-- I don't remember what the report  
13 said. I think Gordon talked to several jurors. I  
14 can't remember how many. I know there were a few.  
15 Gordy, I mean Gordon Gratius, I don't think that he  
16 talked to all of them. I know that he talked to  
17 several. I think that several wouldn't talk to him.  
18 My recollection is that he talked to everybody that  
19 would talk to him.

20 My recollection also is that the jurors did  
21 not understand what was going on, did not recall  
22 that, had they recalled it--the purpose for him going  
23 down there to talk to the jurors was to determine  
24 whether or not they were prejudiced in any way.

25 Q. Actual prejudice as opposed to

2

STATE OF IOWA,

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Plaintiff,

FECR055372

FECR055373

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vs.

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JOHN WEST SICKELS,  
JAMES ALAN CHRISTENSEN,

State's Rebuttal  
Closing Argument

6

Defendants.

7

8

9

BEFORE: The Honorable Arthur E. Gamble  
Chief Judge, Fifth Judicial District

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AT: Woodbury County Courthouse  
620 Douglas Street  
Sioux City, Iowa 51101

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COMMENCING ON: March 3, 2009  
ENDING ON: March 12, 2009

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\* \* \*

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Reported by: MISTY L. BUBKE, CSR, RPR, CRR  
Official Court Reporter  
Woodbury County Courthouse  
620 Douglas Street, #210  
Sioux City, Iowa 51101

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13, 14, 15, 16, 17

1 They have not met their burden of proof. This is  
2 your verdict. It is a final verdict. It is a  
3 final verdict for you, it's final for the court and  
4 it's final for Jamie Christensen. Be proud of your  
5 verdict. Hold the State to its burden. They  
6 haven't met it and I'm asking you to return a  
7 verdict of not guilty. Thank you.

8 THE COURT: Ms. Goettsch, the State's  
9 rebuttal.

10 MR. PROSSER: I have to get my computer  
11 going.

12 THE COURT: Okay.

13 MR. MCCONVILLE: Your Honor, I'm going to  
14 object to that. The first three lines is a  
15 misstatement of the law.

16 THE COURT: Sustained.

17 MR. MCCONVILLE: Move that it be stricken  
18 and taken off that there.

19 THE COURT: Sustained.

20 MS. GOETTSCH: If I may, thank you.

21 Mr. Scott told you that our job is to prove  
22 this to you beyond a reasonable doubt. Let's take  
23 a logical unimpassioned look at this and see if we  
24 have done that.

25 To give the defendants a not guilty verdict

1 as they have asked you for, you have to essentially  
2 disbelieve, forget Lisa Smith. Because if you  
3 believe her beyond a reasonable doubt, that alone  
4 is enough to sustain a verdict of guilty to sexual  
5 abuse in the second degree.

6 Sexual abuse in the second degree is when  
7 someone is aided and abetted. You listened to  
8 Ms. Smith. She told you that that's exactly what  
9 Mr. Christensen did to help the act occur with John  
10 Sickels. If you believe her, you're entitled to  
11 that verdict.

12 To disbelieve her, to discount her, to say  
13 that something in her testimony has reasonable  
14 doubt, you really have to logically come to two  
15 conclusions in your mind: A, that she has a  
16 motive. Because I think we would all agree that  
17 people lie for a reason. I suppose there's some  
18 situation where someone just lies for fun; I'm  
19 going to tell a big lie and see what happens just  
20 for fun. But most lies are told because there's a  
21 reason, there's a motive behind it.

22 The other aspect or conclusion that you must  
23 come to to find reasonable doubt here is you have  
24 to believe the defendants, believe the defendants  
25 and give Lisa Smith a motive to lie or some

1 combination thereof. That's what they're asking  
2 you to do.

3 Let's look at all the reasons that they have  
4 put forth that they don't want you to return the  
5 verdict of guilty. And let me also say this:  
6 Mr. Scott said that it's hard to understand  
7 reasonable doubt. No, it's not. Reasonable doubt  
8 is the same standard that is used across America in  
9 every case. It means if you're firmly convinced  
10 that this happened in a way Lisa Smith says it  
11 happened, there's no reasonable doubt. It's not  
12 doubt beyond any doubt, any possibility. We don't  
13 go looking for any possible scenario; it has to be  
14 a reasonable doubt, one based on reason. And when  
15 you look at what they want to you believe is  
16 reasonable doubt here, it doesn't fly.

17 First of all, let's look at this. I call  
18 the first one the girl gone wild defense. It's  
19 reasonable doubt here because maybe Lisa Smith  
20 just -- I think Mr. Scott said she was half in the  
21 bag and just decided that this was what she wanted  
22 to do. She wanted to get it on with John Sickels,  
23 who is a relative stranger to her, right here right  
24 now behind the bar.

25 This is a woman that you heard

1 few cocktails, free game. If that's reasonable  
2 doubt -- It's not reasonable doubt.

3 Plus, whether she's intoxicated, not  
4 intoxicated, I mean Mr. Sickels wants us to believe  
5 that, She was drunker than me. She was really  
6 drunk. If that's the case, he's a police officer,  
7 he should have known she couldn't consent. Which  
8 is it? You can't have it both ways.

9 MR. MCCONVILLE: Excuse me, Your Honor. I  
10 object to that. That's a misstatement of the law.  
11 I'd like to take a matter up with the Court.

12 THE COURT: All right. Well, we will take a  
13 recess and the jury will remember the admonition.

14 \* \* \*

15 (Jury exits courtroom.)

16 \* \* \*

17 THE COURT: Let the record show hearing is  
18 being held outside the presence of the jury during  
19 the State' rebuttal argument. The defendants are  
20 present.

21 Mr. McConville, you wanted to make a record.

22 MR. MCCONVILLE: Yes, Your Honor, I did.

23 And I objected to the statement that was made  
24 because this is the second time there's been  
25 misstatements of the law made in this court. The

1 THE COURT: Yes.

2 \* \* \*

3 (Bench conference)

4 \* \* \*

5 THE COURT: The objection is sustained. You  
6 may proceed.

7 MS. GOETTSCH: Thank you. Ms. Smith is not  
8 running out the back door, is not screaming, is not  
9 fighting because she knows it's not going to do any  
10 good. It's also -- As she testified to you, this  
11 happened very suddenly to her. In fact, when  
12 Mr. Christensen has her cornered behind the bar,  
13 she's even saying, This isn't happening, right?  
14 Don't do this.

15 And she talked about how she wasn't even  
16 seeing this coming until it was too late. So what  
17 do we expect her to do? Would we expect her to  
18 call the police? They suggested in their argument  
19 that she should have tried to call Larry. At that  
20 point she's being surrounded by two police  
21 officers. That wasn't going to happen. That's not  
22 reasonable doubt because it didn't happen.

23 The other thing that we have heard some  
24 mention of about is the warrant. She has lots of  
25 motives I think is what we heard. We hadn't heard

1 about the warrant. There was some discussion that  
2 maybe there was a warrant out. You heard the  
3 testimony that neither she nor either one of the  
4 defendants --

5 MR. MCCONVILLE: Excuse me, Your Honor. I  
6 think there was something mentioned that is  
7 improper rebuttal and I would object to that also.

8 THE COURT: Sustained.

9 MS. GOETTSCH: When you're done looking at  
10 all the facts, there's no reasonable doubt here.  
11 There's no reasonable doubt left. All the things  
12 that they want you to believe, all the rabbit holes  
13 that they want you to go through don't hold water.

14 In order to find the defendants not guilty,  
15 there has to be some element in you to believe what  
16 the defendants have told you in their statements  
17 and in their testimony.

18 MR. MCCONVILLE: Objection. That's the same  
19 misstatement of the law that you made her take down  
20 in the first place, and I want to take this up with  
21 the Court right now, Your Honor.

22 THE COURT: We will take a recess. The jury  
23 will remember the admonition given earlier.

24 \* \* \*

25 (Jury exits courtroom.)



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\* \* \*

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THE COURT: You can be seated. The record will reflect that hearing is being held outside the presence of the jury. During the State's rebuttal argument, there was a request of defense counsel. Did you want to make a record?

7

MR. MCCONVILLE: Yes, Your Honor. Comes now the defendant Sickels, moves the Court for a mistrial. This is the fifth time in the rebuttal argument that this counsel has made a misstatement of the law. And it has already caused the Court on one occasion to have to do an instruction to this jury.

14

And this misstatement of the law is the exact same misstatement of the law which was the first one up there on the board which the Court already struck, that they have to believe the defendants. That is a misstatement of the law. The defendants don't have to prove anything. They don't have to do anything. If they don't believe any of these people, they can find -- they have to find these defendants not guilty. They do not have to believe anything that we put on nor do we have to put on anything.

25

And five times is just too many, Judge. And

1 I know we spent nine days here, but this is just  
2 unbelievable. I have never seen this. It's  
3 prosecutorial misconduct to try to get in a  
4 statement that this Court has already stricken once  
5 in the same closing argument, and I move for a  
6 mistrial.

7 MR. SCOTT: Your Honor, I would agree with  
8 Mr. McConville. There have been numerous  
9 misstatements of the law. There has been an  
10 ongoing attempt during this rebuttal -- frankly, in  
11 opening statement as well, but during this rebuttal  
12 argument to shift the burden.

13 The statements are improper. They are  
14 misstatements of the law of a constitutional  
15 proportion and, you know, frankly, I would like to  
16 see this done sua sponte, but I do at this time  
17 join Mr. McConville's motion for a mistrial. I  
18 don't think that this can be remedied.

19 It's been an ongoing thing that they have to  
20 believe something that these defendants say in  
21 order to find them not guilty. It is absolutely a  
22 misstatement of the law and, again, of a  
23 constitutional proportion. Thank you.

24 THE COURT: What's the State's position?

25 MR. PROSSER: Your Honor, I -- I just can't

1 agree with any of that. I think the substance and  
2 the intent of counsel's comment has to do with the  
3 statements of the defendants that the  
4 untruthfulness of the statements of the defendants  
5 and the potential effect that those statements may  
6 be having on the jurors' mind.

7 I didn't hear before and I don't hear any --  
8 I mean counsel did not stand up and say the law  
9 says anything. She was talking about -- and I  
10 don't know exactly -- I'm not a verbatim  
11 transcriber, but she was talking about the effect on  
12 the jurors' mind of believing what the defendants  
13 said. And I think it's perfectly proper argument  
14 by the State to say, Look, folks, you know, you  
15 have to consider what these defendants have said in  
16 reaching your verdict in this case.

17 And I think that was the intent -- the  
18 substance and the intent of the argument. And I  
19 don't think it's been done five times, and I think  
20 there was one comment up at the beginning that was  
21 taken off before any comment was made.

22 And I don't recall five other times that  
23 this was done, but I think counsel is a little  
24 angry right now and I think that may have been an  
25 exaggeration. I don't know how many times, but

1 this argument has not been done five times, and I  
2 think it's a fair argument.

3 THE COURT: Let's just review the record to  
4 see if it's been done twice. Could you put up,  
5 please, the first three lines of the rebuttal  
6 argument that the Court asked you to take down.

7 MR. PROSSER: I will try.

8 THE COURT: All right. So the first three  
9 lines of the slide that the Court struck before the  
10 arguments began was quote, unquote, "Not guilty  
11 requires you to believe defendants and not believe  
12 Lisa Smith."

13 The objection to that was sustained. The  
14 statement that was made in the rebuttal argument  
15 that caused this objection was, quote, "In order to  
16 find the defendants not guilty, there has to be  
17 some element in you to believe what the defendants  
18 have told you in their statements and in their  
19 testimony."

20 So it's the same thing. And the Court is  
21 troubled by the fact that the Court sustained the  
22 objection, struck the argument, and then at the  
23 conclusion of the State's rebuttal we have exactly  
24 the same argument that the Court previously struck.

25 MS. GOETTSCH: Judge, I'm commenting on the

1 fact -- I'm not stating the law, but I'm saying  
2 that common sense dictates if you're going to  
3 disregard Ms. Smith, you're somehow giving credence  
4 to what the defendants said. And they have given  
5 statements. They don't have to, but they did.  
6 They testified. They don't have to, but they did,  
7 and I should be able to comment on their  
8 believability. /

9 And there is something psychologically to  
10 what a juror has to go through that if they're  
11 going to say, Well, we're not going to believe Lisa  
12 Smith, and they're somehow believing part of the  
13 defendants. I don't think that's -- I'm not  
14 quoting the law. It's a common sense argument.  
15 That's where I was going with it. I don't  
16 understand why I can't comment on if you're going  
17 to endorse them, let's look at their statement. I  
18 mean they have put their testimony out there. I'm  
19 shocked.

20 THE COURT: You're shocked?

21 MS. GOETTSCH: I guess I don't think that is  
22 improper when I'm saying this is your common sense  
23 way of viewing this evidence.

24 THE COURT: Well, what was the objection to  
25 begin with when this was shown to the jury?

1 MR. MCCONVILLE: I think it was a  
2 misstatement of the law, Your Honor. It shifted  
3 the burden and it wrongly said -- and I'm  
4 paraphrasing. I don't recall everything I said,  
5 but it wrongly implied to the jury that these  
6 defendants have to prove something when all the  
7 instructions and<sup>1</sup> the law is to the contrary. And  
8 if you don't believe them, you have to --

9 MS. GOETTSCH: That's not what it says,  
10 Judge. And I have taken that down.

11 THE COURT: Then you put it right back up.

12 MS. GOETTSCH: I didn't put it up.

13 THE COURT: You stated exactly the same  
14 thing in conclusion of your argument after being  
15 told by the Court not to do it.

16 MS. GOETTSCH: Well, I apologize.

17 THE COURT: Well, the question is whether  
18 it's improper shifting of the burden of proof over  
19 to the defense and whether it misstates the burden  
20 of proof in this case.

21 The burden of proof is stated in Instruction  
22 Number 4. The burden is on the State to prove the  
23 defendants guilty beyond a reasonable doubt. And  
24 that instruction provides, in part, if after a full  
25 and fair consideration of all the evidence you are

1 firmly convinced of the defendant's guilt, then you  
2 have no reasonable doubt and you should find the  
3 defendant guilty. But if, after a fair and full  
4 fair consideration of all the evidence in the case,  
5 from the lack or failure of evidence produced by  
6 the State, you are not firmly convinced of the  
7 defendant's guilt, then you have a reasonable doubt  
8 and you should find the defendant not guilty.

9 Your little shorthand of that leaves out  
10 some fairly important premises of constitutional  
11 law and that is you -- in order to find the  
12 defendants not guilty, there has to be some element  
13 that you to believe what the defendants have told  
14 you in their statements and in their testimony. In  
15 other words, in order to find reasonable doubt, you  
16 have to believe the defendants. But there is a  
17 whole lot of other evidence in this case and the  
18 Court's jury instruction refers to a full and fair  
19 consideration of all the evidence in the case. So  
20 the objection was sustained to begin with and then  
21 did you it again.

22 So the question is whether or not there  
23 should be a mistrial. The defendant's motion for  
24 mistrial is denied. The objection will be  
25 sustained. We're going to bring the jury in and

=

1 we're going to finish this closing argument and  
2 we're going to submit this case.

3 MS. GOETTSCH: I apologize. Nothing was  
4 intentional. When I was saying that an element is  
5 that -- Of course, they have testified, so that's  
6 in their head. So I'm saying an element of your  
7 not guilty verdict would to a certain extent  
8 involve believing what the defendant is saying.  
9 But I'm going to leave that alone. It was not  
10 intentional. I apologize.

11 THE COURT: I think that would be a good  
12 idea to leave it alone. And I believe you that it  
13 wasn't intentional and that's why I'm not going to  
14 grant a mistrial. And I'm not finding  
15 prosecutorial misconduct, but you weren't careful.  
16 And after the Court's already sustained the  
17 objection to the beginning of your closing argument  
18 on the exact same premise, for you to come back to  
19 it at the conclusion of your argument is just not  
20 being careful and not making a good record for  
21 appeal.

22 MR. SCOTT: Your Honor --

23 THE COURT: That's all I --

24 MR. SCOTT: I understand you have sustained  
25 the objection. I would like to be heard on this



1 for one brief moment.

2 THE COURT: Sure.

3 MR. SCOTT: In addition to that line on the  
4 Power Point presentation and the closing argument  
5 that was made, I do believe that -- Well, I believe  
6 that it is prosecutorial misconduct and I believe  
7 one other thing that indicates that, Your Honor, is  
8 that this is the exact same language that was  
9 presented in their proposed jury instructions that  
10 you denied that they have been trying to get in  
11 throughout this entire closing argument.

12 And I think that that adds to the -- well,  
13 to the point that this should be mistried because  
14 it's not just some sort of slip of the tongue and  
15 it's not just some sort of slip of the Power  
16 Points. I mean these are intentional acts that are  
17 attempting to put in the jurors' mind law that the  
18 Court -- law that is not of the State of Iowa, law  
19 that is against the constitution, and law that was  
20 told to these prosecutors would not be part of the  
21 law of this case based on their requested jury  
22 instructions.

23 And that's the additional record that I  
24 would like to make on that motion for mistrial,  
25 Your Honor.

More importantly, [L.S.'s] testimony was significantly corroborated by the admissions of the defendants. For example, in his trial testimony, Sickels admitted that he asked L.S. for [oral sex] for himself and Christensen after the other patrons had left the Club. Sickels even admitted the first thing that happened after L.S. said [no] was that he approached L.S. behind the bar, kissed her, [and had sexual intercourse]. While Sickels testified that L.S. reciprocated, Sickels admitted not another word was exchanged between them after L.S. said "no" to oral sex. Defendant Christensen admitted that after the sex act was completed, he said to L.S. "this never happened," or words to that effect, as he and Sickels were leaving the Club. While Christensen testified that he said this because he thought L.S. was embarrassed because he had walked in on something, Christensen's testimony corroborates [L.S.'s] testimony that these words were said.

Given the physical evidence at the crime scene and the admissions of the defendants, the State's case was strong. The complainant's testimony was credible. Her statements to the DCI, her deposition testimony and her trial testimony were consistent on her central allegations of sexual abuse. The testimony of the defendants was neither consistent nor credible. Under the circumstances of this case, the Court doubts that the misstatements of the prosecutor on rebuttal had any serious impact on the outcome.

The court also analyzed the "severity and persuasiveness" element of prejudice:

Nevertheless, the performance of the prosecutor in her rebuttal closing smudged an otherwise clean record in this long and difficult trial. The prosecutor repeated the offensive burden shifting statement on at least two occasions in rebuttal. But when viewed in the context of the entire trial, these isolated statements did not rise to the level of a due process violation.

This trial was not characterized by the pervasive lack of civility or unprofessional conduct that has warranted a new trial or a reversal of a conviction in other cases. . . . While this Court does not condone the prosecutor's conduct during her rebuttal closing, the Court does not find that this trial contained the sort of improper questioning or disparaging and belittling remarks by the prosecutors concerning the defendants that has supported a finding of prejudicial prosecutorial misconduct in our jurisprudence.

This trial was conducted over the better part of eight days. There will be hundreds of pages of transcript on appeal. The prosecutors exhibited professionalism throughout the trial. They honored the presumption of innocence and assumed the burden of proof throughout voir dire, opening statement, the presentation of

evidence and the opening closing argument. It was only on rebuttal that the prosecutor erred in the formulation of her argument. She prepared her rebuttal in advance and was not able to adjust after the Court sustained the first objection. But in the context of the entire trial, these missteps alone did not deprive the defendants of a fair trial. The misconduct of the prosecutor was not severe and pervasive.

(Citations omitted.)

The court concluded "the defendants failed to establish that the misconduct of the prosecutor denied them a fair trial or deprived them of due process," stating:

This Court was a firsthand observer of the entire trial including the prosecutorial misconduct and the jury's reaction to it. The Court is firmly convinced that there is no reasonable probability the prosecutor's misconduct prejudiced, inflamed or misled the jurors so as to prompt them to convict the defendants for reasons other than the evidence and the law contained in the Court's jury instructions. Instead, the Court believes the jury took the prosecutor's arguments, the defendants' objections and the Court's rulings sustaining the objections in stride. The Court believes the jury returned a verdict based on the evidence and the law set forth in the Court's jury instructions.

(Citations omitted.)

We note generally, a jury is presumed to follow its instructions. *State v. Frank*, 298 N.W.2d 324, 327 (Iowa 1980). "[B]ecause the trial court is a firsthand observer of both the alleged misconduct and any jury reaction to it," we recognize "a trial court is better equipped than appellate courts can be to determine whether prejudice occurs." *Anderson*, 448 N.W.2d at 34. When we view the prosecutor's misstatements in the context of the entire trial, we are convinced the misstatements did not deprive Sickels of a fair trial and conclude he has failed to prove prejudice.

June 29, 2009

Iowa Division of Criminal Investigation  
Professional Standards Bureau  
215 East 7th Street  
Des Moines, Iowa 50319  
*Sent certified mail: June 29, 2009*

On behalf of John West Sickels and James Allen Christensen, we are lodging a formal complaint against Agent David Dales. We are further requesting an internal investigation be launched against Dales and the DCI team who were responsible for investigating the alleged sexual assault of Elisa Smith in Creston, Iowa, on April 18<sup>th</sup> 2008.

We believe that the above mentioned did not conduct a thorough investigation and that important case notes were mishandled. The investigation conducted was biased and one sided, designed solely to convict John Sickels and Jamie Christensen and not to uncover all the pertinent facts of the case.

At the onset of the case, prior to even speaking with the accused men, Agent Dales promised the accuser he would do "everything in his power to get a conviction" and that is exactly what he did.

Following are supporting facts:

### I. Incomplete Investigation

A. Agent Adam DeCamp conducted the initial interview with Smith. Although it is standard protocol to tape interviews and take notes, all records of this interview have disappeared.

1. In his deposition, Agent Dales stated there was a recorded audio of Smith, however, when the defense requested copies, the Agent in Charge "couldn't find them".
2. During the initial interview with Smith, investigators should have established who was in the bar on the evening in question. We believe they asked Smith and she was too intoxicated to remember. We don't know, because the notes and audio tape from that meeting are gone.

B. The agents did not interview key witnesses prior to filing charges – including the last men (other than Sickels and Christensen) in the bar on the evening of the alleged assault.

1. Investigators should have established who was in the bar on the evening in question. They should have spoken to the last men to leave that night. The agents didn't even know who was there until the list of defense witnesses was released.

- a) **Brad Johnston and Ryan Mohr** were the last two patrons to leave and had plenty to say about the accuser's behavior, sobriety and past behavior at the club.
- C. No background check was done on Lisa Smith regarding her past behavior and potential motives. She has a documented pattern of behavior – drinking, having sex with men at her place of employment and lying to keep herself out of trouble.
1. This behavior was documented by Crestmoor Country Club in a letter in her employment file stating that she would be terminated if caught drinking on the job, leaving the club in a mess or having sex with members again.
  2. Additionally, Lisa Smith was and continues to be, involved in an abusive relationship. During the trial, testimony was given that a few months before the alleged incident, her live-in boyfriend had sexually assaulted her with a loaded shotgun during a fight and threatened to kill her because he believed she was “cheating on him”. Testimony was also given that he had threatened to kill both Sickels and Christensen.
- D. The accuser, Lisa Smith, had warrants out at the time of the investigation that were not discovered by your Agents. Jamie Christensen made a phone call to Agent Dales to bring them to his attention. Dales took no action in regards to the warrants.
1. Sickels and Christensen made the call to Dales about the warrants together and it was witnessed by **Tom Hartsock**. Agent Dales would subsequently lie about that call taking place, the purpose of the call or knowledge of the warrants and denied that a call in regards to warrants was even placed.
- E. Agent Dales was dishonest in regards to the call that was made to him about the warrants. Dales reported that Christensen called him with some type of ‘admission of guilt’
1. Tom Hartsock was asked about that “admission of guilt” by States Attorney Prosser during his deposition and Hartsock testified that it never happened. Prosser advised Hartsock that Dales had filed a report that included reference to this phone call. Dales report states erroneously that Christensen had made an admission of guilt.

## II. Questionable Tactics:

- A. Agent Dales and team wired Lisa Smith and had her meet with Jamie Christensen by phone and in person multiple times to “collect more evidence”. Is it standard practice to send a “victim” to meet with the person who supposedly attacked and raped her?
1. Dales was asked during his deposition why he did not have Lisa Smith attempt to contact Sickels as well. He states “I don't believe I suggested it. I believe that she was very adamant about who she felt comfortable talking to

and who she didn't. So after that, we didn't consider a phone call to Sickels an option."

2. During the trial, Dales testified that Smith didn't want to talk to Sickels because she was afraid of him.
  3. Lisa Smith testified at the trial that she would have talked to either one of them, but Dales wanted her to call only Christensen.
  4. When the defense attorney asked her if someone who said she was afraid to talk to Sickels would be a liar, her response was "yes".
    - a) In a 'he said, she said' case when testimony is all we have to assess guilt or innocence, the accuser also calls her lead investigator a liar.
- B. Agent Dales interviewed John Sickels and Agent Bill Kietzman interviewed Jamie Christensen. These interviews were taped with a voice recorder and with a "secret" video camera.
1. The taped conversations of the accused men are often inaudible and portions of them were not recorded at all.
  2. Agent Kietzman left the building with Christensen and took him out for lunch.
  3. Agent Kietzman can be heard literally putting words in Christensen's mouth such as, "Isn't it possible?" and "Might you have seen?" repeatedly. Finally, Christensen says "I guess it's possible" – this statement was later used as an admission of guilt, when clearly it *is not*. Kietzman's action is tantamount to coercing a confession.
  4. During his interview, Sickels asked Dales three different times if he needed an attorney. Each time Dales advised that he couldn't tell him what to do, but that if he (Sickels) just told the truth, they could get this behind them and move on. Sickels believed that Dales was acting in good faith in the pursuit of truth and justice. We believe that Dales was not working the case, but rather, *creating* a case against him.
  5. Christensen and Sickels were interrogated, sometimes aggressively, for at least six hours in the span of one day. That seems excessive for a fact finding "interview".
- C. After Agent Dales had been advised that Sickels had hired an attorney, he called him on at least three different occasions in a short period of time. At one point, using a different phone so caller ID would show an unrecognized number. **Clint Luther** witnessed these multiple attempts by Dales to make contact with John Sickels, after he had been clearly advised that all questions were to be directed to the attorney.
- D. Agent Dales created two different 'complaints'. One that was signed by the Judge setting the formal charges and a different one that was released to the media.
- E. Agent Dales testified at the trial that Jamie Christensen NEVER admitted to "touching" or "shushing" the accuser. Yet, this information was given to the media and created a media furor that was inflammatory and created untoward bias against the men.



### III. Additional Information:

- A. A local (and very vocal) victims' advocate group in the Creston area was heavily involved in this case. The woman who runs this agency has an open, and well-documented, dislike for both of the officers involved. We believe Dales relied on this agency and worked with them to "coach" the accuser and prepare her for trial.
1. This agency paid off the accuser's warrants so the case could proceed.
  2. A former employee, **Shawna Rouh**, has important information about how things were handled by this agency and the personal vendetta the woman who runs it has against Sickels and Christensen.
- B. Before the arrests were made and the story was publicized, David Dale's wife called her friend, Creston resident **Tammy Kavanaugh**, and spoke to her at length about this case. Acting as a friend, Ms Kavanaugh then went to Tom Hartsock's residence to warn him to "be careful". She advised him that "there was more to the case than he knew. That the DCI had other females that were coming forward about Sickels." In so many words, she told him to "watch out". Agent Dale's wife had extensive information about this case and shared details with Ms. Kavanaugh that were both incorrect and should have been confidential. We believe sharing details of an active case is unethical and inappropriate.
- C. Facts the agents did *not* consider before charging two police officers, with NO prior complaints of any kind in their jackets, with the crime of Second Degree Sexual Assault:
1. The accuser had been in trouble at the club for leaving the area behind the bar cluttered and messy, her closing duties incomplete.
  2. The accuser frequently stayed late after the club closed, drinking with members.
  3. The accuser had prior sexual relations with club members, at the club, after hours.
  4. When one of those relationships was exposed, the accuser claimed that the other person was the aggressor and was harassing her.
  5. The accuser had stayed late with yet another member, giving him free drinks. When he left, she followed him to the parking lot and became sexually aggressive with him. When confronted by his wife and later the club manager, her story was that HE had initiated the contact and was the aggressor – against her wishes. His name is **Curtis Downey**.
  6. The accuser was on *probation* at her job at the country club and had been warned she would be fired if she got caught drinking at work or "messing around" with club members again.
  7. The accuser was under constant surveillance by her manager.
  8. In their capacity as police officers, both Sickels and Christensen had responded on different occasions to domestic disturbances at the accuser's residence.

- D. State's attorney, Prosser, stated that the case was improperly handled, poorly investigated, and that his office didn't like how it was handled by Agents Dales and Kietzman.
- E. *After* Sickels and Christensen were arrested and charged, several DCI agents were sent to Creston to conduct a more thorough investigation. An alleged crime should be investigated thoroughly *before* criminal charges are filed. Not after.
  - 1. These agents talked with other DCI agents, narcotics agents, and local officers that worked with Sickels and Christensen, yet none of the information gleaned from those interviews was included on any reports.
  - 2. We believe that once the Agents arrested and charged the men (then, subsequently "leaked" the lurid details to the media), public pressure was such that they had to make their case.
- F. There are valid reasons to doubt the credibility of the accuser:
  - 1. She was afraid of her abusive boyfriend
  - 2. She was afraid of losing her job
  - 3. She had an established pattern of behavior in which she would lie about sexual situations

We believe the Agents conducted an improper and incomplete investigation. We believe this case was created solely on circumstantial evidence and the story of a woman who:

- a) was intoxicated that evening
- b) did not seek medical attention
- c) did not make a report for 10 days
- d) had questionable motives, and
- e) would subsequently testify that she drinks to blackout and does things that she can not remember.

We believe the agents did not conduct a fair, unbiased or thorough investigation. Once the trial started, Iowa's Rape Shield Laws did not allow the defense to enter into evidence important information about the accuser's past pattern of behavior that would have spoken to their innocence and her motives. This "rush to judgment" *prior to* the trial prevented both sides of the story from being told *at* the trial...a trial that would never have occurred had these men done their job.

What motivated Dales and Kietzman? Why would they believe this woman, given questionable motivation and her past pattern of behavior over two law enforcement officers, neither of who has a single complaint on their service records?

Part of stated credo of the DCI is "that guilt should not escape *nor* innocence suffer". How ironic. These men are not guilty of the crime of sexual abuse in the 2<sup>nd</sup> degree. Because of the actions of these agents, two innocent men have been sentenced to 25 years in prison. That is suffering.



We believe that Dales and his team used unscrupulous interrogation techniques to manipulate Christensen during his interview, thereby making him complicit in a crime - instead of just an intoxicated person who mistakenly walked in on a consensual sex act. This was the key to creating the erroneous charge of 2<sup>nd</sup> degree second assault. We believe that the "missing" tapes or transcripts of Smith's interview would reveal this to be the truth.

We are requesting a formal internal investigation be launched. We would like to have the interview tapes to be reviewed by an independent and impartial party. We ask that disciplinary actions be taken against the agents in question and that the DCI issue a statement to the AG's office asking for the verdict in this trial to be overturned.

Respectfully,

Joni Sickels Kirk  
847-525-7456  
435 Oakdale Ave.  
Glencoe, IL 60022

Vicki Sickels Osland  
515-991-5385  
1630 Red Oak Drive  
Coralville, IA 52241-1095

Janet Sickels Jackson  
641-782-8827  
2075 Beechwood Ave  
Lenox, IA 5051

Melissa Sickels  
641-202-1580  
1101 N Oak  
Creston, IA 50801

Cc:

**Assistant Director James J. Saunders**  
Director of the Support Operations Bureau  
Iowa Division of Criminal Investigation  
Support Operations Bureau  
215 East 7th Street  
Des Moines, Iowa 50319  
cc. cont.

**John Quinn, Director of the Division of Criminal Investigation**  
Iowa Division of Criminal Investigation  
Office of the Director  
215 East 7th Street  
Des Moines, Iowa 50319

**Assistant Director Kevin Winker, Field Operations Bureau**  
Field Operations Bureau HQ  
Iowa Division of Criminal Investigation  
Iowa Department of Public Safety  
215 East 7th Street  
Des Moines, Iowa 50319

**Governor Chet Culver**  
**Lt. Governor Patty Judge**  
Office of The Governor and Lt. Governor  
State Capitol  
Des Moines, IA 50319

**Iowa Attorney General, Tom Miller**  
1305 E. Walnut Street  
Des Moines IA 50319

**The Office of Citizens' Aide/Ombudsman**  
Ola Babcock Miller Building  
1112 East Grand  
Des Moines, Iowa 50319

**Iowa Department of Public Safety**  
Professional Standards Bureau  
215 East 7th St.  
Des Moines, Iowa 50319

Iowa Civil Liberties Union  
Executive Director: Ben Stone  
505 5th Avenue, Suite 901  
Des Moines, IA 50309

**Crestmoor Country Club Board of Directors**  
Attn: Todd Nielsen  
1801 W Townline St  
Creston, IA 50801-1065

**David Adams**  
**Polk County Public Defender Appellate Division**  
4th Floor Lucas Building  
321 E. 12th Street  
Des Moines, IA 50319-0068  
Chief: Mark Smith

**Rick McConville**  
Coppola, McConville, Coppola,  
Hockenber & Scalise, P.C.  
Attorneys at Law  
2100 Westown Parkway,  
Suite 210  
West Des Moines, Iowa 50265

**Paul Scott**  
Brown & Scott  
1001 Office Park Rd # 108  
West Des Moines, IA 50265-2509

Chester J. Culver  
Governor  
Patty Judge  
Lt. Governor



Eugene T. Meyer  
Commissioner

July 7, 2009

CASE #: PSB2009-032

Vicki Osland  
1630 Red Oak Drive  
Coralville, IA 52241

Dear Ms. Osland:

Your allegation of misconduct by members of the Iowa Department of Public Safety has been received by the Department's Professional Standards Bureau.

An investigation of this matter will be initiated by or under the supervision of the Professional Standards Bureau. Upon conclusion of the investigation, appropriate corrective action will be taken if warranted.

The Iowa Department of Public Safety desires to provide the best possible law enforcement service to those in our state.

Thank you for taking time to bring this situation to our attention. If we can be of further assistance to you, please feel free to contact us.

Sincerely,

A handwritten signature in black ink that reads "Jeff N. Ritzman".

Jeff N. Ritzman, Bureau Chief  
Iowa Department of Public Safety  
Professional Standards Bureau

cc: Assistant Director Winker  
Special Agent in Charge Klooster  
Special Agent in Charge Kisner

Chester J. Culver  
Governor  
Patty Judge  
Lt. Governor



Eugene T. Meyer  
Commissioner

October 14, 2009

Case # PSB2009-032

Vicki Osland  
1630 Red Oak Drive  
Coralville IA 52241

Dear Ms. Osland:

An investigation has been conducted into your report of misconduct by members of the Iowa Department of Public Safety.

The results of this investigation have been carefully evaluated and it has been found that there is not sufficient information to clearly prove the allegation. Therefore, the allegation is not sustained.

Thank you for expressing your concerns in this matter. Please be assured of our sincere interest in all allegations of misconduct by members of this department.

Sincerely,

A handwritten signature in black ink that reads 'Jeff N. Ritzman'.

Jeff N. Ritzman, Bureau Chief  
Iowa Department of Public Safety  
Professional Standards Bureau

cc: Assistant Director Winker  
Special Agent in Charge Klooster  
Special Agent in Charge Kisner

**REQUEST FOR THE INVESTIGATION OF:**

Becky Goetsch, Polk County  
Attorney

To: *The Prosecutorial Standards and Conduct Committee of the Iowa County Attorneys Association, Inc;*

The undersigned, being first duly sworn or affirmed, requests that he aforementioned Assistant Attorney General be investigated and the appropriate action be taken by the Prosecutorial Standards and Conduct Committee of the Iowa County Attorneys Association, Inc. I offer the following matters in support of this request for investigation.

**PLEASE SEE ALL ATTACHED DOCUMENTS:**

Signature: 

Address: 2700 Coral Ridge Ave  
Coralville, Ia  
52241

State of Iowa; County of \_\_\_\_\_

Subscribed and Sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_  
20\_\_\_\_

\_\_\_\_\_  
Notary Public in and for the State of Iowa

On March 12, 2009 while presenting the State's rebuttal closing argument in State of Iowa Vs. John W Sickels and James A. Christensen, a Union County criminal case tried in Woodbury County. Assistant Attorney General Becky Goettsch committed numerous acts of prosecutorial misconduct. Despite attempts by the court to address those issues in instructions and rulings, the defendants were so prejudiced that no remedy other than a mistrial would have assured them a fair and impartial trial.

During the course of her argument Goettsch made no less than six misstatements of the law, improper burden shifting, and ignored the presumption of innocence guaranteed a defendant by the United States Constitution.

The constant, repetitive, and intentional actions of the State's counsel required seven objections by defense counsel. Six of the seven objections were sustained by the court. The only objection that was not sustained was the motion for a mistrial.

Copies of relevant portions of the certified transcript of said rebuttal argument, the objections, arguments of counsel, and the Court's rulings are attached hereto and made a part hereof as Exhibits A-F

- Exhibit A. Page 3 Lines 8-14
- Exhibit B. Pages 9 -17
- Exhibit C. Page 27 Lines 3-8
- Exhibit D. Page 32 Lines 12-25
- Exhibit E. Page 34 Lines 9-18
- Exhibit F. Page 34 Lines 22-25 and Pages 35-44

The defendant's counsel failed to object to two additional instances of improper burden shifting. The statements that were overlooked were of the exact same context as the original power point that was ordered removed by the Court only moments before.

These statements persistently made by Assistant Attorney General Goettsch, despite the Court's rulings, effectively told the jury to disregard law given to them by the Court in instructions and consider the law suggested by the prosecution.

Copies of relevant portions of the certified transcript of the un-objected to statement are attached hereto and made a part hereof as Exhibits G and H.

- Exhibit G. Page 3 Lines 20-25
- Exhibit H. Page 4 Lines 17-21

The State's persistent and unlawful arguments resulted in the jury being removed two times and one bench conference between counsels, the contents of which are not a part of the record.

Copies of relevant portions of the certified transcript of the jury being removed and the bench conference are attached hereto and made a part hereof as Exhibits I through K.

- Exhibit I. Page 10 Line 10
- Exhibit J. Page 32 Line 23
- Exhibit K. Page 34 Line 20

Assistant Attorney General Goettsch was willing to lie to gain a conviction in the case. Ms. Goettsch was well aware that there was a valid arrest warrant for Lisa Smith prior to the trial. During Lisa Smith's deposition in October of 2008, Assistant Attorney General Andrew Prosser advised defense counsel there was a valid Union County warrant for Smith. Assistant Attorney General Goettsch was present during the entirety of the deposition.

Additionally, Assistant Attorney Goettsch argued during a pre trial hearing to keep the information of the warrant out of the trial. During her closing argument, Ms. Goettsch fabricated her statements to the jury to make it appear that the prosecution was not aware of any warrants for Lisa Smith.

Copies of relevant portions of the certified transcript are attached hereto and made a part hereof as Exhibit L.

- Exhibit L. Page 33 Lines 18-24

Assistant Attorney General Goettsch's persistence in an unlawful and un-invited argument showed the State's willingness to seek a conviction at all costs. The resulting prejudice was so inflammatory that no remedy other than a mistrial could have provided the defendants with a fair and impartial trial afforded by the 5<sup>th</sup> 6<sup>th</sup> and 14<sup>th</sup> Amendments of the United States Constitution.

The complainant believes that Assistant Attorney General Goettsch acted with malice and forethought when delivering her rebuttal closing argument. Proof of the allegations lies in the power point presentation that was prepared well in advance of the trial:

**"Not guilty requires you to believe defendants and not believe Lisa Smith."**

The aforementioned statement required objections and unfairly drew the jury's attention to the misstatements and away from the trial.

Assistant Attorney General Goetsch was forced to remove the offending statement by the court, after which she revisited the statement, or a variation of, on three more occasions during her rebuttal closing argument.

The prosecutor bears a dual role in representing the state during a criminal prosecution: To prosecute with vigor and diligence while assuring that the defendant receives a fair trial.

It is the prosecutor's duty to refrain from improper methods calculated to obtain a conviction.

Assistant Attorney General Goetsch by her actions on March 12, 2009 failed to insure that I received a fair trial and also used improper methods to gain a conviction at all cost.

On November 24, 2010 the Court of Appeals stated in their published opinion on the case that: "While this Court does not condone the prosecutor's conduct during her rebuttal closing." They further stated that Assistant Attorney General Goetsch: "Prepared her statement in advance and was not able to adjust after the Court sustained the first objection."

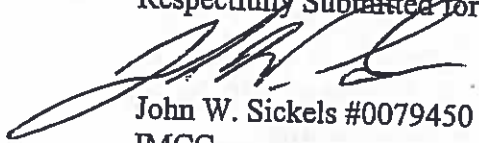
As stated previously, The Court determined that Assistant Attorney General Goetsch prepared her rebuttal in advance. Ms. Goetsch knowingly prepared a power point presentation that contained an improper statement, shifted the burden of proof to the defendants, and blurred the presumption of innocence guaranteed by the Constitution.

Copies of relevant portions of the certified transcript are attached hereto and made a part hereof as Exhibit M.

Exhibit M. Pages 14-15

The complainant prays that the Prosecutorial Standards and Conduct Committee take the appropriate action to correct the situation.

Respectfully Submitted for Consideration



John W. Sickels #0079450  
IMCC  
2700 Coral Ridge Avenue  
Coralville, Iowa 52241

Cc: Attorney General Tom Miller  
Governor Terry Branstad



*Iowa Supreme Court  
Attorney Disciplinary Board*

---

Phone: 515-725-8017  
Fax: 515-725-8013

Iowa Judicial Branch Building  
1111 East Court Avenue  
Des Moines, IA 50319-5003

CHARLES L. HARRINGTON  
ADMINISTRATOR, ATTORNEY  
DISCIPLINARY BOARD  
ASSISTANT DIRECTOR, OPR

March 22, 2011

PERSONAL AND CONFIDENTIAL

Ms. Becky Goettsch  
Assistant Attorney General  
Hoover State Office Building  
Des Moines, IA 50319

Re: Our File No.: 2011-120  
Complainant: John W. Sickels  
Respondent: Becky Goettsch

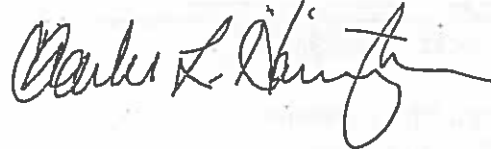
Dear Ms. Goettsch:

The Iowa Supreme Court Attorney Disciplinary Board has received a complaint against you filed by John W. Sickels of Coralville, Iowa. A copy of that complaint is enclosed.

Under the Rules of Procedure of this Board, an investigation will be made and the matter will come on for consideration at a future meeting of the Board.

In the meantime, you are required pursuant to Iowa R. Prof'l Conduct 32:8.1(b) to provide the Board with a statement responsive to this complaint which statement may be addressed in my care. Please see also Rule 34.7 of the enclosed copy of Rules of Procedure of the Board.

FOR THE IOWA SUPREME COURT  
ATTORNEY DISCIPLINARY BOARD



CLH/vls  
Enclosures

cc: John W. Sickels  
cert: 91 7108 2133 3938 9024 2708

May 2, 2011

Mr. Charles Harrington  
Administrator Attorney  
Iowa Judicial Branch Building  
Des Moines, Iowa 50319

John W Sickels #0079450  
I.M.C.C.  
2700 Coral Ridge Avenue  
Coralville, Iowa 52241

Re: File Number 2011-120  
Complaint on Becky Goettsch

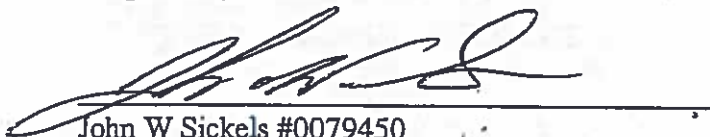
Dear Mr. Harrington

I am in possession of a letter written by you and dated March 22, 2011 regarding a complaint that I have filed on Becky Goettsch of The Iowa Attorney Generals Office. It is my understanding that Ms. Goettsch is required by Iowa law to write a response to that complaint. I am contacting you to inquire if Ms. Goettsch has complied with that request and if so, can a copy be forwarded to me at the above address?

I am aware of the fact that the investigation and subsequent rulings may take several months to complete. At this point in time, I do not anticipate an address change. If at all possible, I would like to be informed of any changes in the status of the investigation.

Thank you for your time and consideration in this matter.

Respectfully Submitted



John W Sickels #0079450  
I.M.C.C.  
2700 Coral Ridge Avenue  
Coralville, Iowa 52241

*Iowa Supreme Court  
Attorney Disciplinary Board*

---

Phone: 515-725-8017  
Fax: 515-725-8013

Iowa Judicial Branch Building  
1111 East Court Avenue  
Des Moines, IA 50319-5003

**CHARLES L. HARRINGTON**  
ADMINISTRATOR, ATTORNEY  
DISCIPLINARY BOARD  
ASSISTANT DIRECTOR, OPR

May 5, 2011

Mr. John W. Sickels, #0079450  
c/o Iowa Medical & Classification Center  
2700 Coral Ridge Ave.  
Coralville, IA 52241

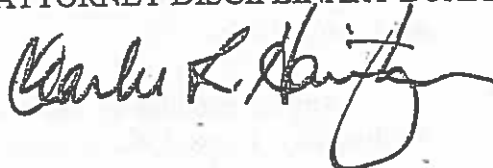
Re: Our File No.: 2011-120

Dear Mr. Sickels:

The Board has received your letter of May 2, 2011. In response to your request, the Board's files are confidential and therefore we cannot send you a copy of Ms. Goettsch's answer to the complaint.

The matter remains under investigation, and you will be informed in writing when the Board makes a decision.

FOR THE IOWA SUPREME COURT  
ATTORNEY DISCIPLINARY BOARD



CLH/vls

Sent 10-11-11

October 11, 2011

To: Mr. Charles Harrington  
Administrator, Attorney  
Iowa Supreme Court Attorney Disciplinary Board  
Iowa Judicial Branch Building  
1111 East Court Avenue  
Des Moines, Iowa 50319

Fr: John W Sickels #0079450  
Iowa Medical and Classification Center  
2700 Coral Ridge Avenue  
Coralville, Iowa 52241

Re: File No.: 2011-120  
Complaint against Assistant Attorney General Becky Goettsch

Mr. Harrington

I am requesting an update on the complaint that I filed against Assistant Attorney General Becky Goettsch and was received by your Board on March 22, 2011.


In the letter that I received dated March 22, 2011, I was informed that the investigation could take up to six months. As of the writing of this letter, I have not received any information that the complaint has been resolved.

I realize that the Board receives numerous complaints and that some are more valid than others.

Any update that the Board could provide me would be greatly appreciated. Additionally, I would like to know if Ms. Goettsch provided the Board with a response to my complaint and any action that the Board has taken.

Thank you for your time and consideration in this matter.

I remain Respectful;



John W Sickels #0079450  
IMCC  
2700 Coral Ridge Avenue  
Coralville, Iowa 52241

*Iowa Supreme Court  
Attorney Disciplinary Board*

Phone: 515-725-8017  
Fax: 515-725-8013

Iowa Judicial Branch Building  
1111 East Court Avenue  
Des Moines, IA 50319-5003

**CHARLES L. HARRINGTON**  
ADMINISTRATOR, ATTORNEY  
DISCIPLINARY BOARD  
ASSISTANT DIRECTOR, OPR

October 19, 2011

Mr. John W. Sickels, #0079450  
c/o Iowa Medical & Classification Center  
2700 Coral Ridge Ave.  
Coralville, IA 52241

Re: Our File No.: 2011-120  
Complainant: John W. Sickels  
Respondent: Becky Goettch

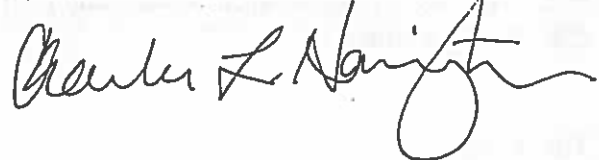
Dear Mr. Sickels:

The above complaint filed by you recently came on for consideration by the Board.

Following a review of the complaint, the response thereto, and the investigative file, the Board concluded that although respondent erred in her closing argument, the record did not convincingly establish that she intentionally crossed the line in her statements. The Board noted that the trial judge concluded that she did not intentionally violate his rulings.

Therefore, under the high standard of proof in disciplinary matters, misconduct was not established, and the complaint was dismissed. In response to your recent letter, the respondent did provide an answer to the complaint; however, her answer and the other portions of the investigative file are confidential pursuant to the Board's procedural rules.

FOR THE IOWA SUPREME COURT  
ATTORNEY DISCIPLINARY BOARD



CJLH/vls  
cc: Becky Goettsch

October 27, 2011

To: Mr. Charles Harrington  
Administrator Attorney  
Iowa Supreme Court Attorney Disciplinary Board  
Iowa Judicial Branch Building  
1111 East Court Avenue  
Des Moines, Iowa 50319

Fr: John W Sickels #0079450  
Iowa Medical and Classification Center  
2700 Coral Ridge Avenue  
Coralville, Iowa 52241

Re: Complaint No.: 2011-120

Dear Mr. Harrington:

I am in possession of a letter sent by you and dated October 19, 2011 regarding the denial of the complaint that I filed against Assistant Attorney General Becky Goettsch. I am at a loss as to explain how the board could not find misconduct when Ms. Goettsch presented her closing rebuttal argument on March 12, 2009.

I question how The Board could say that the record did not convincingly establish that she intentionally crossed the line in her statements. It is apparent that The Board chose to ignore the fact that the Court of Appeals stated that Ms. Goettsch had prepared her statement in advance and was not able to adjust after the Court sustained the first objection. If the offensive statement was prepared in advance and repeated after it was stricken by The Court then by definition it is intentional.

I also question how The Board can state that under the high standard of proof in disciplinary matters misconduct was not established even though the Court of Appeals has already identified it and stated that they do not condone the prosecutors conduct.

Is there anyway to appeal this decision to a higher authority? Also, would it be possible for you to forward me an explanation of how one would go about having a high enough standard of proof in a disciplinary matter?

Thank You

---

John W Sickels #0079450  
Iowa Medical and Classification Center  
2700 Coral Ridge Avenue  
Coralville, Iowa 52241

Cc: Governor Branstad

*Iowa Supreme Court  
Attorney Disciplinary Board*

---

Phone: 515-725-8017  
Fax: 515-725-8013

Iowa Judicial Branch Building  
1111 East Court Avenue  
Des Moines, IA 50319-5003

**CHARLES L. HARRINGTON**  
ADMINISTRATOR, ATTORNEY  
DISCIPLINARY BOARD  
ASSISTANT DIRECTOR, OPR

November 4, 2011

Mr. John W. Sickels, #0079450  
c/o Iowa Medical & Classification Center  
2700 Coral Ridge Ave.  
Coralville, IA 52241

Re: Our File No.: 2011-10

Dear Mr. Sickels:

Your letter of October 27, 2011 has been received. I am sorry you disagree with the Board's decision. All I can tell you is that the Board was aware of the decision of the Court of Appeals, but did not believe the matter could be successfully pursued. The rules do not provide for an appeal of the Board's decision.

FOR THE IOWA SUPREME COURT  
ATTORNEY DISCIPLINARY BOARD



CLH/vls

BEFORE THE COMMISSION ON JUDICIAL QUALIFICATIONS  
OF THE STATE OF IOWA

IN THE MATTER OF THE CONDUCT OF )  
JUDGE Arthur Gamble )  
JUDGE OF THE 5<sup>th</sup> )  
JUDICIAL DISTRICT. )

TO: COMMISSION ON JUDICIAL QUALIFICATIONS, STATE OF IOWA

The undersigned hereby makes complaint on the above-named judge and hereby states:

1. The address of the complainant is 2700 Coral Ridge Ave  
Coralville, Ia 52241
2. The events about which the undersigned makes complaint occurred on the 12<sup>th</sup> day  
of March, 2009 and \_\_\_\_\_  
(list other dates if applicable)
3. The events about which the undersigned complains occurred on the above date(s) in the  
matter of State of Iowa vs. John Sickels &  
James Christensen  
(list name of case[s])
4. That said matter was in the District Court of the State of Iowa in and for Union tried in  
Woodbury County (county)  
county(ies). That the number of said matter was \_\_\_\_\_  
(list case number[s])

That the events about which the undersigned complains are as follows: \_\_\_\_\_

Please See all attached Documents

Attach additional pages if necessary.

Jana A. Christensen  
Complainant

Cc. Governor Terry Branstad



On March 12, 2009, while presiding over State of Iowa Vs. John W. Sickels and James A. Christensen, a Union County Criminal Case tried in Woodbury County, 5<sup>th</sup> Judicial District Judge Arthur Gamble acted in a way that was unethical, unprofessional and showed a lack of knowledge and of relevant application of the law and rights afforded a defendant by the Constitution and of the State of Iowa.

Judge Gamble erred in questions of the law and allowed prosecutors from the Attorney General's Office to continually misquote the law and switch the burden of proof, even after the defense's *numerous objections had been sustained by the Court.*

During the prosecutor's rebuttal, the jury was removed on two occasions as a direct result of the prosecutor's actions. The persistently made false statements by the prosecution, despite the Court's rulings, unfairly drew the jury's attention to the misstatements of the law and away from the actual facts of the case.

Judge Gamble further erred by not finding that aforementioned actions constituted prosecutorial misconduct. Judge Gamble incorrectly inferred that for such misconduct to exist, or for the Court to so find, the acts would need to be intentional. *Misconduct need not be intentional for the Court to rule as such.*

Judge Gamble deferred control of the Court to the prosecution and allowed them to effectively tell the jury to disregard the law given to them by the Court in its instructions and consider law suggested by the prosecution.

On the record, Judge Gamble informed the prosecutor that he was: "Shocked, your little shorthand leaves out some fairly important premise of Constitutional law, and you are not making a good record for appeal."

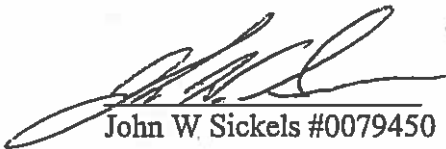
Judge Gamble erred in not granting the defendant's motion for a mistrial. The attempts by the Court to address the aforementioned errors in instructions and rulings on objections were insufficient and inconsistent with the law. The jury's view of the defendants was so prejudiced and inflamed that no remedy other than a mistrial could have provided the defendants with a fair and impartial trial.

Copies of relevant portions of the certified transcripts detailing objections and arguments as well as the Court's rulings are attached hereto and are marked as Exhibit A

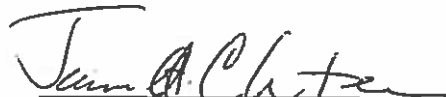
Exhibit A Pages 33-44

The complainants pray that the Commission on Judicial Qualifications takes the appropriate corrective action and holds Judge Gamble accountable for his actions (Or lack thereof) on the evening of March 12, 2009. Judge Gamble is directly responsible for a miscarriage of justice and a breach of the defendant's inalienable rights afforded them under the Constitution of the United States.

Respectfully Submitted for Consideration



John W. Sickels #0079450  
IMCC  
2700 Coral Ridge Avenue  
Coralville, Iowa 52241



James A. Christensen #6076835  
IMCC  
2700 Coral Ridge Ave.  
Coralville, Iowa 52241

Cc: Governor Branstad

3-18-11

*Judicial Qualifications Commission*

Iowa Judicial Branch Building  
1111 East Court Avenue  
Des Moines, IA 50319  
(515) 281-5241

March 10, 2011

John Sickels #0079450  
James Christensen #6076835  
2700 Coral Ridge Avenue  
Coralville, IA 52241

Dear Mr. Sickels and Mr. Christensen:

Your complaint against Chief Judge Arthur Gamble has been received and forwarded to the members of the commission for their consideration.

Sincerely,



David K. Boyd *DKB*  
Executive Secretary  
Judicial Qualifications Commission

DKB/tms

4-5-11

*Judicial Qualifications Commission*

Iowa Judicial Branch Building

1111 East Court Avenue

Des Moines, IA 50319

(515) 281-5241

March 30, 2011

John Sickels #0079450  
James Christensen #6076835  
2700 Coral Ridge Avenue  
Coralville, IA 52241

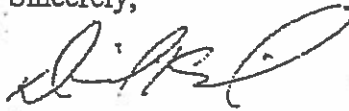
Re: Grievance Against Chief Judge Arthur Gamble

Dear Mr. Sickels and Mr. Christensen:

The Commission on Judicial Qualifications of the State of Iowa was established in 1975. It is an impartial body whose function is to receive, investigate and evaluate complaints about the conduct of judges and magistrates. The Commission may recommend to the Supreme Court of Iowa that a judge be disciplined or removed for persistent failure to perform his/her duties, habitual intemperance, willful misconduct in office, conduct that brings judicial office into disrepute, and/or substantial violations of the Code of Judicial Conduct. The Commission is not empowered to act as an appellate court and, therefore, has no authority to change the decision made by any judge in this state.

After considering your complaint during its recent meeting, the Commission has determined that there is insufficient evidence of judicial misconduct that would warrant discipline or further investigation. Accordingly, the commission has dismissed the complaint.

Sincerely,



David K. Boyd  
Executive Secretary  
Judicial Qualifications Commission

DKB/tms

April 6, 2011

To: The Judicial Qualifications Commission  
Iowa Judicial Branch Building  
1111 East Court Avenue  
Des Moines, Iowa 50319

Fr: John W Sickels #0079450

Re: Grievance denial against Chief Judge Arthur Gamble

Dear Mr. Boyd

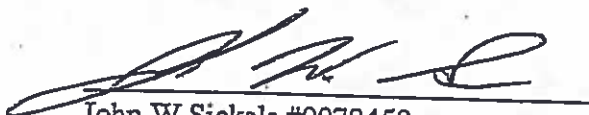
I am in possession of your letter dated March 30, 2011 regarding the complaint that was filed by Jamie Christensen and myself regarding Chief Judge Arthur Gamble. I am at a loss as to how a complaint can be presented so clearly and yet not acted upon by some level by the Commission.

I feel that there was more than enough evidence presented for the Commission to determine that there was judicial misconduct during my trial.

I would like a copy of the minutes from the meeting pertaining to the aforementioned complaint and any other documents that were generated as a result of the complaint.

I realize that the Commission is not empowered to act as an appellate court and am cognizant of the fact that it has no authority to overturn decisions. However, I do feel that the Commission has a duty to uphold the highest standards of Judicial Qualifications that the citizens of Iowa deserve.

Respectfully



John W Sickels #0079450  
IMCC  
2700 Coral Ridge Avenue  
Coralville, Iowa 52241

Cc: Governor Terry Branstad



Terry E. Branstad  
GOVERNOR.

OFFICE OF THE GOVERNOR

Kim Reynolds  
LT. GOVERNOR

April 15, 2011

John W. Sickels  
I.M.C.C. # 0079450  
2700 Coral Ridge Avenue  
Coralville, Iowa 52241

Dear Mr. Sickels:

Thank you for contacting our office regarding your case. The Judicial Qualifications Commission is the proper office to file any complaints against judges. The judicial branch handles all complaints against judges and lawyers. Although you already filed a complaint, you should direct all questions and concerns to the Judicial Branch as they are the proper office to handle judge and attorney disciplinary complaints. The proper contact for you is:

Daniel K. Boyd  
Judicial Qualifications Commission  
Iowa Judicial Branch Building  
1111 East Court Avenue  
Des Moines, Iowa 50319  
(515) 281-5241

Regarding your appeal and post-conviction relief, the court system is the proper venue for appeals, not the executive branch. You do have the right to apply for a pardon and/or commutation with our office. For your convenience, I am attaching an application and frequently asked questions (FAQ) section. Please do not hesitate to contact our office with questions. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "Larry Johnson, Jr.", written over a horizontal line.

Larry Johnson, Jr.  
Deputy Legal Counsel

Sent 6-13-11

June 13, 2011

To: Daniel K Boyd  
Executive Secretary  
Judicial Qualifications Commission  
Iowa Judicial Branch Building  
1111 East Court Avenue  
Des Moines, Iowa 50319

Fr: John W Sickels #0079450  
I.M.C.C.  
2700 Coral Ridge Avenue  
Coralville, Iowa 52241

Re: Grievance Against Chief Judge Arthur Gamble

Dear Mr. Boyd

I am in possession of a letter sent by you and dated March 30, 2011 denying my properly filed grievance against 5<sup>th</sup> Judicial Chief Judge Arthur Gamble.

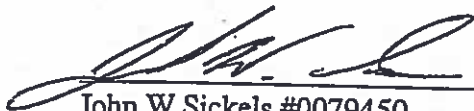
After receiving your letter, I requested on April 6, 2011 from the Commission, the minutes to the meeting and any relevant paperwork that was generated as a response to my complaint.

As of the writing of this letter I have not received a response from either you or any other representative from the Commission. I would like to renew my request for the aforementioned documents.

If for some reason that I am unaware of that I am not allowed to have the requested documents please notify me in writing at the address listed at your earliest possible convenience. If there is a nominal fee for copying the requested documents please advise me in writing and I will make the necessary arrangements required to pay.

I have attached for your convenience copies of the letters that I have referred to with this letter.

Respectfully Submitted



John W Sickels #0079450  
I.M.C.C.  
2700 Coral Ridge Avenue  
Coralville, Iowa 52241

Sent 7-11-11

July 11, 2011

To: Daniel K Boyd  
Executive Secretary  
Judicial Qualifications Commission  
Iowa Judicial Branch Building  
1111 East Court Avenue  
Des Moines, Iowa 50319

Fr: John W. Sickels #0079450  
Iowa Medical & Classification Center  
2700 Coral Ridge Avenue  
Coralville, Iowa 52241

Re: Complaint regarding Judge Arthur Gamble

Dear Mr. Boyd

I would like to renew my previous requests for the minutes to the meeting and any paperwork that was generated from my filing of a formal complaint on 5<sup>th</sup> Judicial Chief Judge Arthur Gamble.

As you are aware, I have requested the aforementioned paperwork on three previous occasions and have not received a response from you or any other member of the commission.

If there is a rule or law prohibiting my obtaining the records please inform me in writing at the above address.

Respectfully

  
John W Sickels



BEFORE THE COMMISSION ON JUDICIAL QUALIFICATIONS  
OF THE STATE OF IOWA

IN THE MATTER OF THE CONDUCT OF )  
JUDGE Arthur Gamble )  
JUDGE OF THE 5<sup>th</sup> )  
JUDICIAL DISTRICT. )

TO: COMMISSION ON JUDICIAL QUALIFICATIONS, STATE OF IOWA

The undersigned hereby makes complaint on the above-named judge and hereby states:

1. The address of the complainant is Town Medical & Classification Center  
2000 Coral Ridge Ave, Coralville, Iowa 52241
2. The events about which the undersigned makes complaint occurred on the 9<sup>th</sup> day  
of June, 2011 and \_\_\_\_\_  
(list other dates if applicable)
3. The events about which the undersigned complains occurred on the above date(s) in the  
matter of State of Iowa vs. John West Sietels.  
(list name of case(s))
4. That said matter was in the District Court of the State of Iowa in and for Union/Woodbury  
(county)  
county(ies). That the number of said matter was 008958 / 055372  
(list case number[s])

That the events about which the undersigned complains are as follows: \_\_\_\_\_

Please See Attached

Attach additional pages if necessary.

  
Complainant

7-21-11

July 21, 2011

To: David K Boyd  
Executive Secretary  
Judicial Qualifications Commission  
Iowa Judicial Branch Building  
1111 East Court Avenue  
Des Moines, Iowa 50319

Fr: John W Sickels #0079450  
Iowa Medical & Classification Center  
2700 Coral Ridge Avenue  
Coralville, Iowa 52441

Re: Complaint Regarding Arthur Gamble  
Chief Judge 5<sup>th</sup> Judicial District

Dear Mr. Boyd

On February 11, 2011 I filed a formal complaint against 5<sup>th</sup> Judicial Chief Judge Arthur Gamble along with my co-defendant James Christensen. On March 30, 2011 I received a letter from you stating that there was insufficient evidence of judicial misconduct that would warrant discipline or further investigation. As you are aware I have attempted unsuccessfully to gain access to the minutes of the meeting and any additional documents relating to that complaint since I received your letter.

On June 9, 2011 Chief Judge Gamble presided over a restitution hearing that was remanded back to the District Court by the Iowa Court of Appeals.

On June 6, 2011 I retained private counsel to represent me in this matter. My attorney asked for a continuance based on the fact that he was hired three days prior to the hearing. The prosecutor from the Iowa Attorney General's Office did not resist the motion for continuance. Judge Gamble denied the request and erroneously stated that he questioned my motives because I knew the hearing had been scheduled on March 23, 2011. After reviewing the order setting the hearing, it is clearly set on May 2, 2011 and ordered by Judge Gamble.

I question rather Judge Gamble was able to remain impartial due to the complaints filed against him and my continuing correspondence with the Commission and Governor Branstad. I further believe that by ruling on a complex case with many issues and opposing opinions in less than twenty-four hours is positive proof that Judge Gamble's judgment is clouded and he was unable to remain impartial.

As I stated previously, Judge Gamble presided over the original restitution hearing in 2009 before it was remanded back to the District Court by the Court of Appeals. Judge Gamble waited an appropriate sixty days before making a ruling in 2009.

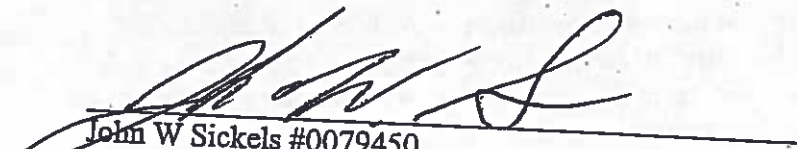
Additionally, my co-defendant Jamie Christensen filed a motion to correct an illegal sentence that was docketed in Woodbury County on February 11, 2011. Judge Gamble denied the motion without a hearing or resistance filed from the state after 120 days with one sentence at the bottom of his most recent ruling.

In the interest of justice and the perception of impartiality, I feel that Judge Gamble should have excused himself from any further proceedings that dealt with either Jamie Christensen or me. I also feel that ignoring a properly filed and docketed motion for 120 days before combining the two rulings into one judgment also shows Judge Gamble's inability to remain impartial in this case.

I have attached copies of my previous correspondence with the Commission for your review.

I pray that the Commission takes the appropriate corrective action against Judge Gamble for his persistent failure regarding this case.

Respectfully Submitted for Consideration



John W Sickels #0079450  
Iowa Medical & Classification Center  
2700 Coral Ridge Avenue  
Coralville, Iowa 52441

Cc: Governor Branstad

August 22, 2011

To: David K Boyd  
Executive Secretary  
Judicial Qualifications Commission  
Iowa Judicial Branch Building  
1111 East Court Avenue  
Des Moines, Iowa 50319

Fr: John W Sickels #0079450  
Iowa Medical & Classification Center  
2700 Coral Ridge Avenue  
Coralville, Iowa 52241

Re: Formal Complaint against 5<sup>th</sup> Judicial Chief Judge Arthur Gamble

Dear Mr. Boyd

I am writing this letter as a follow up to a second formal complaint that I filed with the Commission on July 11, 2011 against 5<sup>th</sup> Judicial Chief Judge Arthur Gamble. Since filing the complaint, I have not received confirmation that you received the complaint or that the Commission was going to investigate.

I would also like to know if the Judge that the complaint was filed on is informed that there was a complaint and who filed it.

I am sure that you are aware that I have sent numerous letters and inquiries to you personally and have not received any response from you or your designee. I realize that you are busy and I am not on your priority list. However, I feel that I have raised legitimate complaints to you and have not been afforded the proper responses.

If I am mistaken, and the Judicial Qualifications Commission is not the proper venue for a complaint against a Judge, could you please advise me where that place is.

If my complaint was not received by you could you please inform at your earliest possible convenience and I will send the complaint again.

Thank you for your time and consideration.

August 23, 2011

To: Clerk of the Supreme Court  
Judicial Branch Building  
1111 East Court Avenue  
Des Moines, Iowa 50319

Fr: John W Sickels #0079450  
Iowa Medical & Classification Center  
2700 Coral Ridge Avenue  
Coralville, Iowa 52241

Re: Complaint against 5<sup>th</sup> Judicial Chief Judge Arthur Gamble

Clerk of the Supreme Court of Iowa

My name is John Sickels and I am one of the two police officers from Creston, Iowa that were convicted of Sexual Abuse in the 2<sup>nd</sup> Degree in 2009 and sentenced to twenty-five years in prison.

Since my conviction I have filed two complaints With the Judicial Qualifications Commission against 5<sup>th</sup> Judicial Chief Judge Arthur Gamble. My first complaint was filed in February of 2011 and was a result of his actions during the trial. The Commission dismissed my complaint and the multiple letters that I have sent to David Boyd as to why have gone unanswered.

I filed a second complaint in July of 2011 that resulted from a restitution hearing that Judge Gamble presided over on June 9, 2011 that was remanded back to the District Court by the Court of Appeals. Foremost among my complaints was the fact Judge Gamble should not have presided over the hearing in light of the first complaint that was filed and for ruling on a very complex case with diametrically opposing opinions in less than twenty four hours.

I have filed an appeal on Judge Gamble's most recent ruling and will wait for the decision from the higher courts.

I realize that the Supreme Court is not the proper venue for a complaint. However, it is becoming apparent that the Judicial Qualifications Commission has chosen to ignore me and my properly filed complaints. I regret to say that I have nowhere else to turn for answers.

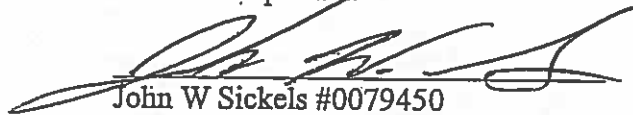
I recently contacted the Iowa Citizen's Aide/Ombudsman's Office and was informed that they do not have any jurisdiction over the Judicial Qualifications Commission.

It is my hope that you will be able to offer some direction as to where the proper place and venue for a complaint is or at a very minimum explain to me why the Executive Secretary of the Judicial Qualifications Commission has refused to acknowledge my numerous requests for answers and my most recent complaint. I realize that due to my current circumstances, I am not the highest priority.

I have enclosed in this letter a copy of the second complaint that I filed for your review and my most recent letter to the Judicial Qualifications Commission. If there is any additional correspondence that you would be interested in reviewing, please inform me at your earliest possible convenience at the listed address.

Thank you for your time and consideration in this matter.

I remain respectful



John W Sickels #0079450  
Iowa Medical & Classification Center  
2700 Coral Ridge Avenue  
Coralville, Iowa 52241

*Judicial Qualifications Commission*

Iowa Judicial Branch Building  
1111 East Court Avenue  
Des Moines, IA 50319  
(515) 281-5241

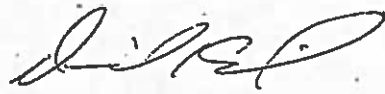
August 24, 2011

John Sickels, #0079450  
Iowa Medical & Classification Center  
2700 Coral Ridge Avenue  
Coralville, IA 52441

Dear Mr. Sickels:

Your complaint against District Judge Arthur Gamble has been received and forwarded to the members of the commission for their consideration.

Sincerely,



David K. Boyd  
Executive Secretary  
Judicial Qualifications Commission

DKB/tms

John Seckels #0079450

***Judicial Qualifications Commission***

**Iowa Judicial Branch Building  
1111 East Court Avenue  
Des Moines, IA 50319  
(515) 281-5241**

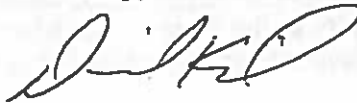
August 25, 2011

Janet Jackson  
2075 Beechwood Avenue  
Lenox, IA 50851

Dear Ms. Jackson:

Your complaint against District Judge Arthur Gamble has been received and forwarded to the members of the commission for their consideration.

Sincerely,



David K. Boyd  
Executive Secretary  
Judicial Qualifications Commission

DKB/tms



# Judicial Qualifications Commission

Iowa Judicial Branch Building  
1111 East Court Avenue  
Des Moines, IA 50319  
(515) 281-5241

---

August 29, 2011

John Sickels  
Iowa Medical & Classification Center  
2700 Coral Ridge Avenue  
Coralville, IA 52241

Dear Mr. Sickels:

On July 13, 2011, we received your written request for a copy of the meeting minutes and other paperwork related to the decision of the Iowa Commission on Judicial Qualifications (JQC) to dismiss your complaint against Chief Judge Gamble. We have since received your August 18, 2011 request for public records addressed to me as Executive Secretary of the JQC. According to Iowa Code section 602.2103:

“Notwithstanding chapter 21 and chapter 22, all records, papers, proceedings, meetings, and hearings of the commission are confidential, but if the commission applies to the supreme court to retire, discipline, or remove a judicial officer . . . the application and all of the records and papers in that proceeding are public documents.”

Consequently, the Commission cannot comply with your request.

In addition to serving as Executive Secretary to the commission, I also serve as the State Court Administrator. Solely in my capacity as the State Court Administrator, I do have documents relevant to your request that I may disclose and I have chosen to include them with this letter and without you having to submit a separate public records request.

As a bit of background, in my role as State Court Administrator I have frequent contact with members of the legislative branch of government. In my capacity as State Court Administrator on June 24, 2011, I did receive an email from a state representative who was forwarding to me a message from a Matt Somers that had been received by every member of the Iowa House of Representatives that same day. Once again in my capacity as State Court Administrator, I then forwarded that email to Chief Judge Arthur Gamble. I did so because at that time there no longer was any pending complaint with the JQC on the matter. I did not want Chief Judge Gamble to be surprised if he received an inquiry regarding the email message sent to members of the Iowa House of Representatives.

Therefore, attached you will find copies of emails between myself and Representative Mark Smith as well as between myself and Chief Judge Gamble, including the attachments referenced in any of those messages. Extraneous material not relevant to your request has been redacted in the email exchange between Chief Judge Gamble and me. Just for the record, the JQC was not a party to any of these exchanges.

Sincerely,



David K. Boyd  
Executive Secretary  
State Court Administrator

## Judicial Qualifications Commission

Iowa Judicial Branch Building  
1111 East Court Avenue  
Des Moines, IA 50319  
(515) 281-5241

October 26, 2011

Janet Jackson  
2075 Beechwood Avenue  
Lenox, IA 50851

Re: Grievance against Chief Judge Gamble

Dear Ms. Jackson:

The Commission on Judicial Qualifications of the State of Iowa was established in 1975. It is an impartial body whose function is to receive, investigate and evaluate complaints about the conduct of judges and magistrates. The Commission may recommend to the Supreme Court of Iowa that a judge be disciplined or removed for persistent failure to perform his/her duties, habitual intemperance, willful misconduct in office, conduct that brings judicial office into disrepute, and/or substantial violations of the Code of Judicial Conduct. The Commission is not empowered to act as an appellate court and, therefore, has no authority to change the decision made by any judge in this state.

After considering your complaint during a recent meeting, the Commission determined that there is insufficient evidence of judicial misconduct that would warrant discipline or further investigation. Accordingly, the Commission has dismissed the complaint.

The primary focus of your complaint was that Chief Judge Arthur E. Gamble should have recused himself from a hearing on June 9, 2011, involving John Sickels and James Christensen. Specifically, you question the propriety of Judge Gamble presiding over this hearing knowing that Mr. Sickels and Mr. Christensen has filed complaints against him earlier in the year. In actuality, Judge Gamble was unaware of the earlier complaints.

When the Commission concludes during its initial review of a complaint that the allegations do not involve an ethical violation, the Commission does not inform the judge that a complaint has been filed against the judge, so it is not necessary for the judge withdraw from handling subsequent proceedings in the case. If judges are informed each time a complaint is filed against them, they would have to withdraw from involvement in subsequent proceedings in the case. But many complaints against judges involve appealable issues or simply frivolous allegations. Requiring judges to withdraw from handling any further proceedings in a case whenever a complaint is filed would allow parties to create unending delays by filing complaints against every judge assigned to their case. The Iowa court system could not operate efficiently, effectively, or fairly under those circumstances.

Janet Jackson  
October 26, 2011  
Page 2

This is precisely what happened with the earlier complaint against Judge Gamble. The Commission concluded that the allegations against the judge involved disagreements with the judge's decisions on various issues during the trial. These are matters that must be submitted to an appellate court, not this Commission. The appropriate action by a party who disagrees with a judge's decision would be to file an appeal. That complaint was dismissed without the judge ever knowing it had been filed. Therefore, at the time of the hearing in question on June 9, 2011, Judge Gamble had no knowledge of any earlier complaint. Later, he did become aware of the complaint after an individual sent email correspondence to a state legislator who in turn shared it with me. At that time I had no choice but to notify Judge Gamble of the prior complaint. But, all of this transpired after the hearing on June 9<sup>th</sup> about which you complain.

Sincerely,



David K. Boyd  
Executive Secretary  
Judicial Qualifications Commission