

Paulson, Charis [DPS]

From: Quinn, JohnF [DPS]
Sent: Tuesday, February 08, 2011 1:33 PM
To: Noble, Larry [DPS]
Cc: Bogle, Steve [DPS]
Subject: FW: Interview Request

Sir,

This is the case where two former Creston Police Officers were convicted of the sexual assault of a female employee of the Creston Golf and Country Club. The allegation is that the officers were denied due process, thus wrongfully convicted, as a result of the victim rape protection shield that the courts extend to victims of sexual assault where the defense council cannot bring up the sex life history of sexual assault victims.

The IDOC will deny the requested media interviews, citing pending legal issues where the court has yet to establish the amount of restitution the two suspects will be required to pay. Once this issue is resolved the IDOC will permit the requested interview to transpire and the aforementioned allegation of wrongful conviction will garner publicity.

This email is to provide visibility on the pending issue. I will keep everyone advised as the case progresses.

John

John F. Quinn
Director
Division of Criminal Investigation
State of Iowa
215 East 7th Street
Des Moines, Iowa 50319
O: 515-725-6017
F: 515-725-6020
C: 515-971-5683
jquinn@dps.state.ia.us

From: Scaletta, Fred [DOC]
Sent: Tuesday, February 08, 2011 12:42 PM
To: Quinn, JohnF [DPS]
Subject: FW: Interview Request

FYI. Thanks John.

From: Towne, Jannay [mailto:Jannay.Towne@WHOTV.com]
Sent: Tuesday, February 08, 2011 10:07 AM
To: Scaletta, Fred [DOC]
Subject: Interview Request

Fred,

I would like to interview Jamie Christensen and John Sickels. Both men are being held at the Iowa Medical and Classification Center.

The two former Creston police officers were convicted of sexual assault. They lost their appeal for a new trial and the Iowa Supreme Court has declined to hear their case.

Both Christensen and Sickels maintain their innocence. My understanding from their family is that they believe key evidence about their accuser was not allowed in court. If possible, I would like to hear from them why they think they were wrongfully convicted.

Please let me know what you find out about their appeal.

Thanks,

Jannay Towne
Reporter
jannay.towne@whotv.com
Phone: (515) 242-3785
Fax: (515) 242-2796



1801 Grand Avenue
Des Moines, IA 50309
www.whotv.com

Subject: John Sickels and Jamie Christensen

Date: Wed, 02 Sep 2015 13:18:07 -0500

From: Janet Jackson <ljackfrm@gmail.com>

To: Jannay Towne <jannay.towne@whotv.com>

Dear Ms. Towne

Now that Governor Branstad wants to do something about Prosecutorial Misconduct and Justice in the State of Iowa, would you consider again trying to meet with John Sickels and Jamie Christensen at IMCC in Coralville? They have a story to tell and it is time it is told. Had former Assistant Attorney Becky Goettsch and Assistant Attorney Andrew Prosser told the truth at the trial, the judge would have likely granted the mistrial like our attorney ask for. This case has Prosecutorial Misconduct written all over it.

Thank you for your time,

Janet Jackson
2075 Beehwood Avenue
Lenox, IA 50851

ljackfrm@gmail.com

641-202-1840

Subject:

From: "Scaletta, Fred [DOC]" <Fred.Scaletta@iowa.gov>

Date: 12/24/2015 8:09 AM

To: "ljackfrm@gmail.com" <ljackfrm@gmail.com>

Ms. Jackson,

It has always been the practice of the Department of Correction to decline media requests to interview inmates if there are pending court decisions, such as restitution, or open appeals of their convictions. Both Sickels and Christensen currently have open appeals on record. There have been no media requests to interview either Sickels or Christensen for several years.

Fred Scaletta

Assistant Director

Iowa Department of Corrections

Office: (515) 725-5707

Pager: (515) 284-9004

—Original Message—

From: Janet Jackson [mailto:ljackfrm@gmail.com]

Sent: Tuesday, December 22, 2015 11:12 AM

To: Information, DOC <DOC.Information@iowa.gov>

Subject:

What possible reason could the Department of Corrections and the Attorney Generals Office not let a reporter in to visit with John Sickels and Jamie Christensen? The reason six years ago was that the restitution was still pending. I believe that has been settled.

Thank you,

Janet Jackson

ljackfrm@gmail.com

John Sickels
#0079450

Subject: Re: John Sickels and Jamie Christensen
From: Janet Jackson <ljackfrm@gmail.com>
Date: 1/13/2016 10:33 AM
To: "Towne, Jannay" <Jannay.Towne@WHOTV.com>

January 13, 2016

Ms. Towne,

I emailed the Department of Corrections and heard back from Fred Scaletta. He stated it is the practice of the DOC to decline media requests if there are pending court decisions or open appeals, which I can understand. John is completely through the state and our attorney said we could enlist the media. Mr. Scaletta stated "there have been no media requests to interview either Sickels or Christensen for several years". Anyway, I was wondering if you could try again to interview John. He is more than willing and would not mind being filmed.

Thank you for your time.

Janet Jackson

On 12/19/2015 10:36 AM, Towne, Jannay wrote

Janet,

Thank you for resending you message. I received the second, but not the first. It might have been sent to my spam or junk folder.

I have made that request about a half dozen times.

The Department of Corrections and the Attorney General's Office is not allowing media to speak to John and/or Jamie.

Jannay

From: Janet Jackson <ljackfrm@gmail.com>
Sent: Tuesday, December 8, 2015 10:40 AM
To: Towne, Jannay
Subject: Fwd: John Sickels and Jamie Christensen

Ms. Towne,

Would like to know if you received this message.

----- Forwarded Message -----

David K Boyd/SCA/JUDICIAL
06/27/2011 03:24 PM

To Arthur E Gamble/District5/JUDICIAL@JUDICIAL
cc
bcc
Subject Re: with friends like this....

Will do. [REDACTED]
Arthur E Gamble

----- Original Message -----

From: Arthur E Gamble
Sent: 06/27/2011 02:46 PM CDT
To: David Boyd
Subject: Re: with friends like this....

My cell is out of juice. Please call me on my office Blackberry phone @ [REDACTED] Thanks.
David K Boyd

----- Original Message -----

From: David K Boyd
Sent: 06/27/2011 01:22 PM CDT
To: Arthur Gamble
Subject: Re: with friends like this....

Woa. Please don't do anything until we can talk. [REDACTED] I should
be free by about 3 pm and I'll call you.
Arthur E Gamble

----- Original Message -----

From: Arthur E Gamble
Sent: 06/27/2011 01:05 PM CDT
To: David Boyd
Subject: Fw: with friends like this....

I believe I should respond to this today or someone should do so on my behalf. Who do I need to contact
about this?
Arthur E Gamble

----- Original Message -----

From: Arthur E Gamble
Sent: 06/27/2011 08:50 AM CDT
To: David Boyd
Subject: Re: with friends like this....

David,
I didn't know anything about any complaint. If I had known, I could have recused myself. I feel bad that
this sent to all legislators and that I can't respond. What can we do?

Art

David K Boyd

----- Original Message -----

From: David K Boyd
Sent: 06/24/2011 11:04 PM CDT
To: Arthur Gamble
Subject: with friends like this....

Thought you might want to see this email that was sent to everyone in the legislature today.

DKB

From: Matt Somers [matt@precopt.com]

Sent: Friday, June 24, 2011 7:29 AM

To: Abdul-Samad, Ako [LEGIS]; Alons, Dwayne Arlan [LEGIS]; Anderson, Richard [LEGIS]; Arnold, Richard [LEGIS]; Baltimore, Chip [LEGIS]; Baudler, Clel [LEGIS]; Berry, Deborah [LEGIS]; Brandenburg, Mark [LEGIS]; Byrnes, Josh [LEGIS]; Chambers, Royd [LEGIS]; Cohoon, Dennis [LEGIS]; Cownie, Peter [LEGIS]; DeBoef, Betty [LEGIS]; Deyoe, Dave [LEGIS]; Dolecheck, Cecil [LEGIS]; Drake, Jack [LEGIS]; Forristall, Greg [LEGIS]; Fry, Joel [LEGIS]; Gaines, Ruth Ann [LEGIS]; Gaskill, Mary [LEGIS]; Grassley, Pat [LEGIS]; Hagenow, Chris [LEGIS]; Hager, Bob [LEGIS]; Hall, Chris [LEGIS]; Hanson, Curt [LEGIS]; Hanusa, Mary Ann [LEGIS]; Heaton, Dave [LEGIS]; Heddens, Lisa [LEGIS]; Hein, Lee [LEGIS]; Helland, Erik [LEGIS]; Horbach, Lance [LEGIS]; Hunter, Bruce [LEGIS]; Huseman, Dan [LEGIS]; Isenhardt, Charles [LEGIS]; Iverson, Stewart [LEGIS]; Jacoby, David [LEGIS]; Jorgensen, Ron [LEGIS]; Kajtazovic, Anesa [LEGIS]; Kaufmann, Jeff [LEGIS]; Kearns, Jerry [LEGIS]; Kelley, Dan [LEGIS]; Klein, Jarad [LEGIS]; Koester, Kevin [LEGIS]; Kressig, Bob [LEGIS]; Lensing, Vicki [LEGIS]; Lofgren, Mark [LEGIS]; Lukan, Steven [LEGIS]; Lykam, Jim [LEGIS]; Mascher, Mary [LEGIS]; Massie, Glen [LEGIS]; McCarthy, Kevin [LEGIS]; Miller, Helen [LEGIS]; Miller, Linda [LEGIS]; Moore, Brian [LEGIS]; Muhlbauer, Dan [LEGIS]; Murphy, Pat [LEGIS]; Oldson, Jo [LEGIS]; Olson, Rick [LEGIS]; Olson, Steve [LEGIS]; Olson, Tyler [LEGIS]; Paulsen, Kraig [LEGIS]; Paustian, Ross [LEGIS]; Pearson, Kim [LEGIS]; Petersen, Janet [LEGIS]; Pettengill, Dawn [LEGIS]; Quirk, Brian [LEGIS]; Raecker, Scott [LEGIS]; Rasmussen, Dan [LEGIS]; Rayhons, Henry [LEGIS]; Rogers, Walt [LEGIS]; Running-Marquardt, Kirsten [LEGIS]; Sands, Tom [LEGIS]; Schulte, Renee [LEGIS]; Schultz, Jason [LEGIS]; Shaw, Tom [LEGIS]; Smith, Jeff [LEGIS]; Smith, Mark [LEGIS]; Soderberg, Chuck [LEGIS]; Steckman, Sharon [LEGIS]; Swaim, Kurt [LEGIS]; Sweeney, Annette [LEGIS]; Taylor, Jeremy [LEGIS]; Taylor, Todd [LEGIS]; Thede, Phyllis [LEGIS]; Thomas, Roger [LEGIS]; Tjepkes, David [LEGIS]; Upmeyer, Linda [LEGIS]; Van Engelenhoven, Jim [LEGIS]; Vander Linden, Guy [LEGIS]; Wagner, Nick [LEGIS]; Watts, Ralph [LEGIS]; Wenthe, Andrew [LEGIS]; Wessel-Kroeschell, Beth [LEGIS]; Willems, Nate [LEGIS]; Winckler, Cindy [LEGIS]; Windschitl, Matt; Wittneben, John [LEGIS]; Wolfe, Mary [LEGIS]; Worthan, Gary [LEGIS]

Subject:

My name is Matt Somers, owner of Precision Optical Group, Inc. in Creston. For the last three years I have been watching the legal proceedings of Jamie Christensen and John Sickels, the two police officers from Creston, Iowa who were convicted of Sexual Abuse in the 2nd Degree and sentenced to twenty-five years in prison. Never mind the lack of precedent for the sentencing handed down by Judge Gamble.

After the men were convicted, I know that complaints were filed against one of the prosecutors from the Iowa Attorney General's Office and Chief Judge Arthur Gamble. The complaint regarding the prosecutor is still being investigated. The complaint against Judge Gamble was dismissed by the Judicial Qualifications Commission. Unfortunately, the two men have been unable to find out why the complaint regarding Judge Gamble was dismissed.

Another of several injustices against the defendants in this case occurred on June 9th, 2011 when Judge Gamble presided over a restitution hearing and ruled in favor of the state after only one day of deliberation. Why was Judge Gamble allowed to involve himself in a hearing when a formal complaint had been levied against him by the two men? It would seem to me that Judge Gamble had his mind made up on the day of the hearing to rule against Sickels and Christensen with very little deliberation on a complex case with several issues.

As a tax payer of the state of Iowa, I am shocked that Judge Gamble did not step down and allow an alternate judge to preside over the hearing. I do not think it is possible for Judge Gamble to be impartial to Sickels and Christensen after the complaints. Even the hint of an impartial trial stains the Judicial System of Iowa.

I am also aware that Judge Gamble used his rulings on this case as a sample of his work when applying for appointment to the Iowa Supreme Court. The families and supporters of Christensen and Sickels wrote letters to the Governor protesting the appointment based on his handling of this case. I cannot help but wonder if the complaints filed against him were partly responsible for his not receiving the nomination. If Judge Gamble had even the smallest perception that the complaints filed against him by Sickels and Christensen and their MANY supporters were responsible, could he have been impartial to them during the recent hearing? I do not think so.

~~I believe that Judge Gamble's ruling should be stayed immediately and reviewed by an impartial judge. I realize that the men can and most likely will appeal the ruling to the Supreme Court of Iowa. It seems that all of the taxpayer money involved in such a lengthy appeal is cost prohibitive to the state in these tough financial times.~~

It appears to me that Judge Gamble has inflicted yet another blow to the Judicial System and although he may not have voiced it, he has essentially said "I can do whatever I want because I am a judge and nobody will hold me accountable." I am outraged that he was allowed to continue to preside over a case when complaints were filed against him and I believe that his judgment was clouded by those complaints.

Please look into this matter and insure that Judge Gamble is not allowed to continue presiding over this case.

Thank you,

Matt Somers

Matt Somers
Precision Optical Group, Inc
(641)782-6685 x 101
(641)202-0797 cell

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IN THE IOWA DISTRICT COURT FOR WOODBURY COUNTY

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

DEPOSITION OF BECKY GOETTSCH, ESQ.

taken by the Plaintiff/Petitioner before Ann T. Moyna, Certified Shorthand Reporter of the State of Iowa, at the Hoover State Office Building, Second Floor Conference Room, Des Moines, Iowa, commencing at 9:15 a.m., Monday, September 8, 2014.

APPEARANCES:

For Plaintiff/Petitioner: ALFREDO PARRISH, ESQ.
 Christensen: Parrish Kruidenier
 2910 Grand Avenue
 Des Moines, Iowa 50312

For the State of Iowa: ANDREW PROSSER, ESQ.,
 Assistant Attorney General
 Second Floor
 Hoover State Office Bldg.
 Des Moines, Iowa 50319

ORIGINAL

RECEIVED

SEP 19 2014

ANN T. MOYNA - CERTIFIED SHORTHAND REPORTER

AP
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SH
BT

PETERSON
500 SW Sev
Des Mo

31, 32, 33, 34, 35

P R O C E E D I N G S

BECKY GOETTSCH, ESQ.

1 called as a witness by counsel for the
2 Plaintiff/Applicant, being first duly sworn by the
3 Certified Shorthand Reporter, was examined and
4 testified as follows:
5

6
7 EXAMINATION

8 BY MR. PARRISH:

9 Q. Do you want to state your name and spell
10 both your first and last names for the record,
11 please.

12 A. Becky Goettsch, G-O-E-T-T-S-C-H.

13 Q. Would you tell us your current occupation?

14 A. I'm a Polk County Magistrate.

15 Q. And tell us what your duties are in that
16 position, how long you've held that position, please.

17 A. Since October of 2012. And I'm a magistrate
18 judge presiding over small claims, mental health
19 commitments, and suburban traffic and simple
20 misdemeanors.

21 Q. Is that a full-time or part-time position?

22 A. This is a part-time position.

23 Q. And do you have any other job that you do,
24 other than that job, at the current time?

25 A. Not that I get paid for.

1 Q. Okay. And would you tell us prior to the
2 position as a Polk County Magistrate, what did you
3 do? What was your occupation?

4 A. I was an Assistant Attorney General in the
5 Area Prosecutions Division.

6 Q. How long did you have that position and what
7 were your duties there?

8 A. I started in September of 2006 through
9 October of 2012, and I was a prosecutor of criminal
10 cases.

11 Q. And what type of criminal cases and what
12 were your areas that you practiced in?

13 A. The type of cases were anything from
14 misdemeanors to Class A felonies; murders, sex
15 assaults, fraud. Whatever I was assigned to do.

16 I also did sexually violent predators, which
17 are civil commitments, civil jury trials.

18 Q. What years again, please?

19 A. From September of '06 until October of 2012.

20 Q. Okay. And during that time do you recall
21 the number of sex offender cases you tried, Class B
22 cases did you try?

23 A. Some were Class Bs, yes.

24 Q. Do you know how many?

25 A. That were solely Class Bs?

1 Q. Yes. And ended up in jury trials too, to
2 narrow it down.

3 A. Probably less than five.

4 Q. Okay.

5 A. That's the best estimate I can give.

6 Q. Did you try any by yourself during that
7 time?

8 A. Yes.

9 Q. How many?

10 A. I don't recall. I'd have to look at
11 statistics. At least--at minimum three-a-year that I
12 tried by myself.

13 Q. You said you tried a total of approximately
14 five; is that correct?

15 A. Oh, of B felonies? How many B felonies did
16 I try by myself?

17 Q. Yes.

18 MR. PROSSER: B felony sex assaults?

19 MR. PARRISH: Yes.

20 BY MR. PARRISH:

21 Q. And I'm assuming B felonies would be
22 Mr. Christensen's case, it was a B felony.

23 A. I think there was probably some other child
24 sex abuse B felonies that I tried by myself. Maybe
25 one or two of those.

1 Q. Okay. How many did you try with co-counsel?

2 A. Well, the remainder, so two or three of
3 those.

4 Q. Who were your co-counsel that you tried them
5 with?

6 A. I don't recall any specific ones off the top
7 of my head other than Christensen. That would be
8 Mr. Prosser.

9 Q. Okay. So other than trying a Class B sex
10 offense with Mr. Prosser, you can't recall trying
11 anymore Class B sex offender cases with any other
12 co-counsel; is that correct?

13 A. That's correct.

14 Q. Okay. And that would have been from the
15 years 2006 to 2012. Would that be accurate?

16 A. Correct. There could be some cases. I
17 can't remember a specific incident of that. There
18 probably is some B felony sex cases that I tried. I
19 can't remember the specifics of it.

20 Q. Prior to your work with the Attorney
21 General's Office of the State of Iowa, what was your
22 prior employment?

23 A. Before that I was a deputy district attorney
24 in Las Vegas.

25 Q. And what area did you work in and how long

1 did you have that position?

2 A. I started that position in '98, '99, and I
3 worked in the appellate division, I worked as general
4 trial counsel, I worked in the special victims unit,
5 and I worked in the--on the homicide unit.

6 Q. And how many felony jury trials did you have
7 in Las Vegas?

8 A. Over 60.

9 Q. And how many of those were, say, comparable
10 to a Class B felony in Iowa? And what I mean by
11 that, a Class B where there was a mandatory minimum
12 sentence that the defendant would be facing if
13 convicted.

14 A. How many of the 60?

15 Q. Yes, ma'am.

16 A. And the 60 I'm talking about, felony jury
17 trials.

18 Q. Correct. And I want to also clarify, Class
19 B being one less than a Class A. If we need to break
20 it down further, we will do that. I hope you
21 understand the distinction I'm making here.

22 A. I do understand the distinction.

23 Without looking at stats, maybe 20,
24 approximately. That's the best approximation I can
25 give you.

1 Q. Out of those that were comparable to what
2 you would call a Class B Las Vegas, same as Class B
3 in Iowa, how many of those were sex offense cases?

4 A. Close to all of them, I would say. Fifteen
5 of those, perhaps. I mean, the homicides I did would
6 have been life sentences, which I'm considering not
7 Class Bs.

8 Q. Correct.

9 A. Okay.

10 Q. And how many did you have co-counsel with?

11 A. Approximately half.

12 Q. Okay. What did you do prior to your work in
13 1998 with Las Vegas?

14 A. I was in private practice in Las Vegas for
15 about 18 months. And before that I was in private
16 practice in Des Moines.

17 Q. Okay. And private practice in Las Vegas,
18 what type of work did you do and what was the name of
19 the firm or company you worked with?

20 A. It was mostly employment litigation, but it
21 was--I did litigation of all kinds. I was an
22 associate at Lionel, Sawyer and Collins.

23 Q. What type of firm is that?

24 A. It's the largest law firm in Nevada, so it's
25 general practice. They had divisions in litigation,

1 real estate, gaming. They did all kinds of work.

2 Q. But your specialty there, or the main focus
3 of your work, as I understand it, was employment?

4 A. Correct.

5 Q. Prior to that you were in Des Moines in
6 private practice?

7 A. Correct.

8 Q. And where in Des Moines were you in private
9 practice?

10 A. Shearer, Templer, Pingel and Kaplan.

11 Q. And with them what type of work did you do?

12 A. Anything that they gave me. I was a new
13 associate out of law school. I did everything from
14 divorce to real estate to litigation to business
15 transactions.

16 Q. And you went to law school where?

17 A. University of Iowa.

18 Q. And undergrad?

19 A. Iowa State.

20 Q. Okay. And your major?

21 A. My major was distributed studies, which is a
22 prelaw program.

23 Q. When were you first assigned the Christensen
24 case to prosecute?

25 A. Mr. Prosser asked for my assistance, and I

1 don't recall the time. It was maybe about a year
2 before it went to trial maybe.

3 Q. And who was lead counsel?

4 A. Mr. Prosser.

5 Q. And I do want to state for the record, and
6 you may have seen a copy of the court order, the
7 Court has indicated, and we've told the Court, that
8 we would not get into any attorney/client privilege
9 material. If I do stray into that area, I'm sure
10 Mr. Prosser will make sure that I stay away from it.

11 MR. PROSSER: It's not attorney/client, it's
12 work product.

13 MR. PARRISH: Work product, which I
14 interpret as the same thing.

15 Then if we don't get into that area, it
16 won't be a problem. If we do, we'll reserve those
17 questions for the judge so we don't have to bother
18 him right now.

19 I will stay focused on the narrow area that
20 I think I want to focus on for the purpose of these
21 questions.

22 BY MR. PARRISH:

23 Q. Mr. Prosser was lead counsel, and you don't
24 recall the date when you became involved in the case.
25 The record will speak for itself. At some point you

1 entered an appearance in this case; is that correct?

2 A. Correct.

3 Q. And in terms of your area of preparation for
4 trial, prior to the time that the trial started,
5 could you tell us what your area of preparation was
6 to be?

7 A. We did not have defined duties. Andy and I
8 really split things depending on who was busy with
9 other activities, what needed to be done. So there
10 wasn't--I didn't have a specific assignment.

11 Q. As far as preparing motions, whose job was
12 it to prepare motions or respond to motions?

13 A. I think mostly Andy, but I can't say that I
14 didn't respond to a motion. It's possible I did.

15 Q. Did you author them, did you research them
16 yourself or did you assign them out to other people
17 and adopt their research, or correct their research?
18 How was this done in preparing your motions?

19 A. Typically the way the office works, and the
20 way Andy and I worked together was, whoever was
21 available and could do it did it, and it would vary
22 on a case-by-case and motion-by-motion and job-by-job
23 basis.

24 Q. Okay. What about in terms of the opening
25 statements, whose job was it to prepare the opening

1 statement?

2 MR. PROSSER: I guess we're getting a little
3 close to work product in deciding how we strategized
4 the case. I think the record will speak for itself
5 about which of us did what parts of the case. I'll
6 state that whoever did that part of the case did the
7 preparation for it.

8 But in terms of what we sat down and talked
9 about--

10 MR. PARRISH: I didn't ask her what she
11 talked about.

12 MR. PROSSER: All right.

13 MR. PARRISH: The question speaks for
14 itself. Read it back, please.

15 (Record read as requested.)

16 A. Whoever did the opening statement.

17 BY MR. PARRISH:

18 Q. Who delivered it?

19 A. I don't remember.

20 Q. Okay. The record speaks for itself.

21 Let's go to the closing statement. Whose
22 job was it to prepare the closing statement?

23 A. Andy prepared the first closing statement,
24 and I prepared the rebuttal.

25 Q. Okay. Did you prepare the rebuttal on your

1 own?

2 A. We worked together. I mean, there were
3 discussions between Mr. Prosser and I, but it was my
4 primary duty. We did discuss it together.

5 Q. Did you discuss your Power Point?

6 A. Yes.

7 Q. Did you show it to Mr. Prosser?

8 A. Yeah.

9 Q. Where did you show it to him?

10 A. Hotel room the night before.

11 Q. Did you show it to him before you left
12 Des Moines to go back to Sioux City for closing
13 arguments?

14 A. I don't recall that.

15 Q. Did he make any corrections to it?

16 A. No.

17 Q. Had you discussed your closing argument with
18 Mr. Scott, your rebuttal closing argument with
19 Mr. Scott?

20 A. No.

21 Q. At no point in time?

22 A. No.

23 Q. Did you tell Mr. Scott at some point that
24 you intended to talk about the burden of proof that
25 was the law in Nevada, and he indicated to you that

1 that was not the burden of proof in Iowa?

2 A. Did I have that discussion with Mr. Scott?

3 Q. Yes, ma'am.

4 A. I don't have any memory of talking outside
5 the record with Mr. Scott. Is it possible that
6 occurred? It is possible. But I don't have any
7 immediate recollection of that.

8 Q. Well, let's go to the-- Let's see if we can
9 refresh your recollection a little bit.

10 If you would go to your rebuttal closing
11 argument. You would agree that at some point you put
12 up a Power Point presentation that indicated
13 something about a particular witness'--a jury's
14 belief in a particular witness' credibility.

15 A. I remember the slide you're referring to. I
16 mean, how it's characterized, I guess, speaks for
17 itself.

18 Q. Right. Do you have a copy of that slide
19 still?

20 A. I don't.

21 Q. Do you know what happened to it?

22 A. No. It's possible it might exist somewhere.
23 I don't have it because I haven't worked--

24 Q. Do you know why it was not preserved when it
25 became an issue in the courtroom in rebuttal and in

1 the motion for new trial?

2 A. Do I know why?

3 Q. Right.

4 A. No.

5 Q. Did you request that it be preserved, to
6 your knowledge?

7 A. No.

8 Q. Okay.

9 A. My knowledge is it was already a part of the
10 record. It was read into the record.

11 Q. Well, yeah, it was read into the record.
12 But the size of it, the way it was on the screen, how
13 it was presented for the jury. None of that's in the
14 record. How long it was up is not even in the
15 record.

16 My question is: Is your testimony that you
17 prepared that slide the night before the rebuttal
18 argument?

19 A. Yes, or very close to that. It would have
20 been within a couple of days of that.

21 Q. Did you prepare it in Sioux City or did you
22 prepare it in Des Moines, to your best recollection?
23 I know I've asked you that question.

24 A. I have no idea. I have no memory of that.

25 Q. This is Mr. Scott speaking on page 14 of his

1 motion for new trial, he says--I'm starting on line
2 9, "Here, I've got what it says here. The Power
3 Point presentation stated not guilty requires you to
4 believe the defendants and not believe Lisa Smith.
5 The statement was objected to as a misstatement of
6 the law. The Court sustained that objection, and the
7 screen was taken down.

8 "Again, that screen was put up there.
9 That-- Obviously, it was intentionally put up there.
10 The screen was made by the State prior to closing
11 argument. This wasn't something, I believe, I don't
12 believe, anyway, I can't imagine they created a Power
13 Point during closing argument."

14 So we know now what it says. Was it a one-
15 sentence statement?

16 A. Yes.

17 MR. PROSSER: Wait. Wait. Wait. I object
18 to the question because it presumes what Mr. Scott
19 says in his motion is what was actually on the slide.
20 I think that's inaccurate, if you look at the record
21 itself.

22 So your question, I just want to make sure,
23 presupposes that his statement in his motion
24 accurately reflects what was in the slide. I forget
25 what the rest of the question was.

1 MR. PARRISH: Why don't we go back and find
2 out what the question is.

3 (Record read as requested.)

4 BY MR. PARRISH:

5 Q. That's what I'm asking.

6 A. Regardless of what it said, it was one
7 sentence.

8 Q. All right. Was the entire Power Point,
9 then, a one-sentence statement?

10 A. Correct.

11 Q. And--

12 MR. PROSSER: Wait. Wait. Wait. You're
13 saying was her whole Power Point one sentence or just
14 the offending--

15 MR. PARRISH: Just that slide, yes.

16 A. I think I had other slides.

17 BY MR. PARRISH:

18 Q. Was that one slide just a one-sentence
19 statement, was my question?

20 A. That's correct. Yes.

21 Q. And you prepared it yourself?

22 A. Yes.

23 Q. You prepared it in Sioux City?

24 A. I'm not sure.

25 Q. Let me ask you this: Prior to the time that

1 you put that slide up, had you done research on that
2 issue?

3 MR. PROSSER: That is work product. I'm
4 going to object to it.

5 MR. PARRISH: I'm going to ask her to answer
6 it.

7 MR. PROSSER: I'm going to tell her not to
8 answer it because we've already got an order saying
9 that we don't have to answer it.

10 MR. PARRISH: I don't think that's what the
11 order says. We can disagree with that.

12 My point is: Did she do research on that
13 issue, and you're telling her not to answer.

14 Okay. That's fine. I can live with that.

15 MR. PROSSER: All right.

16 BY MR. PARRISH:

17 Q. And so, Ms. Goettsch, it's your position
18 that you don't have to answer that question; is that
19 correct?

20 A. That's correct.

21 Q. All right. Where did you get that slide
22 from?

23 A. My head. I didn't copy it from anything, if
24 that's your question.

25 Q. Where in your head did you get it from?

1 MR. PROSSER: Wait. Wait. Wait. Now
2 you're literally asking her what she was thinking
3 when she created the slide. There's nothing more
4 clearly work product, and strategy, and theory, than
5 that.

6 BY MR. PARRISH:

7 Q. Was it based on Iowa law?

8 MR. PROSSER: I'm going to object to that,
9 too. It asks for what her thinking was, why she put
10 and crafted that slide.

11 I'm going to object.

12 MR. PARRISH: Well, I tend to disagree with
13 you.

14 Was it based--I think she can tell me
15 whether or not she had a good faith belief that it
16 was based on Iowa law, or not.

17 MR. PROSSER: I'm still objecting to what
18 her thinking was about why and how she crafted the
19 argument. It's her strategy, her thinking, her work
20 product.

21 BY MR. PARRISH:

22 Q. Can you give me a case in Iowa, or an
23 instruction that Judge Gamble, when given, that
24 indicated that you could present that particular
25 Power Point slide that stated--

1 MR. PROSSER: Same objection.

2 MR. PARRISH: Let me finish the question,
3 please.

4 BY MR. PARRISH:

5 Q. --stated not guilty requires you to believe
6 the defendants and not believe Lisa Smith?

7 MR. PROSSER: Same objection.

8 BY MR. PARRISH:

9 Q. Did you hear the Court state afterwards that
10 that was a misstatement of the law?

11 A. Yes.

12 Q. Okay. Did you-- And the Court sustained
13 the objections; is that correct?

14 A. Yes.

15 Q. Did you know beforehand when you put the
16 Power Point slide up that it was a misstatement of
17 Iowa law?

18 MR. PROSSER: Objection; calling for her
19 thinking, legal reasoning, and other thought
20 processes about creating the slide. I'm objecting to
21 it.

22 BY MR. PARRISH:

23 Q. Had you discussed-- You said Mr. Prosser
24 had seen the slide?

25 A. Yes.

1 Q. Did he raise an objection to the slide?

2 MR. PROSSER: Objection. Conversations
3 between counsel as to strategy are clearly work
4 product.

5 MR. PARRISH: Now, Mr. Prosser, the only
6 problem, I think, is that you will be able--you will
7 be a potential witness, as you know. And I brought
8 it up at the time you were making the argument before
9 Judge Jacobsen, I believe, that you interjected what
10 you thought had taken place.

11 Now the question is: Is it fair for you to
12 make this objection at this time? I realize you're
13 the only person sitting here. The question is: Is
14 it fair for you to make that objection?

15 MR. PROSSER: Well, I'm not under oath, and
16 I don't know why you're asking me that. Is it fair?
17 Yes, it's fair because I'm enforcing the order that's
18 been entered and our right as attorneys not to have
19 you or other counsel probing around in our heads
20 about our theories of why we did what we did and when
21 we did it.

22 MR. PARRISH: But are you conflicted on
23 this particular objection?

24 MR. PROSSER: No, I'm not conflicted on this
25 particular objection.

1 MR. PARRISH: That's fine. Okay.

2 BY MR. PARRISH:

3 Q. How long was the Power Point up, Judge
4 Goettsch?

5 A. Seconds.

6 Q. What do you call seconds?

7 A. I know we're talking five years ago. You
8 know, it seemed like a lifetime to me. I think 30
9 seconds. I mean, the lawyers were on it. Judge
10 Gamble was on it. It was seconds, less than 30, that
11 it was up. The computer was right there and I shut
12 it down.

13 Q. Okay. To your best recollection, then, did
14 the lawyers actually object prior to the specific
15 argument on the point with regard to the misstatement
16 of the law?

17 A. That's my recollection, I hadn't even
18 started.

19 Q. Okay. So is it your position that you had
20 never made any specific argument with regard to that
21 specific Power Point statement before it was taken
22 down?

23 MR. PROSSER: I'm going to object to the
24 form of the question. Is it her position? I'm not
25 sure she has a position, and I don't understand what

1 the question is.

2 If she does, I guess she can answer it.

3 A. Well, that's my recollection. It's all on
4 record. It would say whether I had begun my
5 argument, or not. It's my recollection that I had
6 not.

7 Could that be wrong? I suppose it could be.
8 But the record is there. The record would show
9 whether I had started an argument.

10 BY MR. PARRISH:

11 Q. Knowing that that was a misstatement of the
12 law, and at least the Court ruling that it was a
13 misstatement of the law, did you feel that you had an
14 obligation to ask for a curative instruction in order
15 for Mr. Christensen to get a fair trial because some
16 of the jurors could have seen that particular Power
17 Point?

18 A. I don't recall. I don't recall. I think it
19 was already--it was being discussed at that point as
20 to whether they wanted a curative instruction.

21 Q. And Mr.--

22 A. But I don't recall. I don't recall.

23 Q. And Mr. Scott did not ask for a curative
24 instruction, would you agree?

25 A. I don't recall. I don't recall what he did

1 at that time.

2 Q. You believe that once a misstatement of the
3 law is presented to the jury, the Court has sustained
4 that, that the prosecutor has any duty, because it
5 was their action that triggered the objection, to
6 present a curative instruction to the jury?

7 A. Generally do I think that's a prosecutor's
8 duty?

9 Q. Yes.

10 A. I don't know about the word duty, but--
11 Well, it's certainly always the best practice of a
12 prosecutor to protect the record. I would typically
13 not necessarily ask for an instruction, but always
14 tell the jury, you know, keep in mind this is what
15 the law is. If I've said something wrong, if there's
16 been some confusion, I would definitely verbally
17 state it to the jury.

18 It's my understanding and belief that the
19 defense attorney--it's the defense attorney's
20 position to ask for the curative, or not. Some
21 attorneys have the strategic decision that they don't
22 want to call attention to something and talk about it
23 more, or do they want a curative instruction. That's
24 more of a defense attorney's strategic decision on
25 that.

1 Q. Okay. Did you go to the motion for new
2 trial? I see in the transcript that you were present
3 on May 7th and the argument on the motion for new
4 trial.

5 A. Yes.

6 Q. Did you make any professional statement on
7 that date with regard to your conduct?

8 A. No.

9 Q. Did you think one was warranted?

10 A. No.

11 Q. On the issue of the Power Point that was
12 shown to the jury-- Well, strike that.

13 Is there any dispute that the jury saw the
14 Power Point, in your mind?

15 A. They saw something. I don't even know if
16 they had time to read it. That is disputed. If
17 somebody was a really quick reader they might have
18 seen it, but I would venture to say many didn't have
19 time to read it.

20 Q. Okay. You heard Mr. Scott argue when asked
21 by the Court in pursuing this issue whether or not
22 putting it up made a difference, if you put it up
23 intentionally or made--or you put it up recklessly.
24 You followed that argument, I take it; right?

25 If not, I can--I don't know whether you read

1 anything to prepare for the--kind of refresh-- I'll
2 go to page 15 when Judge Gamble asked this question.

3 "Can I ask you another question? You're
4 quite right. But the case law has indicated that the
5 good faith or bad faith of the prosecutor in making
6 the offensive argument is not determinative of
7 whether the prosecutor's misconduct."

8 And Mr. Scott says, "Right."

9 The Court says, "Right. So does it make it
10 worse if it was intentional? I mean, is that why
11 you're arguing so strenuously that it was
12 intentional?"

13 Then they go back and forth on a mistrial
14 because Mr. Scott said, "I believe that's the reason
15 why you stated you did not grant a mistrial." I
16 think that the Court interrupts him and says, "Now
17 we've had the benefit of the research, and you've
18 pointed that out." Mr. Scott says, "Right."

19 The Court then asks this question: "So now
20 the question I'm asking you is, okay, it doesn't make
21 any difference whether it was intentional, or not.
22 What I'm asking you now, though, does it make it
23 worse if it was intentional."

24 And then he says, Mr. Scott says, "I think
25 so," and proceeds.

1 Does that refresh your recollection now
2 about the argument that was made?

3 A. Yes.

4 Q. All right. Was that Power Point put up
5 intentionally?

6 MR. PROSSER: And I'm going to object. What
7 do you mean, did she put the slide up on purpose? Is
8 that the question?

9 MR. PARRISH: Yes.

10 A. Certainly I pushed the button on the
11 computer to put it up there intentionally. Was there
12 any at all intent for me to misstate Iowa law? Of
13 course not.

14 BY MR. PARRISH:

15 Q. Well, you know it was not Iowa law.

16 A. Not--

17 MR. PROSSER: Objection.

18 MR. PARRISH: She's already broached the
19 subject. I have a right to go into it.

20 MR. PROSSER: Wait. We're not going into
21 what her knowledge of Iowa law was with respect to
22 this slide.

23 MR. PARRISH: With all due respect,
24 Mr. Prosser, let's read her question--her response:
25 Okay?

1 MR. PROSSER: Let's not, because we're still
2 not going there, whatever her answer was.

3 MR. PARRISH: Let's reread it.

4 (Record read as requested.)

5 BY MR. PARRISH:

6 Q. Did you misstate Iowa law?

7 A. Clearly the Court said I did. When I put it
8 up there, that certainly was not my intent to do
9 that.

10 Q. Well, you had to get that law from
11 somewhere. Is that Nevada law?

12 MR. PROSSER: Wait a minute. We're into
13 work product again. We're not going there.

14 MR. PARRISH: Well, go ahead. If you're
15 telling her not to answer...

16 MR. PROSSER: I am.

17 BY MR. PARRISH:

18 Q. Did you put the slide up? I'm asking her,
19 was that the law in Nevada or was that the law in
20 Iowa?

21 MR. PROSSER: You're asking her to interpret
22 Iowa law and whether it supports the slide she put
23 up. That's work product. We're not going there.

24 MR. PARRISH: I can ask her.

25 MR. PROSSER: You can ask her anything you

1 want.

2 MR. PARRISH: I can ask her, Mr. Prosser, if
3 the quote she put up was Iowa law or Nevada law.
4 That's not getting into work product.

5 MR. PROSSER: How is it that you're-- I
6 disagree completely. Asking her to give her
7 subjective analysis versus--Iowa versus Nevada law
8 and whether that statement has anything to do with
9 it, or not, and whether she feels that it was
10 supported by either of those laws, which is her
11 thinking, her legal analysis. We're not going there.

12 MR. PARRISH: Right. You also understand
13 that Mr. Scott has indicated he had a conversation
14 with her about this issue prior to the time that she
15 made her rebuttal argument.

16 MR. PROSSER: Are you talking to me?

17 MR. PARRISH: Yes. I have a copy of his
18 deposition here.

19 MR. PROSSER: That's what Mr. Scott says,
20 but that may not be accurate either.

21 MR. PARRISH: She also has said that she
22 doesn't recall, she may have had that conversation
23 with him. She can't recall if she did or did not.

24 MR. PROSSER: We are also presuming
25 something else, which is that this statement that was

1 in the Power Point had anything to do with this
2 statement of the law that you keep referring to with
3 Mr. Scott.

4 I'm not sure that there is any connection
5 like that. All of that aside, I don't think we can
6 ask this witness what her legal analysis was or is
7 about that instruction.

8 MR. PARRISH: Okay. Let me try it this way,
9 then, if you're instructing her not to answer.

10 BY MR. PARRISH:

11 Q. Ms. Goettsch, when we started the deposition
12 we talked about your experience in Nevada,
13 specifically if you had experience with felony sex
14 abuse cases.

15 Is there a law in Nevada that does, in fact,
16 allow you to argue to the jury in a Power Point
17 presentation, that the Power Point presentation
18 stated not guilty requires you to believe the
19 defendant and not believe a victim? Is there a law
20 or an instruction similar to that in Nevada?

21 A. No.

22 Q. In any other state that you're aware of?

23 A. No.

24 Q. Then where did you get the instruction
25 from--the argument from?

1 MR. PROSSER: Objection. We're not going
2 there. How did you formulate this instruction, give
3 me your legal thinking. We're not going there.

4 BY MR. PARRISH:

5 Q. Were you aware, before your argument, that
6 your argument has to conform with the Court's
7 instructions and the law of the State of Iowa?

8 A. Of course.

9 Q. Do you know why Mr. Scott nor Mr. McConville
10 asked for a curative instruction in this case?

11 A. Why they didn't?

12 Q. Yes.

13 A. No. I have no idea.

14 MR. PROSSER: Do you mean a written
15 instruction or do you mean that the jury be told on
16 the spot that an error had been made? What do you
17 mean by that?

18 MR. PARRISH: Do you want to reread the
19 question?

20 (Record read as requested.)

21 A. No.

22 BY MR. PARRISH:

23 Q. And is there any reason why the State did
24 not ask for a curative instruction?

25 MR. PROSSER: A curative instruction of

1 what? I don't understand the question.

2 THE WITNESS: Well--

3 MR. PROSSER: A curative instruction for--

4 Wait a second. I'm objecting to the question.

5 A curative instruction about what?

6 MR. PARRISH: We're only talking about one
7 issue here.

8 MR. PROSSER: About the Power Point slides,
9 the words that were on the slide. Why the State
10 didn't ask for a curative written instruction during
11 jury instructions? That presumes that the
12 instructions that were given didn't accurately state
13 the law. Is that what you're suggesting, is that the
14 instructions that were given didn't accurately state
15 the law and we should have corrected that somehow?

16 MR. PARRISH: I think you're making it a lot
17 more complicated than that.

18 MR. PROSSER: No, I'm not. I'm making it
19 clear.

20 MR. PARRISH: Well, if she understands the
21 question-- I think you're digging so deep in your
22 own head, Mr. Prosser, that you're trying to argue
23 your position. If she understands the question--

24 MR. PROSSER: I think--

25 MR. PARRISH: Are you going to let me

1 finish? I let you finish your statements, let me
2 finish mine.

3 I think if you let her see if she
4 understands the question and try to answer it. If
5 she can't, that's fine.

6 MR. PROSSER: Well, I think you're trying to
7 mislead the witness. That's what I think.

8 MR. PARRISH: Mislead her to where?

9 MR. PROSSER: Your question has so many
10 suppositions in it that it's hard to know what you're
11 asking, which is why I'm objecting.

12 But I guess if you can understand it, go
13 ahead. Why did we not ask or was there a reason why
14 we didn't ask for a curative instruction.

15 BY MR. PARRISH:

16 Q. Right.

17 A. The issue was burden shifting. The
18 instruction gave the burden of proof. I believe at
19 some point Judge Gamble said the jury will be
20 instructed on burden of proof. At that point it was
21 such a small exposure to the jury, it's up to the
22 defense attorneys to decide whether they want to call
23 attention to it or if they wanted to just let this go
24 because it was so short.

25 Q. Okay.

1 A. That's why.

2 Q. And did you read the Court of Appeals
3 decision in this case?

4 A. I'm sure I did.

5 Q. You, perhaps, have not read the briefs of
6 the lawyer who argued the appeal for Mr. Christensen?

7 A. No.

8 Q. Okay. And you don't know whether that
9 lawyer, I believe it was Susan Stockdale, addressed
10 the issue of ineffectiveness by Mr. Scott not asking
11 for, or Mr. McConville, not asking for a curative
12 instruction as a result of the argument made from the
13 Power Point?

14 A. I don't know what her arguments were.

15 Q. Okay. Did you agree with the Court's
16 analysis with regard to the curative instruction?

17 MR. PROSSER: Now, I really, really don't
18 know. What court and what analysis?

19 MR. PARRISH: She's already answered the
20 question. It's just a followup.

21 BY MR. PARRISH:

22 Q. With Judge Gamble.

23 A. Yes.

24 Q. And did you agree or disagree with Mr. Scott
25 and Mr. McConville not asking for a curative

1 instruction?

2 A. I didn't have an opinion on that. That was
3 entirely up to their strategy.

4 Q. Okay. What did you do to prepare for your
5 deposition here today, Judge Goettsch?

6 A. I spoke with Andy.

7 Q. And--

8 A. That was it.

9 Q. You didn't go back and read the rebuttal
10 closing argument?

11 A. No. Andy and I discussed it, he read to me
12 some parts of it.

13 Q. Okay. And so you say you never reread it
14 yourself; is that correct?

15 A. No.

16 Q. And you never reread the Court opinion with
17 regard to the argument on that point?

18 A. When it came out I did.

19 Q. But not since then?

20 A. Not since then.

21 Q. Do you agree that this case, as presented,
22 was an issue of credibility of the witnesses?

23 A. Yes.

24 Q. And you would agree that was the position of
25 both parties, both the persons representing the

1 defendants and the persons representing the State of
2 Iowa?

3 A. Yes.

4 Q. As I understand it, and correct me if I'm
5 wrong, the Power Point slide was not preserved?

6 A. I don't know for sure.

7 Q. All right. But I was looking through the
8 record to try to find it, and I didn't find it. I
9 don't know whether it could have been preserved some
10 other way in your office, or something. Was it
11 printed out maybe?

12 A. It might have been printed out, but I don't
13 recall for sure.

14 Q. Would it still be in the Attorney General's
15 files?

16 A. Possibly. I don't know. I don't know. I
17 have not worked here for 12, 18 months. I don't know
18 what happened to any of my stuff.

19 Q. A smile came across your face at that point.

20 A. I don't know what they've done.

21 Q. Let me ask you this: Are you familiar with
22 the rule in federal court with regard to Power Point
23 presentations?

24 A. No.

25 Q. Okay. So you're not aware that if you have

1 a Power Point in federal court the local rule
2 requires that opposing counsel be allowed to look at
3 the Power Point and make objections prior to it--

4 A. Prior to the presentation? I have heard of
5 that being the rule in certain jurisdictions, yes.
6 I'm aware that that is out there in some
7 jurisdictions.

8 Q. You would agree in this instance the Power
9 Point was not shown to Mr. Scott or Mr. McConville?

10 A. Correct.

11 Q. Okay. I assume Mr. Prosser made the closing
12 argument, the main closing argument?

13 A. Correct.

14 Q. I take it he did not use a Power Point?

15 A. I believe he did.

16 Q. Okay. And do you know if that was shown to
17 Mr. Scott or Mr. McConville prior to his argument?

18 A. I don't know that for sure.

19 Q. Okay. I take it yours was not?

20 A. Not that I recall.

21 Q. Okay. Did Mr. Scott or Mr. McConville make
22 a request to look at your Power Point before closing
23 argument?

24 A. No.

25 Q. Had they made a request to look at it would

1 you have shown it to them?

2 A. I really don't know. I really don't-- I
3 really can't say.

4 Q. If the Court had ordered you to show the
5 Power Point to them, would you have still used a
6 Power Point or would you have chosen to make your
7 argument without the Power Point being shown to the
8 jury?

9 A. Oh, I would have still used it.

10 Q. So at that point you would have disclosed it
11 to the other side?

12 A. Yes. Yes. If I'm ordered to do so, yes.

13 Q. Thank you. But obviously you would have had
14 the choice. You didn't have to use it at all, you
15 could have just made your argument?

16 A. Oh, right. But, I mean, I had nothing to
17 hide. It was not my intention to ever misstate
18 anything, obviously. Obviously, I did not--I would
19 not have ever put that up there had I thought I
20 was misstating the law. I would not have used it
21 just because I was ordered to show it to someone
22 else.

23 Q. Okay. I think Mr. Scott acknowledges that
24 he did not ask you to look at the Power Point before
25 you made that presentation. And that's on page 54 of

1 his deposition.

2 I want to read you, this is what I've been
3 looking for, from--this is Mr. Scott's deposition on
4 page 46.

5 Mr. Scott testified under oath, "Well, I
6 want to start over with the fact that it was
7 unintentional because he says that in his opinion, or
8 his ruling, I don't remember where that was, whether
9 it was at the trial or whether it was at the hearing
10 on the posttrial motion, at one point he makes the
11 comment that it was misconduct, but he doesn't think
12 it was prejudice, No. 1.

13 "No. 2, that he didn't think it was
14 intentional. I'm telling you right now, that prior
15 to the jury instructions being submitted,
16 Ms. Goettsch told me, and I don't know who else was
17 present, that she was going to attempt to get in this
18 instruction that said if you believe the victim
19 beyond a reasonable doubt, you must convict the
20 defendants, something to that effect.

21 "Apparently, it's a Nevada instruction. I
22 think that I looked it up and I think that I
23 researched it. We had a discussion about it. I
24 thought there is no possible way she's going to
25 attempt to bring this in because that's not what Iowa

1 law is. She did attempt to get it in as a jury
2 instruction. Judge Gamble excluded it.

3 "The first slide of her Power Point
4 presentation in her rebuttal argument was, the first
5 line said something to the effect of in order to
6 acquit the defendants you must believe what they say,
7 or visa versa, that you must--in order to convict,
8 you've got to believe the victim. You have to
9 believe the victim beyond a reasonable doubt.

10 "She made comments like that three or four
11 times throughout the course of her rebuttal.

12 That's-- I mean, we've all been on the, obviously,
13 defending people, and we know that in Iowa that you
14 intend the consequences of your act. It was an
15 intentional act. It was an intentional act for one
16 and only one purpose, and that was to sway the jury,
17 to prejudice the jury. I don't know how it could be
18 reviewed as anything but this."

19 Now, that raises a few questions in my mind.
20 The first is: Did you attempt, prior to the jury
21 instructions with Judge Gamble, to introduce a Nevada
22 instruction?

23 A. Did I attempt to introduce it to Judge
24 Gamble?

25 Q. Yes, as a proposed instruction of the law in

1 the case.

2 A. Okay. First of all, I remember discussions
3 about this jury instruction, but that's not what it
4 says. What it says is it mirrors the Knox case,
5 which is if you believe the victim beyond a
6 reasonable doubt that's enough to sustain a verdict
7 of guilty. That's the Knox rule.

8 It's not if you believe--I don't know how he
9 said it in there, but I would quibble with that being
10 what the instruction said.

11 There was discussion about the Knox case,
12 which is the law in Nevada, it's also the law in
13 Iowa, that if you believe testimony of the victim
14 beyond a reasonable doubt that's enough to sustain a
15 verdict of guilty, meaning the victim doesn't have to
16 be corroborated. That was discussed.

17 Whether-- I don't think we ever submitted a
18 formal instruction on that. I don't recall, but I
19 don't think we did. There was discussion about
20 whether that's the law, whether it should be a jury
21 instruction, but I don't believe we submitted it.

22 Q. Did you have a discussion with Mr. Scott
23 about wanting to submit that type of an instruction?

24 A. I don't recall. Like I said, I do remember
25 talking to them about the lack of corroboration. We

1 don't need to have corroboration to sustain a verdict
2 of guilty. But to me that's a separate issue than
3 what's on the Power Point.

4 Those weren't connected in my head. Now,
5 we're into work product. But they're two separate
6 things to me.

7 Q. If you would have had this conversation with
8 him and if you're saying you don't remember, that's
9 fine, where would you have been with Mr. Scott when
10 you had this conversation?

11 A. Where would I have been?

12 Q. Off in the hallway?

13 A. Yes. Yeah. Or just in court before
14 it--before court started, or in chambers as we're
15 just sitting around talking about that.

16 Q. So there would have been no formal written
17 or e-mail exchanges prior to the start of the trial?

18 A. Could have been. I don't recall. I don't
19 recall an e-mail exchange over that issue. It's
20 possible that happened. I mean, if there's e-mails
21 that say that, then I don't deny that obviously.

22 Q. So you believe that the discussion you had
23 with Mr. Scott on this particular issue revolved
24 around the Knox case that you felt was similar to
25 Nevada law, is that what you're saying?

1 A. Yes.

2 Q. I don't want to put words in your mouth.

3 A. The victim of sexual assault does not need
4 to be corroborated in order to sustain a verdict of
5 guilty if you believe the victim beyond a reasonable
6 doubt.

7 Obviously, you have to believe the victim
8 beyond a reasonable doubt. She has to meet all of
9 the elements of the crime. That's enough to sustain
10 a verdict of guilty. In other words, it won't be
11 reversed for insufficient evidence. It was that kind
12 of argument.

13 In Nevada we did have a jury instruction
14 that said something about corroboration wasn't
15 necessary. That was discussed.

16 Q. But the Iowa instruction doesn't say
17 corroboration was not necessary?

18 A. Correct. We do not have a jury instruction
19 that says that. The Knox case, I believe it's the
20 Knox case, echos that sentiment. It's the same law,
21 but we don't have a uniform jury instruction that
22 states that.

23 Q. In the jury instruction did they do what
24 they called, what a lot of judges do, I'm sure we're
25 all familiar with it, they will go off the record and

1 have a discussion where you make your argument and
2 see if you can resolve any issues like that.

3 Did you go through that process first with
4 Judge Gamble?

5 A. I'm sure we did.

6 Q. And then after that, when you couldn't make
7 an agreement, you then went on the record; is that
8 correct?

9 A. Yes.

10 Q. Okay. In that off-the-record discussion,
11 and if you don't know, that's fine, do you think
12 that's when your conversation could have occurred?

13 A. It's possible.

14 Q. Okay. Did Mr. Prosser, to your knowledge,
15 participate in that?

16 A. Most likely, but I don't have an independent
17 recollection of that.

18 Q. And what about the judge, did he just
19 sit there or did he go back and forth on that
20 issue engaging in any discussions, as best you can
21 recall?

22 A. I'm sure there was some, but I don't know
23 the specifics of what--if this was ever discussed in
24 front of him.

25 Q. When they were doing the motion for new

1 trial, and I've already referred to the date, did
2 Mr. Scott or Mr. McConville indicate to you that they
3 may be interested in calling you as a witness?

4 A. No.

5 Q. Did they ask you to come up as a witness, or
6 anything?

7 A. No.

8 Q. Did you anticipate that you were going to be
9 called by them?

10 A. No.

11 Q. Is it your testimony that you prepared the
12 Power Point slide for your rebuttal after the final
13 jury instructions were made or was it before? And if
14 you know the date, let us know.

15 A. I don't recall.

16 Q. Okay. A lot of times I know when judges are
17 traveling, I'm sure we are all familiar with that
18 process, you may not get your final jury instructions
19 until right before the jury goes out because they
20 don't have everything that they normally have in
21 their own courtroom available.

22 What I'm trying to do is kind of probe your
23 memory a little bit and see, did he have them made up
24 the weekend before and you all had them and you could
25 work them into your closing argument, or did he show

1 you that day and say, okay, for example, here are
2 your final instructions, go to it, and you would have
3 already had your Power Point slide made? Do you have
4 any recollection of that?

5 A. I don't.

6 Q. Did you put a date on your Power Point
7 slide?

8 A. No. No. No. I mean, it would show, when I
9 pulled it up, the last time that it was edited, but
10 it doesn't show inception, or, like, when it was
11 started.

12 Q. Did you do it by yourself or did one of your
13 assistants help you put it together?

14 A. I would have done that.

15 Q. And you would have done it on a laptop while
16 you were in Sioux City?

17 A. Yes. Although I could have started it even
18 before--I mean, not before trial, because I'm one who
19 likes to have closing arguments or rebuttal
20 skeletons, issues, done before I start trial. It's
21 possible I even started before then, but I don't
22 recall specifically in this case.

23 Q. So you're saying you possibly could have
24 started it. As you narrow it down, the instructions
25 and the Court indicated how it was going to go on

1 some of those critical issues, did you go back, after
2 you got your final instructions, and then edit your
3 Power Point slides?

4 A. I'm sure I would have.

5 Q. Did you edit this one?

6 A. No. But this-- Well, I don't know. I may
7 have, I may not have. I don't recall specifically.
8 But it wasn't based on a jury instruction. It wasn't
9 tied to a jury instruction.

10 Q. I'm going to look at my notes here, Judge
11 Goettsch, and see if there's anything else I wanted
12 to ask. I just wanted to focus on that one issue
13 with you.

14 There is another matter I want to address
15 just briefly. Did it ever come to your attention
16 during the trial, after it started, that there was a
17 need for a severance of Mr. Christensen because of
18 any misconduct that had come out related to the
19 co-defendant?

20 A. Prior to trial starting?

21 Q. No-- Yes. After the trial had started. I
22 know before the trial had started you guys had raised
23 the issue, and they decided they wanted to go
24 forward.

25 I mean, after the trial started, and mainly

1 if I can--I know this has been some time for you--
2 with regard to the Twilight Zone bar incident.

3 A. Okay. So your question, again, is when the
4 Twilight Zone incident came up, did it cross my mind
5 for a need for severance at that time?

6 Q. Correct. And I'm not arguing that that was
7 your guy's obligation, or anything like that. I
8 mean, was it approached in any way, to your
9 knowledge?

10 MR. PROSSER: Yeah. Yeah. Not what you
11 were thinking, but did the issue come up.

12 MR. PARRISH: Right.

13 A. I don't recall it coming up.

14 BY MR. PARRISH:

15 Q. Okay. But you do remember the Twilight Zone
16 incident coming up?

17 A. Yes.

18 Q. But you don't recall the lawyers approaching
19 you, or anything, and saying, hey--Mr. Scott saying
20 maybe we've got to move for a severance, or something
21 like that?

22 A. No.

23 Q. But prior to trial you would agree that your
24 office and Mr. Prosser brought up the issue of
25 whether or not the case was going to be tried

1 together?

2 A. Correct.

3 Q. And the lawyers made it clear that they were
4 going to try these cases together; right?

5 A. Correct.

6 Q. Did the State go to Mr. Christensen with an
7 offer?

8 A. Not that I recall.

9 Q. Did Mr. Scott come to the State with an
10 offer for Mr. Christensen?

11 A. Not that I recall.

12 Q. So there was absolutely nothing with regard
13 to a resolution of the case prior to trial?

14 A. Not that I recall. Now, that would have
15 been--I would have left that to Mr. Prosser, however.

16 Q. And I assume nothing after trial?

17 A. Correct, not that I know of.

18 Q. Did you understand all of the questions that
19 I had for you here today?

20 A. As I understood them, yes.

21 Q. Do you want to go back and correct or to
22 change any of your testimony that was presented here
23 today?

24 A. No.

25 MR. PARRISH: I know we have a couple of

1 minor questions that we may have to bring up with the
2 Court later and see if the Court is going to allow us
3 to follow up, or if he feels that's work product or
4 attorney privilege. Other than that, I don't think I
5 have any further questions to ask you.

6 MR. PROSSER: I don't.

7 MR. PARRISH: Thank you so much.

8 (Deposition concluded at 10:20 a.m.)
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C E R T I F I C A T E

1
2 I, the undersigned, a Certified Shorthand
3 Reporter of the State of Iowa, do hereby certify that
4 there came before me at the time, date and place
5 hereinbefore indicated, the witness named on the
6 caption sheet hereof, who was by me duly sworn to
7 testify to the truth of said witness' knowledge, that
8 the witness was thereupon examined under oath, the
9 examination taken down by me in shorthand and later
10 reduced to typewriting through the use of a
11 computer-aided transcription device under my
12 supervision and direction, and that the deposition is
13 a true record of the testimony given and of all
14 objections interposed.

15 I further certify that I am neither attorney
16 or counsel for, nor related to or employed by any of
17 the parties to the action in which this deposition is
18 taken, and further that I am not a relative or
19 employee of any attorney or counsel employed by the
20 parties hereto, or financially interested in the
21 action.

22 Dated at Des Moines, Iowa, this 18th day of
23 September, 2014.

24 
25 _____
CERTIFIED SHORTHAND REPORTER

IN THE IOWA DISTRICT COURT IN AND FOR WOODBURY COUNTY

JAMES ALAN CHRISTENSEN,

Applicant,

vs.

STATE OF IOWA,

Respondent.

CASE NO: PCCV145074**APPLICANT'S MOTION TO COMPEL
DEPOSITION OF ANDREW
PROSSER PURSUANT TO IOWA R.
CIV. P. 1.517**

COMES NOW, the Applicant, James Alan Christensen, by and through his undersigned counsel, and in support of his Motion to Compel Deposition of Andrew Prosser Pursuant to Iowa R. Civ. P. 1.517, states as follows:

1. Applicant is seeking to depose Assistant Attorney General Andrew Prosser, who served as lead counsel of record for the State of Iowa during Applicant's criminal trial. Mr. Prosser is also counsel of record for Respondent in the present matter.

2. As indicated in the deposition of former Assistant Attorney General Becky Goettsch, who served as co-counsel alongside Mr. Prosser in Applicant's criminal trial, Mr. Prosser has knowledge regarding the Power Point slide containing a misstatement of law, which the jury observed as part of the State's rebuttal argument.

3. Counsel has contacted Mr. Prosser about agreeing to be deposed, but Mr. Prosser has declined.

4. A party, upon reasonable notice to other parties and all persons affected thereby, may move for an order compelling discovery, including for depositions under Iowa R. Civ. P. 1.701. Iowa R. Civ. P. 1.517(1)(b).

5. A party, following commencement of an action, may take the testimony of *any person*, including a party, by deposition upon oral examination. Iowa R. Civ. P. 1.701 (emphasis added).

6. In the course of her deposition, Ms. Goesttch testified as follows:

Q. Okay. Did you prepare the rebuttal on your own?

A. We worked together. I mean, there were discussions between Mr. Prosser and I, but it was my primary duty. We did discuss it together.

Q. Did you discuss your Power Point?

A. Yes.

Q. Did you show it to Mr. Prosser?

A. Yeah.

Q. Where did you show it to him?

A. Hotel room the night before.

Q. Did you show it to him before you left Des Moines to go back to Sioux City for closing arguments?

A. I don't recall that.

Q. Did he make any corrections to it?

A. No.

(Goetsch Depo. 11:25 – 12:17.)

7. Information sought through the deposition of Mr. Prosser would revolve around Ms. Goettsch's Power Point presentation and what steps, if any, he made to correct the misstatement of law which was to be shown to the jury, and which was found to constitute prosecutorial misconduct.

8. It is the failure of trial counsel to establish a sufficient record before the trial court to establish the prejudice arising from the prosecutor's misconduct which is at issue on postconviction relief. See State v. Haskins, 316 N.W.2d 679, 681 (Iowa 1982) (defendant must be able to point to some unfairness which resulted in prejudice.)

9. Mr. Prosser has indicated he believes the information which Applicant seeks constitutes privileged information as attorney work product. The work-product doctrine reflects the strong public policy underlying the orderly prosecution and defense of legal claims. United States v. Nobles, 422 U.S. 225, 236-37 (1975) (quoting Hickman v. Taylor, 329 U.S. 495, 510 (1947)). The privilege is a *qualified* one, with the court empowered to order disclosure, except for mental impressions, conclusions, opinions, or legal theories, upon the requisite showing of need and hardship. Shook v. Davenport, 497 N.W.2d 883, 888 (Iowa 1993) (emphasis added).

10. The party resisting discovery through assertion of privilege has the burden of showing that a privilege exists and applies. Wells Dairy, Inc. v. Am. Indus. Refrigeration, Inc., 690 N.W.2d 38, 49 (Iowa 2004) (quoting Carolan v. Hill, 553 N.W.2d 882, 886 (Iowa 1996)). An asserted privilege is narrowly construed because it is an exception to our rules governing discovery. Wells Dairy, Inc., 690 N.W.2d at 49 (citing Carolan, 553 N.W.2d at 886).

11. Applicant is not interested in Mr. Prosser's mental impressions, conclusions, opinions, or legal theories as they relate to her decision to engage in misconduct. The issue is what Mr. Prosser, as lead counsel prosecuting Applicant, knew regarding about the burden-shifting Power Point slide which started his co-counsel's rebuttal.

12. As indicated above, Mr. Prosser was shown the slide, which misstated Iowa law, and did nothing to correct this statement. Ms. Goettsch's deposition testimony establishes Mr. Prosser knew what the plan for rebuttal was prior to the trial court's instructions. He was aware of the contents of the Power Point, which tracked the planned rebuttal argument, even after the objection to the slide was sustained.

13. Applicant's criminal conviction and pending claim for postconviction relief evidence his need for the information, and the hardship he will suffer should it be denied to him.

14. Furthermore, Mr. Prosser's knowledge of how the Power Point was prepared and handled raises concerns about the need for him to appear as a witness in these proceedings where he is simultaneously appearing as counsel. Under the Iowa Rules of Professional Conduct:

A lawyer shall not act as advocate at a trial in which the lawyer is likely to be a necessary witness unless:

- (1) the testimony relates to an uncontested issue;
- (2) the testimony relates to the nature and value of legal services rendered in the case; or
- (3) disqualification of the lawyer would work substantial hardship on the client.

Iowa Ct. R. 32:3.7(a). A lawyer having personal involvement in the underlying issues of a case in which he appears as counsel of record creates conflict concerns. Cf. State v. Neiderbach, 837 N.W.2d 180, 200 (Iowa 2013) ("A lawyer personally involved as a witness, closely related family member, and potential suspect in a matter police are investigating may have conflicting motives to deflect blame.")

15. While not as intimately involved as in Neiderbach, Mr. Prosser was lead counsel in Applicant's underlying case, knew of the misstatements contained in the Power Point at least the night before, had worked with Ms. Goettsch in preparing the rebuttal argument, and appears to have done nothing to prevent the misstatements from occurring, or to cure them after the fact.

16. The extent of Mr. Prosser's knowledge regarding how the offending Power Point slide was prepared and used must be examined to determine not only how Applicant's criminal trial may have been prejudiced by a failure to develop a record regarding prosecutorial action, as well as the need for Mr. Prosser to appear as a witness at trial.

WHEREFORE, the Applicant, James Alan Christensen, prays that this Court issue an Order compelling Mr. Prosser to appear for deposition, at a time and place mutually convenient to the parties, and for any other relief found to be just and necessary.

PARRISH KRUIDENIER DUNN BOLES GRIBBLE
GENTRY BROWN & BERGMANN, L.L.P.

BY: */s/ Alfredo Parrish*

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ATTORNEY FOR APPLICANT

PROOF OF SERVICE

The undersigned certifies that the foregoing instrument was served upon all parties to the above cause by:

- | | | | |
|--------------------------|--|-------------------------------------|-------------------|
| <input type="checkbox"/> | personal service | <input checked="" type="checkbox"/> | first class mail |
| <input type="checkbox"/> | certified mail, return receipt requested | <input type="checkbox"/> | facsimile |
| <input type="checkbox"/> | Airborne Express (overnight) | <input checked="" type="checkbox"/> | electronic filing |
| | | <input type="checkbox"/> | e-mail |

on the 7th day of October 2014.

I declare that the statements above are true to the best of my information, knowledge and belief.

/s/ Lori Yardley

Electronically filed.

Andrew Prosser
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ATTORNEY FOR RESPONDENT
Via e-file

James Christensen #6076835
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APPLICANT
Via first class mail

IN THE IOWA DISTRICT COURT FOR WOODBURY COUNTY

 JAMES ALAN CHRISENSEN,

Petitioner,

vs.

STATE OF IOWA,

Respondent.

Law No. PCCV 145074

**Resistance to Motion to Compel
and Cross Motion for Protective
Order**

COMES NOW the State of Iowa, and resists Applicant's motion to compel and further moves pursuant to I.R.Civ.P. Rule 1.501 for a protective order. As grounds, the Respondent states:

1. The requested discovery relates to a claim for relief which is the subject of a pending motion for partial summary judgment filed by the State in this case on October 3, 2014. It is in the interest of judicial economy that the Court first address whether the that claim can survive summary dismissal prior to addressing any issue relating to Applicant's claimed right to pursue any further discovery relating to the issue.

2. For the reasons set forth in the State's motion for summary judgment, incorporated herein by this reference, the requested deposition is outside the scope of discovery as it seeks information which is utterly immaterial to the ultimate outcome of the issue to which the requested discovery is directed.

3. The requested deposition seeks privileged attorney work product, namely, one of the State's trial counsel's thought and legal analysis of the his co-counsel's rebuttal closing argument. State's counsel's mental impressions, thoughts, conclusions, opinions or legal theories are absolutely privileged attorney work product. I.R.Civ.P.

Rule 1.503(3); *Keefe v. Bernard*, 774 N.W.2d 663, 674 (“mental impressions or opinions of the lawyer [are], for all practical purposes, absolutely immune from discovery” citing *Shook v. City of Davenport*, 497 N.W.2d 883, 886 and *Squealer Feeds v. Pickering*, 530 N.W.2d 678, 689 (Iowa 1995)).

WHEREFORE, the State respectfully requests that the motion to compel be denied. If the State’s motion for partial summary judgment is not granted, and the deposition is ordered, the State requests that a protective order be entered prohibiting Applicant’s counsel from inquiring into privileged attorney work product.

Dated this 7th day of October, 2014.



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IN THE IOWA DISTRICT COURT FOR WOODBURY COUNTY

JAMES ALAN CHRISENSEN,	:	
	:	
Petitioner,	:	Law No. PCCV 145074
	:	
vs.	:	Response to Reply to Resistance
	:	to Motion to Compel
STATE OF IOWA,	:	
	:	
Respondent.	:	

COMES NOW the State of Iowa, and for its response to Applicants reply concerning Applicant's pending motion to compel states:

The undersigned cannot be any kind of witness, much less a material one, in this case if the barred claim under which counsel for applicant seeks to depose the undersigned is dismissed, as should occur. See State's Motion for Partial Summary Judgment.

If the Applicant does not timely respond to the pending motion for summary judgment, the court should deem it uncontested, grant partial summary judgment on the grounds set forth in the State's motion and deny the Applicant's motion to compel as moot.

Dated this 8th day of October, 2014.



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 IN THE IOWA DISTRICT COURT IN AND FOR WOODBURY COUNTY

JAMES ALAN CHRISTENSEN,

Applicant,

vs.

STATE OF IOWA,

 Respondent.

CASE NO: PCCV145074
**APPLICANT'S REPLY TO
RESPONDENT'S RESISTANCE TO
MOTION TO COMPEL DEPOSITION
OF ANDREW PROSSER PURSUANT
TO IOWA R. CIV. P. 1.517**

COMES NOW, the Applicant, James Alan Christensen, by and through his undersigned counsel, and in support of his Reply to Respondent's Resistance to Motion to Compel Deposition of Andrew Prosser Pursuant to Iowa R. Civ. P. 1.517, states as follows:

1. On October 7, 2014, Applicant filed his Motion to Compel, seeking an Order commanding Assistant Attorney General Andrew Prosser to appear for deposition at a mutually convenient time and location, on the limited issue of his knowledge regarding a Power Point slide containing a misstatement of law presented to the jury during Applicant's criminal trial, at which Mr. Prosser was the lead prosecutor.

2. Also on October 7, 2014, Respondent filed its Resistance and Cross Motion for Protective Order, in which it requests the court to rule on Respondent's previously-filed Motion for Partial Summary Judgment, and alternatively seeking a protective order prohibiting Applicant from inquiring into attorney work product.

3. In regard to the court issuing a protective order, counsel has previously stated having no interest in Mr. Prosser's mental impressions, conclusions, opinions, or legal theories, which are the only things protected by the attorney work product privilege. Counsel's interest is in what Mr. Prosser knows about the creation and

presentation of the Power Point slide, viewed by the criminal jury at the start of rebuttal argument, which inappropriately attempted to shift the burden of proof onto Applicant, as well as any actions or efforts he took in response to the trial court's striking of the slide to avoid further prejudicing Applicant during the rebuttal argument.

4. As the information counsel seeks to develop in deposing Mr. Prosser is not within the bounds of attorney work product, counsel does not object to a protective order, similar to the one in effect during the deposition of Magistrate Judge Becky Goettsch, prohibiting intrusion into attorney work product.

5. As for Respondent's assertion that its Motion for Partial Summary Judgment be addressed first, it must be recognized that the time for discovery is currently open, and does not close until January 16, 2015. A nonmoving party should have the opportunity to make discovery prior to hearing and ruling on a motion for summary judgment. Bitner v. Ottumwa Community Sch. Dist., 549 N.W.2d 295, 302 (Iowa 1996).

6. Respondent points to the "judicial economy" as the reason for denying Applicant further discovery prior to deciding the summary judgment motion. Judicial economy will not be prejudiced by allowing Mr. Prosser's deposition to occur before addressing summary judgment. This is primarily due to the inapplicability of those concerns underlying questions of judicial economy, which regards: "Efficiency in the operation of the courts and the judicial system; esp., the efficient management of litigation so as to minimize duplication of effort and to *avoid wasting the judiciary's time and resources.*" Black's Law Dictionary 391 (3rd Pocket Edition 2006) (emphasis added).

7. Little impact, if any, will come to judicial economy through compelling Mr. Prosser's deposition. The issues involved with his deposition are essentially the same as those which arose with Ms. Goettsch's deposition. Those proceedings demonstrate that any burden on the court's time and resources stemming from Applicant's motion would be minimal.

8. There is also, however, a potentially significant issue specific to Mr. Prosser, namely whether the potential for him to appear as a witness in this case prevents him from continuing as counsel for Respondent. But for a few exceptions, a lawyer is generally prohibited from appearing as both a witness and counsel for a party in a single proceeding. See Iowa Ct. R. 32:3.7(a).

9. Several concerns on which this rule is based would potentially be implicated in these proceedings:

One reason is that it is unfair to the client that his case be presented through a witness whom the trier of fact would necessarily view as interested because of the witness' zeal of advocacy and likely interest in the result of the case. A second reason is one of public policy: *permitting an attorney who is trying a case also to be a witness in establishing its facts will visit on the legal profession public distrust and suspicion arising from the attorney's dual role. . . . The third reason for the rule is [to avoid the appearance of wrongdoing].*

National Child Care, Inc. v. Dickinson, 446 N.W.2d 810, 811-12 (Iowa 1989) (quoting Presnick v. Esposito, 513 A.2d 165, 167 (Conn. 1986))(emphasis added).

10. As the lead attorney for the State in both the underlying criminal case and the present matter, Applicant must be permitted discovery to determine whether Mr. Prosser is a necessary witness. Given the preceding concerns, this should be permitted to occur prior to disposition of any issue.

WHEREFORE, the Applicant, James Alan Christensen, prays that this Court issue an Order compelling Mr. Prosser to appear for deposition, at a time and place mutually convenient to the parties, and for any other relief found to be just and necessary.

PARRISH KRUIDENIER DUNN BOLES GRIBBLE
GENTRY BROWN & BERGMANN, L.L.P.

BY: /s/ Alfredo Parrish

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ATTORNEY FOR APPLICANT

AT0006051

PROOF OF SERVICE

The undersigned certifies that the foregoing instrument was served upon all parties to the above cause:

<input type="checkbox"/>	personal service	<input checked="" type="checkbox"/>	first class mail
<input type="checkbox"/>	certified mail, return receipt requested	<input type="checkbox"/>	facsimile
<input type="checkbox"/>	Airborne Express (overnight)	<input type="checkbox"/>	electronic filing
		<input checked="" type="checkbox"/>	e-mail

on the 10th day of October 2014.

I declare that the statements above are true to the best of my information, knowledge and belief.

/s/ Lori Yardley

Electronically filed.

Copies to:

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ATTORNEY FOR RESPONDENT
Via e-file

James Christensen #6076835
Iowa Medical and Classification Center
2700 Coral Ridge Avenue
Coralville, Iowa 52241
APPLICANT
Via first class mail

IN THE IOWA DISTRICT COURT IN AND FOR WOODBURY COUNTY

<p>JAMES ALAN CHRISTENSEN, Applicant, vs. STATE OF IOWA, Respondent.</p>	<p>CASE NO: PCCV145074 RESISTANCE TO RESPONDENT'S MOTION FOR PROTECTIVE ORDER</p>
--	--

COMES NOW, the Applicant, James Alan Christensen, by and through his undersigned counsel, and in support of his Resistance to Respondent's Motion for Protective Order, states as follows:

1. Applicant is seeking to depose former Assistant Iowa Attorney General Becky Goetsch, who served as co-counsel of record for the State of Iowa during his criminal trial.

2. On July 29, 2014, Respondent filed a Motion for Protective Order, asserting that only immaterial information outside the scope of discovery, and information protected by the attorney work product privilege, is being sought.

3. The court is empowered to enter a protective order during discovery in civil litigation, *for good cause shown*, which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense. Iowa R. Civ. P. 1.504(1) (emphasis added). The party resisting discovery through assertion of privilege has the burden of showing that a privilege exists and applies. Wells Dairy, Inc. v. Am. Indus. Refrigeration, Inc., 690 N.W.2d 38, 49 (Iowa 2004) (quoting Carolyn v. Hill, 553 N.W.2d 882, 886 (Iowa 1996)). An asserted privilege is

narrowly construed because it is an exception to our rules governing discovery. Wells Dairy, Inc., 690 N.W.2d at 49 (citing Carolan, 553 N.W.2d at 886).

4. Information sought through depositions includes the steps taken by Ms. Goettsch in making repeated statements before the jury which constituted repeated misstatements of the law, and prosecutorial misconduct as found by the district court, and noted by the Court of Appeals. See State v. Christensen, No. 0-490 / 09-0961, 2010 Iowa App. LEXIS 1421, *20 (Iowa Ct. App. November 24, 2010) ("... the issue of prosecutorial misconduct was raised again in defense motions for a new trial. The trial court denied the motions, ruling the defendants established prosecutorial misconduct, but failed to prove prejudice. On appeal, the State argues the trial court correctly determined Christensen was not prejudiced.")

5. It is correct that the Court of Appeals found no prejudice from the misconduct. See Christensen, 2010 Iowa App. LEXIS at *25 ("When we view the prosecutor's misstatements in the context of the entire trial, we are convinced the misstatements did not deprive Christensen of a fair trial and conclude *he has failed to prove prejudice.*")

6. It is the failure of trial counsel to establish a sufficient record before the trial court to establish the prejudice arising from the prosecutor's misconduct which is at issue on postconviction relief. See State v. Haskins, 316 N.W.2d 679, 681 (Iowa 1982) (defendant must be able to point to some unfairness which resulted in prejudice.)

7. The established factors to consider in determining prejudice from prosecutorial misconduct include:

. . . 1) the severity and pervasiveness of the misconduct, (2) the significance of the misconduct to the central issues in the case, (3)

the strength of the State's evidence, (4) the use of cautionary instructions or other curative measures, and (5) *the extent to which the defense invited the misconduct.*

State v. Graves, 668 N.W.2d 860, 869 (Iowa 2003) (emphasis added).

8. The information sought from deposing Ms. Goettch would go directly toward this fifth factor. As prior depositions have indicated, there is evidence Ms. Goettsch expressly intended the statements found to be misconduct prior to making them during her rebuttal argument. As testified to by Applicant's trial counsel:

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 there is no possible way she is 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. The first slide of her Power Point presentation in her rebuttal argument was, the first line said something to the effect of in order to acquit the defendants you must believe what they say—or vice versa that you must—in order to convict you've got to believe the victim. You have to believe the victim beyond a reasonable doubt.

She made comments like that three or four times throughout the course of her rebuttal. That's—I mean, we've all been on the, obviously, defending people, and we know that in Iowa that you intend the consequences of your act. 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.

(Deposition of Paul Scott, 46:18 – 47:23.) This evidence establishes a basis to question at exactly what time Ms. Goettsch decided to make such statements, and why she continued to make such statements despite the trial court having instructed otherwise.

9. It is the assertion of the prosecutor's misconduct having been done in *good faith* which is irrelevant to the issue of prejudice. State v. Blanks, 479 N.W.2d 601, 605 (Iowa Ct. App. 1991) ("The prosecutor's *good faith* concerning this comparison *is not determinative*. It is the effect his comments may have on the jury that concerns us.") This does not mean that a prosecutor's intentional actions are not to be considered:

[The county attorney] may prosecute with earnestness and vigor-- indeed, he should do so. But, 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.

State v. Carey, 709 N.W.2d 547, 557 (Iowa 2006) (quoting Berger v. United States, 295 U.S. 78, 88 (1935)) (emphasis added).

10. The work-product doctrine reflects the strong public policy underlying the orderly prosecution and defense of legal claims. United States v. Nobles, 422 U.S. 225, 236-37 (1975) (quoting Hickman v. Taylor, 329 U.S. 495, 510 (1947)). The privilege is a qualified one, with the court empowered to order disclosure, except for mental impressions, conclusions, opinions, or legal theories, upon the requisite showing of need and hardship. Shook v. Davenport, 497 N.W.2d 883, 888 (Iowa 1993).

11. Applicant is not interested in Ms. Goesttch's mental impressions, conclusions, opinions, or legal theories as they relate to her decision to engage in misconduct. What is at issue is whether the statements were planned prior to the trial court's instructions and what steps were taken by Ms. Goesttch in response to them. Applicant's criminal conviction and pending claim for postconviction relief evidence his need for the information, and the hardship he will suffer should it be denied to him.

WHEREFORE, the Applicant, James Alan Christensen, prays that this Court issue and Order denying Respondent's Motion for Protective Order, and for any other relief found to be just and necessary.

PARRISH KRUIDENIER DUNN
BOLES GRIBBLE & GENTRY, L.L.P.

BY: /s/ Alfredo Parrish
Alfredo Parrish AT0006051
2910 Grand Avenue
Des Moines, Iowa 50312
Telephone: (515) 284-5737
Facsimile: (515) 284-1704
Email: aparrish@parrishlaw.com
ATTORNEY FOR APPLICANT

PROOF OF SERVICE

The undersigned certifies that the foregoing instrument was served upon all parties to the above cause by:

- | | |
|---|---|
| <input type="checkbox"/> personal service | <input type="checkbox"/> first class mail |
| <input type="checkbox"/> certified mail, return receipt requested | <input type="checkbox"/> facsimile |
| <input type="checkbox"/> Airborne Express (overnight) | <input checked="" type="checkbox"/> electronic filing |
| | <input type="checkbox"/> e-mail |

on the 4th day of August, 2014.

I declare that the statements above are true to the best of my information, knowledge and belief.

/s/ Brenda Mozena

Electronically filed.

Copies to:

Andrew Prosser
Office of Attorney General
Hoover State Office Building
Des Moines, Iowa 50319
Telephone: (515) 281-5164
Facsimile: (515) 281-4902
Email: andrew.prosser@iowa.gov
ATTORNEY FOR RESPONDENT
Via e-file

James Christensen #6076835
Iowa Medical and Classification Center
2700 Coral Ridge Avenue
Coralville, Iowa 52241
APPLICANT
Via first class mail

IN THE IOWA DISTRICT COURT IN AND FOR WOODBURY COUNTY

JAMES ALAN CHRISTENSEN, Applicant, vs. STATE OF IOWA, Respondent.	CIVIL NO. PCCV145074 ORDER GRANTING MOTION FOR PROTECTIVE ORDER AND LIMITING SCOPE OF DEPOSITION
--	---

The Respondent's Motion for Protective Order comes before the Court. A telephonic hearing was held on August 12, 2014, with Alfredo Parrish appearing on behalf of the Applicant, James Christensen, and Assistant Attorney General Andrew Prosser appearing on behalf of the Respondent. Having reviewed Respondent's Motion for Protective Order, the Applicant's Resistance to this Motion, and considering the arguments made therein and by counsel at hearing, the Court **FINDS** that Respondent's Motion for Protective Order should be **GRANTED**.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Applicant is permitted to depose Becky Goettsch, but may not solicit testimony as to Ms. Goettsch's mental impressions, conclusions, opinions, or legal theories regarding the case pursuant to Iowa Rule of Civil Procedure 1.503(3).

IT IS SO ORDERED.

Subject: Email - RE: State v. Sickels and State v. Christensen
From: "Brown, ScottAG [AG]" <Scott.Brown@iowa.gov>
Date: 9/28/2015 1:17 PM
To: "'ljackfrm@gmail.com'" <ljackfrm@gmail.com>
CC: "White, Cathleen [AG]" <Cathleen.White@iowa.gov>, "Greenwood, Geoff [AG]" <Geoff.Greenwood@iowa.gov>

Ms. Jackson,

I have been forwarded emails you sent to the Attorney General's website and have been asked to respond to them.

The Attorney General's Office stands behind the work of Assistant Attorney General Andy Prosser and former Assistant Attorney General Becky Goetsch in the Sickels and Christiansen case. Your characterization of any statements made by Ms. Goetsch or Mr. Prosser are inaccurate. Neither of them lied at trial or during a deposition or at any other time. The issues you raise in your email have been raised before Judge Gamble, who presided over the trial, the Iowa Court of Appeals and the post-conviction court. All courts found no wrongdoing by the prosecution. John Sickles and Jamie Christensen were properly convicted.

Scott D. Brown
Special Assistant Attorney General
Area Prosecutions Division Director
Iowa Attorney General's Office
(515)-281-3648
(515)-281-8894 (FAX)

Subject: Prosecutorial Misconduct
From: Janet Jackson <ljackfrm@gmail.com>
Date: 9/2/2015 12:57 PM
To: consumer@iowa.gov

Attorney General Tom Miller,

I would like to bring it to your attention that your former Assistant Attorney General lied directly to the judge to get her conviction. Had she admitted her lie at the trial instead of 5 years later in a deposition, the judge would likely have granted a mistrial like our attorney ask for. We are looking for justice and would like your help. I would like the opportunity to visit with you on this matter.

Janet Jackson
2075 Beechwood Avenue
Lenox, IA 50851

Email: ljackfrm@gmail.com
Cell: 641-202-1840



TERRY E. BRANSTAD
GOVERNOR

OFFICE OF THE GOVERNOR

KIM REYNOLDS
LT. GOVERNOR

June 7, 2011

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

Dear Mr. Sickels,

Our office received your June 3, 2011 letter. I am writing regarding the multiple issues you address.

First, if you are dissatisfied with the review made by the judicial qualifications commission, you must continue to contact the judicial branch and their commission or you may write the Office of Citizens' Aide/Ombudsman. Their contact information is:

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

Second, if you choose to obtain records through the Open Records Act, you must request those records from the agency that maintains the documents that you wish to see. Meaning, if you choose to make an open records request from the Attorney General, you must make a request to their office. Also, if you would like to see any reports made against you to the Department of Criminal Investigations, you must make that request to DCI. If you are dissatisfied with your response, you may contact the Ombudsman at the address listed above.

Lastly, although it is more common for Governors to grant commutations to people serving life-sentences rather than reduced sentences, anyone may apply for a commutation. If you request to be considered for a pardon or commutation, you must fill out the application that was sent to you.

Sincerely,

Larry Johnson, Jr.
Deputy Legal Counsel

38



CHESTER J. CULVER
GOVERNOR

OFFICE OF THE GOVERNOR

PATTY JUDGE
LT. GOVERNOR

June 15, 2009

Vicki West Sickels
1030 Red Oak Drive
Coralville, IA 52241

Dear Vicki:

Thank you for contacting Governor Culver regarding the conviction of your brother, John Sickels. As Executive Officers for the State of Iowa, the Governor and Lt. Governor's influence in legal matters is limited and they cannot overturn the court's decision. We would encourage your brother to continue to work with his attorneys to ensure that his interests are represented.

You also mention in your correspondences that you would like to have an independent agency investigate the DCI agent involved in this case. The Governor does not have authority to investigate the DCI. However, the Ombudsman's office has the authority to investigate all levels of government. You may want to contact their office with your concerns.

If you want to contact the Ombudsman's office you can reach them at:

Office of Citizens' Aide/Ombudsman
Ola Babcock Miller Building
1112 East Grand
Des Moines, Iowa 50319
Website: <http://www.legis.state.ia.us/ombudsman/>

In addition, we will forward a copy of your correspondences to the Commissioner of the Department of Public Safety for his review.

Best wishes,


Kristin Hardt
Legal Assistant



STATE OF IOWA



RUTH H. COOPERRIDER
CITIZENS' AIDE/OMBUDSMAN

Telephone: (515) 281-3592
Toll Free: 1-888-426-6283
TTY: (515) 242-5065
Fax: (515) 242-6007
E-mail: ombudsman@legis.state.ia.us
Website: <http://legis.state.ia.us/ombudsman>

CITIZENS' AIDE/OMBUDSMAN
OLA BABCOCK MILLER BUILDING
1112 EAST GRAND AVENUE
DES MOINES, IOWA 50319

July 15, 2011

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

Subject: Complaints

Dear Mr. Sickels:

Our office received your letter on July 8, 2011. Your letter indicates you have attempted to obtain the results of an investigation conducted by the Iowa Division of Criminal Investigation (DCI) against Investigator David Dales. You want the minutes of the meeting in which the Judicial Qualifications Commission discussed your complaint against Judge Gamble. You also want a copy of Becky Goettsch's response to the Iowa Supreme Court Attorney Disciplinary Board.

Your letter stated you are pursuing your issues regarding the criminal proceeding through the courts, and that is the proper avenue. Our office has repeatedly declined to investigate the underlying investigation and criminal case proceedings against you.

DCI

I researched whether you are entitled to the results of the DCI investigation. Iowa Code section 22.7(11) states personal information in confidential personnel records of public bodies shall be kept confidential. The administrative rules of the agency state:

661—35.3(80)

Notification to complainant.

The professional standards bureau shall provide any identified complainant with a written receipt of the complaint and may provide additional information regarding the complaint and its disposition as permitted by law.

Judicial Qualifications Commission

Our office does not have jurisdiction over the judicial branch including this commission. However, I researched whether you are entitled to a copy of the minutes of the Judicial Qualifications Commission meeting which you requested.

The Iowa Supreme Court rules which govern this Commission state:

Rule 52.8 Minutes.

Minutes shall be kept of each meeting of the commission and shall record the action taken, the names of those present, and any other matter that the commission may deem appropriate. The minutes shall be confidential.

Iowa Supreme Court Attorney Disciplinary Board

Our office does not have jurisdiction over this board, but I researched whether you are entitled to a copy of Ms. Goettsch's response.

The Iowa Supreme Court rules state:

34.4(2) The board shall keep all files in permanent form and confidential, unless otherwise provided or directed in writing by the chair of the board, or the chair's designee, for disciplinary purposes or by a specific rule of the supreme court.

Rule 34.5 Board procedure. Upon receipt of any complaint, the board shall notify the complainant in writing that the complaint has been received and will be acted upon.

Rule 34.8 Board actions upon receipt of response.

34.8(1) Upon receipt of a response, the board shall do one of the following:

- a. Dismiss the complaint, and so notify the complainant and the respondent in writing.
- b. Cause the case to be docketed for consideration by the board at its next hearing-meeting.
- c. Arrange for investigation of the complaint either by the board's counsel or a local bar association as the chair, or the chair's designee, deems appropriate

It does not appear, based upon my research, that you are entitled to any of the documents you requested. You may want to discuss this with an attorney for further advice.

John West Sickels

3

July 15, 2011

I hope this information is helpful.

Sincerely,

A handwritten signature in cursive script, appearing to read "L. Brundies", with a horizontal line extending to the right.

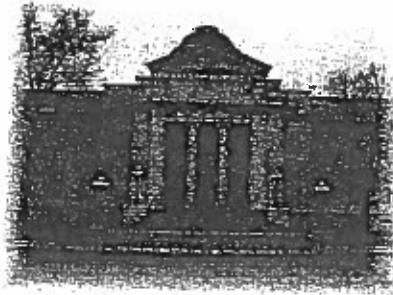
Linda Brundies
Assistant Ombudsman

LB/DJ

1102469b

0079450

STATE OF IOWA



Telephone: (515) 281-3592
Toll Free: 1-888-426-6283
TTY: (515) 242-5065
Fax: (515) 242-6007
E-mail: ombudsman@legis.state.ia.us
Website: <http://legis.state.ia.us/ombudsman>

RUTH H. COOPERRIDER
CITIZENS' AIDE/OMBUDSMAN

CITIZENS' AIDE/OMBUDSMAN
OLA BABCOCK MILLER BUILDING
1112 EAST GRAND AVENUE
DES MOINES, IOWA 50319

July 15, 2011

Vicki Sickels Osland
1630 Red Oak Drive
Coralville, IA 52241

Janet Jackson
111 - 1/2 Montgomery
Creston, IA 50801

Subject: Investigation Request

Dear Ms. Sickels Osland and Ms. Jackson:


Our office has received your letters and documents regarding the criminal investigation involving John Sickels.

This is written confirmation the Ombudsman will not be reopening your complaint. A decision was made to decline your complaint for investigation in June of 2009 and again after a second request in a November 18, 2009, letter. The decision to decline your complaint has not been changed. Our office does not have the resources or expertise to conduct/evaluate the criminal investigations completed on the charges brought against Mr. Sickels.

As stated previously, Mr. Sickels' issues are best dealt with in the courts through appeal or post-conviction relief. I would further note our office has no authority to investigate judges or the judicial branch.

I will be communicating directly with Mr. Sickels regarding his letter to our office.

Sincerely,


Linda Brundies
Assistant Ombudsman

LB/DJ

1102469a

John Durre # 007943 -

STATE OF IOWA



Telephone: (515) 281-3592
Toll Free: 1-888-426-6283
TTY: (515) 242-5065
Fax: (515) 242-6007
E-mail: ombudsman@legis.iowa.gov
Website: <http://legis.iowa.gov/ombudsman>

RUTH H. COOPERRIDER
OMBUDSMAN

OFFICE OF OMBUDSMAN
OLA BABCOCK MILLER BUILDING
1112 EAST GRAND AVENUE
DES MOINES, IOWA 50319

August 7, 2015

Janet Jackson
2075 Beechwood Ave.
Lenox, IA 50851

Dear Ms. Jackson:

This is to acknowledge that our office received your letter yesterday. An Assistant Ombudsman will review your questions or concerns and will inform you of any response or action by our office. You may contact our office if you have additional information or questions regarding the status of our review.

Please notify us of any changes in your address or telephone number. Enclosed is a brochure which explains the functions of the Ombudsman.

Sincerely,

D. Julien
Secretary/Receptionist

Enclosure: Brochure

Ack. case #1502777

AcknowledgeLetter (Rev. 7/1/13)

STATE OF IOWA



RUTH H. COOPERRIDER
OMBUDSMAN

Telephone: (515) 281-3592
Toll Free: 1-888-426-6283
TTY: (515) 242-5065
Fax: (515) 242-6007
E-mail: ombudsman@legis.iowa.gov
Website: <http://legis.iowa.gov/ombudsman>

OFFICE OF OMBUDSMAN
OLA BABCOCK MILLER BUILDING
1112 EAST GRAND AVENUE
DES MOINES, IOWA 50319

August 11, 2015

Janet Jackson
2075 Beechwood Ave.
Lenox, IA 50851

Subject: Denied Fair Trial

Dear Ms. Jackson:

This is in response to the letter our office received from you August 6, 2015. In your brief letter you stated John Sickels and Jamie Christensen have maintained their innocence since their 2009 convictions of Sexual Abuse in the Second Degree. You said Mr. Sickels and Mr. Christensen "have suffered numerous injustices at the hands of the Iowa legal system" and "were denied a fair trial due to lies and misstatements."

Since 2009, our office has responded to a number of complaints regarding the charges, investigation, trial, and conviction of these two men. I located one letter our office sent to you in 2011. You were told our office does not have the resources or expertise to conduct/evaluate the criminal investigations completed on the charges brought against the men; the Ombudsman has no authority to get involved in a matter that has been criminally litigated; and we have no authority to investigate judges or the judicial branch.

While we do have jurisdiction over most governmental agencies, the issues raised about the investigation, arrest, and charging and conviction of the aggrieved parties were likely part of the defense efforts and trial proceedings and/or appeal arguments. Your goal is to get their convictions overturned, and this is a goal that can only be accomplished through the court process. I agree with the previous assessment that there is no role for the Ombudsman regarding this matter.

Sincerely,

Eleena Mitchell-Sadler
Assistant Ombudsman

EMS/jbc
L1502777a.docx

John Seckels #0079450

in:sent

Gmail

Move to Inbox

More

COMPOSE

Eleena Mitchell-Sadler : Re: Letter dated August 11, 2015

Inbox

Janet Jackson <ljackfrm@gmail.com>

11:06 AM (5 hours ago)

Starred

to ombudsman

Important

Dear Ms. Mitchell-SADLER

Sent Mail

You stated in your letter of August 11, 2015, that the issues raised were LIKELY part of the defense efforts. Is lying directly to the Judge part of the defense efforts? Former Assistant Attorney General, Becky Goetsch, told the Judge at trial that her misstating the Iowa law was not "intentional". However, in depositions taken in 2014, Ms. Goetsch testified that she had prepared the Power Point presentation in the weeks before the trial and went over it with Assistant Attorney General, Andrew Prosser. Had Ms. Goetsch admitted to the Judge that the misstatement of Iowa Law was indeed intentional, a mistrial would likely have occurred.

Drafts (1)

Circles

In your brochure "What The Office Of Ombudsman Can Do", you can attempt to rectify problems when a mistake, arbitrary or ILLEGAL action has occurred. Former Assistant AG Becky Goetsch clearly misstated IOWA law, which constituted prosecutorial misconduct. These two men did not receive the fair trial that is guaranteed by the Constitution. And we cannot have persons in our Attorney Generals Office who either lie or do not know IOWA law.

Janet

Thank You,

Janet Jackson
2075 Beechwood Avenue
Lenox, IA 50851

641-202-1840
ljackfrm@gmail.com

No recent chats
Start a new one

Click here to [Reply](#) or [Forward](#)

Subject: Ombudsman response

From: "Mitchell-Sadler, Eleena [LEGIS]" <Eleena.Mitchell-Sadler@legis.iowa.gov>

Date: 8/21/2015 9:59 AM

To: "'ljackfrm@gmail.com'" <ljackfrm@gmail.com>

Dear Ms. Jackson:

The alleged misstatements by Ms. Goettsch you mention were made to the court, along with the claimed rationale for the misstatements. The Court apparently believed the attorney's explanation and chose not to issue sanctions against the attorney, which it had the authority to do. Our office does not get involved in the court process, whether that may include conduct of attorneys in court, evidence presented, or decisions reached by the court. The remedy at the time the explanation was made in court was for the judge on his or her own to issue a sanction against the attorney, or for the defense attorney to raise further objection and seek sanctions. Our office will not interject ourselves into that process.

I also consider the deposition you referenced as being part of the court process. Our office will not review and critique deposition testimony. Any remedy from the criminal case that can be derived from the deposition testimony will have to be considered by the defense attorney. I do not know the process by which depositions can be reviewed by a court for alleged misstatements made earlier to the court, but that will need to be reviewed by your attorney as well. Alternatively, the entity with the administrative authority to receive complaints against and sanction attorneys is the Iowa Attorney Disciplinary Board. You can find their complaint form at the following website: <http://www.iowacourtsonline.org/For Attorneys/Attorney Standards Discipline /Disciplinary Procedures/>

I see no further role for our office in this matter. We will do no further review of concerns surrounding the convictions of Mr. Sickels and Mr. Christensen. Future complaints about such matters will be filed without response.

Sincerely,

Eleena Mitchell-Sadler
Assistant Ombudsman
Office of Ombudsman
Ola Babcock Miller Building
1112 East Grand Avenue
Des Moines, IA 50319-0231
515-281-3592
1-888-426-6283

The true measure of any society can be found in how it treats its most vulnerable members – Mahatma Gandhi

NOTICE TO RECIPIENT:

This e-mail is intended only for the named recipient(s). It may contain confidential or privileged information. If you are not a named recipient, any disclosure, copying, or distribution of this message is prohibited. If you received this e-mail in error, please notify the sender immediately and delete this e-mail and any other records containing this message.

TELEPHONE CONVERSATION
BETWEEN
E.S.
and
RENEE HOYT

TRANSCRIPT FROM RECORDING

PETERSEN COURT REPORTERS

P R O C E E D I N G S

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E.S.: (Inaudible.)

MS. RENEE HOYT: You want to be friends?

E.S.: I need a friend.

MS. RENEE HOYT: E.S., I told you last night I was sorry for getting you all defensive in the way that you was. I was--I was wanting to talk to you.

E.S.: Okay. Well, now I'm your friend.

MS. RENEE HOYT: Hey, I don't have a problem with that. I told you last night, I have no relationship to either one of those two.

E.S.: So are you willing to be my friend, or not?

MS. RENEE HOYT: E.S., I'm willing to be your friend.

E.S.: Then why did you call me a liar? I don't understand. I'm confused.

MS. RENEE HOYT: I was confused by the fact that you stated to me last night that both of those men raped you.

E.S.: They did.

MS. RENEE HOYT: E.S., in court you said Jamie didn't.

E.S.: They both did. I don't know what I said in court. Why are you bringing up court? That

1 was so long ago and under such duress. I mean, my
2 God.

3 MS. RENEE HOYT: Well, court--

4 E.S.: They both (inaudible) and they raped
5 me. That's what happened. And I just need a friend.

6 MS. RENEE HOYT: Court wasn't that long
7 after this happened, that's why...

8 E.S.: It's been a long time ago since court
9 happened.

10 MS. RENEE HOYT: I know. But the trial--

11 E.S.: And I was under a lot of duress. And
12 I-- Do you understand what it's like? I don't know
13 if you've ever been raped--

14 MS. RENEE HOYT: Umm.

15 E.S.: --and called a liar.

16 MS. RENEE HOYT: Been there, done that.

17 E.S.: Have you ever been raped and called a
18 liar?

19 MS. RENEE HOYT: Absolutely.

20 E.S.: And so--

21 MS. RENEE HOYT: But I can tell you every
22 detail to this day.

23 E.S.: I don't know what happened to you.

24 MS. RENEE HOYT: What?

25 E.S.: I can tell you every detail to this

1 day, too. I mean, my God. I can tell you every
2 detail to this day what those two men did to me.

3 MS. RENEE HOYT: But you couldn't--you
4 couldn't in court that day. That's--that's what
5 confuses me.

6 E.S.: It's a little bit stressful being in
7 court and being--having your--the fingers pointed at
8 you when you're the one who got raped. I mean, you
9 know, just imagine if you were in court and you got
10 raped and you had to defend yourself.

11 MS. RENEE HOYT: I've done that.

12 E.S.: (Inaudible) cops. Against two cops?

13 MS. RENEE HOYT: Not against two cops, no.

14 E.S.: The talk of the town. Oh, John and
15 Jamie, they're just all that and a bag of fucking
16 Doritos. How the fuck do you think I felt? I mean,
17 how the fuck do you think it was to go through that?

18 MS. RENEE HOYT: No. I get it.

19 E.S.: What do you fucking think it was?
20 You fucking don't even know. You don't know. You
21 weren't there.

22 MS. RENEE HOYT: I was in the courtroom.

23 E.S.: You weren't in there, in the bar that
24 night when I was bartending.

25 MS. RENEE HOYT: No.

1 E.S.: In the golf club.

2 MS. RENEE HOYT: No, I wasn't. You're
3 right.

4 E.S.: No, you weren't. You have no idea
5 what you're talking about.

6 MS. RENEE HOYT: But E.S.--

7 E.S.: You don't have any fucking clue.

8 MS. RENEE HOYT: E.S., Detective--Detective
9 David Dales--

10 E.S.: Uh-huh.

11 MS. RENEE HOYT: --admitted on the stand
12 that he lied about some of the stuff, and admitted
13 that he lied, that Officer Christensen didn't do it.
14 John--

15 E.S.: David Dales wasn't there when I got
16 raped.

17 MS. RENEE HOYT: I know.

18 E.S.: He wasn't there.

19 MS. RENEE HOYT: And I feel your pain.

20 E.S.: You weren't there.

21 MS. RENEE HOYT: But what I'm saying is John
22 Sickels--

23 E.S.: You think I lied?

24 MS. RENEE HOYT: I don't think--

25 E.S.: You think I lied. You think I lied

1 (inaudible). Jesus Christ, this has haunted me.

2 MS. RENEE HOYT: E.S., I don't think you're
3 lying; okay? I get--I get what happened, but what
4 I'm--what I'm--

5 E.S.: You're calling me and harassing me.

6 MS. RENEE HOYT: I'm not calling you and
7 harassing you.

8 The only--the only question I asked you,
9 that I'm confused on, is the fact that-- Listen, I
10 want you to hear this clearly; okay?

11 E.S.: Okay.

12 MS. RENEE HOYT: Detective David Dales
13 admitted on the stand in Sioux City that he had lied,
14 and in appeals and--

15 E.S.: I don't know what he said. I don't--
16 I'm not responsible for Dave Dales, or whoever his
17 name is.

18 MS. RENEE HOYT: He was the DCI officer.

19 E.S.: Oh, I'm just responsible for knowing
20 what happened to me.

21 MS. RENEE HOYT: I know. But here's--

22 E.S.: I'm not responsible for what he said.
23 I can't-- I don't know how I'm supposed to answer
24 you that because I got raped.

25 MS. RENEE HOYT: But, E.S., here's what

1 I'm--here's what I'm questioning.

2 E.S.: Why are you questioning anything?
3 Why would I make this up?

4 MS. RENEE HOYT: I'm-- Okay. I'm not
5 saying you made it up. I 100 percent believe--

6 E.S.: Why would I do that?

7 MS. RENEE HOYT: I 100 percent believe that
8 John Sickels is a scum bag, but I have doubts in my
9 mind about--

10 E.S.: You weren't there, too. They both
11 fucking put their dicks in me.

12 MS. RENEE HOYT: But, E.S., that's not what
13 you--

14 E.S.: (Inaudible.)

15 MS. RENEE HOYT: E.S., settle down.
16 Seriously. If you want to talk to me you've got to
17 settle down, and you've got to listen to what I want
18 to ask you.

19 E.S.: (Inaudible).

20 MS. RENEE HOYT: E.S. E.S.

21 E.S.: Yes.

22 MS. RENEE HOYT: Settle down. In court you
23 stated that James Christensen did not rape you.

24 E.S.: I don't remember. It was so long
25 ago. I was under a lot of duress. They both raped

1 me. That's all I remember, is they both raped me and
2 they soothed me while they were doing it.

3 MS. RENEE HOYT: And they what?

4 E.S.: When one of them was raping me the
5 other one was soothing me (inaudible).

6 MS. RENEE HOYT: No. Nope. Nope. E.S.,
7 that was admitted in court by the detective that that
8 was a lie.

9 E.S.: It wasn't a lie. I know. I lived
10 it. Come on, man. What the fuck? Why would I make
11 this up?

12 MS. RENEE HOYT: I'm not saying you're
13 making it up.

14 E.S.: Why in the fuck would I do this? Why
15 are you calling me now (inaudible)?

16 MS. RENEE HOYT: You want to know why I'm
17 calling you? Because there's--there's an appeal
18 hearing coming up. That's why I called. Because
19 rather than listening--

20 E.S.: I'm not gonna be there. No one
21 invited me.

22 MS. RENEE HOYT: I know that. But rather
23 than--rather than assuming, I called you because the
24 court documents for the appeal hearing has John
25 Sickels testimony stating he was the only one who had

1 sex with you.

2 E.S.: That's not true.

3 MS. RENEE HOYT: So you-- I mean,
4 seriously, you mean--

5 E.S.: I don't know. I mean, it's been so
6 fucking long ago. I just know I got raped by two
7 police officers, and if I don't remember if they both
8 put their penises in my vagina that's because I don't
9 want to remember that horrid event.

10 But I didn't know there was an appeal coming
11 up, and that's great that you're telling me that
12 because I don't know. No one invited me.

13 MS. RENEE HOYT: Well, because I--I don't
14 think they have to have you testify. It's just like
15 a--it's like a whatever, a supreme court appeal, or
16 whatever, they're trying to get for, I don't know,
17 evidence that wasn't presented or evidence that was
18 presented wrong. I'm not exactly sure, so don't
19 quote me on that.

20 E.S.: Okay.

21 MS. RENEE HOYT: But the reason I'm
22 questioning it is because there's several--

23 E.S.: I'm not lying. Why would I lie and
24 make this up? Why are you questioning anything? Why
25 would I lie and make this up? I don't need this

1 right now, man.

2 MS. RENEE HOYT: E.S., I'm not saying--

3 E.S.: I don't need this.

4 MS. RENEE HOYT: E.S., settle down; okay?

5 E.S.: I might have been beaten up by my old
6 man and kicked out of my house, but I don't need you
7 bringing up this and calling me a liar. I don't need
8 it.

9 MS. RENEE HOYT: E.S., I didn't call you a
10 liar. I'm only asking questions because I, myself,
11 am just wondering. Because one time you said that it
12 was just John, and then you told me it was both of
13 them. But John's testimony for his appeal hearing
14 states it was only him.

15 E.S.: I don't care what his testimony was.
16 Obviously they're going to tell lies. Why would I
17 make this up? Why in the hell would I make this up?
18 Why is this being drug up now?

19 MS. RENEE HOYT: E.S.

20 E.S.: Why are you dragging this up now?

21 MS. RENEE HOYT: E.S., I'm not saying you're
22 making it up.

23 E.S.: (Inaudible) except being raped.

24 MS. RENEE HOYT: Darren-- E.S.

25 E.S.: (Inaudible).

1 MS. RENEE HOYT: E.S., I understand it was a
2 traumatic event. I get that. And I get that they
3 put you through hell on the stand. But you just got
4 through telling me--

5 E.S.: It was hell in the golf club. They
6 raped me.

7 MS. RENEE HOYT: You just got through
8 telling me--

9 E.S.: And you're questioning me.

10 MS. RENEE HOYT: --you couldn't remember if
11 it was one or both of them.

12 E.S.: It was both of them.

13 MS. RENEE HOYT: But...

14 E.S.: I never told you I couldn't remember.
15 They both raped me. They took turns. I'm surprised
16 they don't have STDs.

17 MS. RENEE HOYT: Why?

18 E.S.: Cause I've got STDs.

19 MS. RENEE HOYT: Well, I don't know about
20 that. But, like, five minutes ago--

21 E.S.: Now, they both have it.

22 MS. RENEE HOYT: Like five--

23 E.S.: So if you're fucking one of them--

24 MS. RENEE HOYT: Like five minutes ago,

25 E.S.--

1 E.S.: --you have it, too.

2 MS. RENEE HOYT: --you said you don't
3 remember if it was one of them or both of them.

4 E.S.: No, I never said that. I know it was
5 both of them. They both took turns raping me. And I
6 am perfectly clear on that. I was there and I was
7 sober and I was fucking present when they did that.
8 They were drunk and they were foolish and they lost
9 because they raped me.

10 MS. RENEE HOYT: I get that. But why
11 would--

12 E.S.: Why on the fucking earth would I
13 fucking make up a lie about it? Did I gain anything
14 out of it? I don't think so.

15 MS. RENEE HOYT: You got a rape settlement
16 that you bought a house in Oregon that you no longer
17 have.

18 E.S.: I didn't buy that with my rape
19 settlement, I bought that with my fucking God damn
20 inheritance.

21 MS. RENEE HOYT: You told me--

22 E.S.: My mom has money and your mom
23 doesn't.

24 MS. RENEE HOYT: You told me Wednesday night
25 on the phone you bought your house in Oregon on your

1 rape settlement.

2 E.S.: Maybe I would have told you anything
3 to shut your fucking mouth.

4 MS. RENEE HOYT: You know what? You called
5 me and wanted to be my friend.

6 E.S.: Well, you know, I just want to know
7 why you think I'm lying about two cops raping me.
8 Why would I make up such a fucking lie?

9 MS. RENEE HOYT: Because your testimony and
10 story and depositions has changed six times.

11 E.S.: No, it hasn't.

12 MS. RENEE HOYT: Yes, it has, E.S. I've
13 read them.

14 E.S.: Okay. Well, you know, maybe if you
15 got raped you might be a little bit confused on times
16 and dates.

17 MS. RENEE HOYT: No.

18 E.S.: But those two fucking whores raped
19 me.

20 MS. RENEE HOYT: No. When I got raped I
21 went right--

22 E.S.: And that's the end of it. And why
23 are you telling me that you don't believe me? Why
24 would I fucking make this up?

25 MS. RENEE HOYT: E.S.

1 E.S.: Where is my fucking motivation?

2 MS. RENEE HOYT: Here's my question: Why
3 did you wait three weeks to report it and then
4 reported it to Officer James Christensen and said you
5 wanted John Sickels fired? I know you met him at the
6 hospital wired.

7 E.S.: Right. So?

8 MS. RENEE HOYT: Well, if he raped you, how
9 could you face him?

10 E.S.: How could I face him?

11 MS. RENEE HOYT: Face--

12 E.S.: I had to face him many times. What
13 do you mean how could I face him?

14 MS. RENEE HOYT: How could you face James
15 Christensen--

16 E.S.: What the fuck kind of question is
17 that?

18 MS. RENEE HOYT: How could you stand and
19 face James Christensen in the hospital parking lot?

20 E.S.: Because I was lying to his ass and I
21 wanted something to be done.

22 MS. RENEE HOYT: Why would you go to him if
23 you'd already got the DCI involved? The DCI had you
24 wired.

25 E.S.: Because they told me to.

1 MS. RENEE HOYT: Don't you think--

2 E.S.: This was their plan.

3 MS. RENEE HOYT: Don't you think that if
4 he--

5 E.S.: This was their--this was the DCI
6 telling me what to do. That's why I did what I did,
7 because the DCI said to do it.

8 MS. RENEE HOYT: But don't you think if
9 Officer Christensen raped--

10 E.S.: Because I was raped.

11 MS. RENEE HOYT: --you he would have denied
12 the meeting?

13 E.S.: You don't think I got raped. Do you
14 think I got raped or do you not think I got raped?
15 And why are you bringing this up so many years later,
16 tracking me down in fucking Denver? Why are you
17 doing this?

18 MS. RENEE HOYT: Hey--

19 E.S.: Did they sic you on me?

20 MS. RENEE HOYT: Did who?

21 E.S.: I don't know. Did someone give you
22 my number?

23 MS. RENEE HOYT: No. E.S., you just
24 questioned me on why I'm bringing this up, do I not
25 think you got raped. I do not think you was raped by

1 Officer James Christensen or he would not have met
2 you at the hospital. Your story has changed six
3 times.

4 E.S.: Oh, that's bullshit. He met me there
5 because he wanted to fucking have it covered the fuck
6 up.

7 I was there. You're not--you don't--you
8 don't-- You're not me. I don't know where you get
9 off judging me when you weren't there. When you
10 didn't get raped by the two of them off duty.

11 They were both off duty. They were both
12 drunk. And they both raped me, and they both thought
13 they could get away with it cause they're cops.

14 MS. RENEE HOYT: And guess what?

15 E.S.: And they both did it.

16 MS. RENEE HOYT: Well--

17 E.S.: Both put their dicks inside my
18 fucking vagina--

19 MS. RENEE HOYT: That's like--

20 E.S.: --against my will.

21 MS. RENEE HOYT: That's like the seventh
22 story you've now told because I've read all the court
23 documents. I've read all the depositions.

24 E.S.: That's good for you. I'm glad you
25 did all your fucking research. It's too bad you

1 weren't there. It's too damn bad you weren't there.

2 MS. RENEE HOYT: It's too damn bad--

3 E.S.: It's a fucking bad day to pick on me
4 you fucking cunt. You picked a bad fucking day to
5 fucking call me a liar, you fucking cunt.

6 MS. RENEE HOYT: You called me.

7 E.S.: Yeah, and you keep calling me a liar.

8 MS. RENEE HOYT: All's I'm saying is your
9 story keeps changing.

10 E.S.: All's you're saying? All's?

11 (Inaudible.) All's I'm saying? All's I'm saying.

12 MS. RENEE HOYT: I graduated the same high
13 school all three of your fucking kids graduated.

14 E.S.: (Inaudible). You fucking illiterate
15 cunt. Why don't you go fucking suck both of those
16 fuckers off.

17 MS. RENEE HOYT: So all's I asked, E.S. is
18 that you come clean with the truth.

19 Yep, she did. She hung up on me.

20 (End of recording.)

21

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23

24

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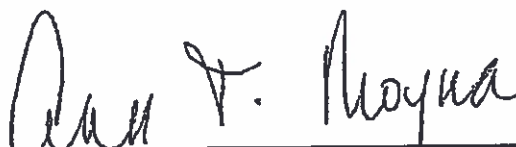
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I hereby certify that the foregoing pages represent a true and complete transcript, to the best of my ability to understand the recording, of the captioned proceedings which was electronically recorded and later reduced to typewriting by me.

I further certify that I am neither attorney or counsel for, nor related to or employed by any of the parties to this action; and, further, that I am not a relative or an employee of any attorney or counsel employed by the parties hereto, or financially interested in the action.

Dated at Des Moines, Iowa, this 26th day of January, 2017.



CERTIFIED SHORTHAND REPORTER

Elisa Smith
30 mins · 49



I don't know.....

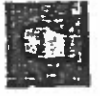
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Elisa Smith
People are so easily lied to and gullible.P M.....FU



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Yesterday at 8:08 PM · 🌐

Watching masters of illusion.....I know the real master.....Of lyingerr...illusion.....and I know the foolish audience....

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Elisa Smith shared **Michael Bernard Beckwith's** photo.

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Michael Bernard Beckwith



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Agree?

Michael Bernard Beckwith

WHEN YOU'RE



IN THE SUPREME COURT OF IOWA

JAMES ALAN CHRISTENSEN, Applicant-Appellant,)	Sup. Ct. No. 15-765
vs.)	APPLICATION FOR EXTENSION OF TIME
STATE OF IOWA, Respondent-Appellee.)	
)	

COMES NOW the State of Iowa, plaintiff-appellee in the above-entitled cause, and pursuant to Iowa Rule of Appellate Procedure 6.1003(2), hereby requests an extension of time in which to file its brief, stating:

1. This is the State's second request for an extension.
2. The State's brief is due on September 14, 2015.
3. The Criminal Appeals staff has fifteen attorneys assigned to state appellate work. Fifty-nine briefs were filed by this office during August, 2015.
4. Approximately fifty-eight briefs were received during August, 2015, and as of September 1, 2015, the Division has approximately two hundred briefs due within the next thirty days.
5. The Criminal Appeals Division currently has only nineteen attorneys, only fifteen of whom work full-time on State

appellate work, causing a significant backlog of cases. All fifteen attorneys currently have substantial numbers of unbriefed cases. The full caseload has made it difficult to start work on individual cases sooner. Additional time is necessary to allow an attorney the opportunity to begin work on this case.

6. Additional time is necessary to review the record, complete legal research, and prepare the State's brief.

WHEREFORE, the State respectfully requests an extension of time up to and including October 14, 2015, in which to file its brief.

Respectfully submitted,

THOMAS J. MILLER
Attorney General of Iowa



KEVIN CMELIK
Assistant Attorney General
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Des Moines, Iowa 50319
Telephone: 515/281-5976
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IN THE SUPREME COURT OF IOWA

No. 15-0765

Woodbury County No. PCCV145074

ORDER

JAMES ALAN CHRISTENSEN,
Applicant-Appellant,

vs.

STATE OF IOWA,
Respondent-Appellee.

The motion to enlarge time, pursuant to Iowa Rule of Appellate Procedure 6.1003, is granted. Appellee is granted to and including October 14, 2015 to file and serve a proof brief and designation of parts. There will be no further extensions absent unusual and compelling circumstances.

Copies to:

Alfredo Parrish
2910 Grand Avenue
Des Moines, IA 50312

Adam C. Witosky
2910 Grand Avenue
Des Moines, IA 50312

Attorney General
Criminal Appeals Division
1305 E. Walnut
Hoover Building
Des Moines, IA 50319

Kevin Cmelik
Assistant Attorney General
Criminal Appeals Division 2nd Floor
Hoover State Office Building
Des Moines, IA 50319



IOWA APPELLATE COURTS

State of Iowa Courts

Case Number
15-0765

Case Title
Christensen v. State

So Ordered

A handwritten signature in black ink, appearing to read "D. Humpal", written over a horizontal line.

Donna M. Humpal, Clerk
Iowa Supreme Court

Electronically signed on 2015-09-14 13:08:18

IN THE SUPREME COURT OF IOWA

JAMES ALAN CHRISTENSEN,
Applicant-Appellant,)

Sup. Ct. No. 15-765

vs.)

**APPLICATION FOR
EXTENSION OF
TIME**

STATE OF IOWA,
Respondent-Appellee.)

)

COMES NOW the State of Iowa, plaintiff-appellee in the above-entitled cause, and pursuant to Iowa Rule of Appellate Procedure 6.1003(2), hereby requests a two-week extension of time in which to file its brief, stating:

1. This is the State's third request for an extension.
2. The State's brief is due on October 14, 2015.
3. In the last thirty-five days, counsel for the State has filed briefs in the cases of *State v. Hilpipre* (15-702), *State v. Gabriel* (15-389), *State v. Dubon-Pantaleon* (15-129), and *State v. Rush* (15-484). Counsel also anticipates filing the State's brief in *State v. Astello* (15-206) within the next two days.
4. Counsel for the State was just recently assigned to *Christensen v. State* four business days ago. The voluminous record

in this case includes over 1000 pages of transcripts, requiring substantial time to adequately research and prepare the State's brief.

5. The Criminal Appeals Division currently has nineteen attorneys, only fifteen of whom work full-time on State appellate work, causing a significant backlog of cases. All fifteen attorneys currently have substantial numbers of unbriefed cases. In fact, to file an equal number to the briefs received each month, each attorney working a state caseload would have to file four briefs each month. With vacations, sick leave, and the press of other business such as motion practice, oral arguments, and county attorney assistance, it is unlikely that the office will ever be able to maintain an average of four briefs per attorney per month. The current caseload has made it difficult to start work on individual cases sooner and to clear the backlog.

WHEREFORE, the State respectfully requests an extension of time up to and including October 28, 2015, in which to file its brief.

Respectfully submitted,

THOMAS J. MILLER
Attorney General of Iowa

A handwritten signature in black ink, appearing to read 'Sheryl Soich', written over a horizontal line.

SHERYL A. SOICH

Assistant Attorney General
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IN THE SUPREME COURT OF IOWA

JAMES ALAN CHRISTENSEN,

Applicant-Appellant,

vs.

STATE OF IOWA,

Respondent-Appellee.

SUPREME COURT NO. 15-0765

APPLICANT'S RESISTANCE
TO RESPONDENT'S THIRD
REQUEST FOR EXTENSION OF
TIME

COMES NOW the Applicant-Appellant, James Allen Christensen, and for his resistance to the State's third request for extension of time to file its brief respectfully states to the Court as follows:

1. On October 14, 2015, the State filed its third request for an extension of time to file its brief. Its brief was due October 14, 2015.
2. Applicant Christensen resists the State's third request for an extension of time.
3. The State files its third request for an extension of time on the very last day its' brief is due, which gives Applicant Christensen little time to respond, and assumes that this Court will automatically grant the extension.
4. This Court put the parties on notice that, "As part of the court's ongoing efforts to reduce case-processing time, extension requests will be closely

scrutinized. Please be advised that appellate deadlines will be strictly enforced.”

Notice of Briefing Deadline May 26, 2015.

5. Applicant filed his page proof brief in a timely fashion, evidencing he wants his case heard in a timely fashion. His notice of appeal was filed April 30, 2015. The Court’s Notice of Briefing Deadline was filed May 26, 2015. His page proof brief was filed July 15, 2015.

6. Applicant has been imprisoned since May 20, 2009.

7. The State with all its resources and power, *see Green v. United States*, 355 U.S. 184, 187 (1957), should not be allowed to continually ignore the due process rights of Mr. Christensen, and due date orders from the Court. On September 14, 2015, this Court ruled, “Appellee is granted to and including October 14, 2015 to file and serve a proof brief and designation of parts. There will be no further extensions absent unusual and compelling circumstances.”

The State has failed to provide “unusual and compelling circumstances.”

8. Based on its prior two requests for an extension of time, and this Court’s warning regarding further extensions, this appeal should have been made a priority of the State.

9. As a sanction for its conduct, the State should be prohibited from filing an appellate brief and designation of the record, and be prohibited from participating in oral argument.

WHEREFORE, the Applicant-Appellant, James Allen Christensen, respectfully requests that the Court denies the State's request for an extension of time to file its brief, prohibit it from filing a brief and participating in oral argument, and set this case for oral argument.

**PARRISH KRUIDENIER DUNN BOLES GRIBBLE
GENTRY BROWN & BERGMANN, L.L.P.**

BY: /s/ Alfredo Parrish
Alfredo Parrish AT0006051
2910 Grand Avenue
Des Moines, Iowa 50312
Telephone: (515) 284-5737
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Email: aparrish@parrishlaw.com
ATTORNEY FOR APPELLANT

PROOF OF SERVICE

The undersigned certifies that the foregoing instrument was served upon all parties to the above cause by:

<input type="checkbox"/>	personal service	<input checked="" type="checkbox"/>	first class mail
<input type="checkbox"/>	certified mail, return receipt requested	<input type="checkbox"/>	facsimile
<input type="checkbox"/>	Airborne Express (overnight)	<input checked="" type="checkbox"/>	electronic filing
		<input checked="" type="checkbox"/>	e-mail

on the 15TH day of October 2015.

I declare that the statements above are true to the best of my information, knowledge and belief.

/s/ Lori Yardley

Ms. Sherri Soich
Assistant Attorney General
Office of Attorney General
Hoover State Office Building
Telephone: (515) 281-5976
Facsimile: (515) 281-4902
Email: Sherri.soich@iowa.gov
ATTORNEY FOR APPELLEE

James Christensen #6076835
APPLICANT
Via first class mail

Jana Weland
Via e-mail

STATE OF IOWA,

Plaintiff,

Vs.

JAMES ALAN CHRISTENSEN

FECR055373

Defendants

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 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

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

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

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