

BEFORE THE COMMISSION ON JUDICIAL QUALIFICATIONS
OF THE STATE OF IOWA

IN THE MATTER OF THE CONDUCT OF)
JUDGE Arthur Gamble)
JUDGE OF THE 5th)
JUDICIAL DISTRICT.)

TO: COMMISSION ON JUDICIAL QUALIFICATIONS, STATE OF IOWA

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

1. The address of the complainant is 2700 Coral Ridge Ave
Coralville, Ia 52241

2. The events about which the undersigned makes complaint occurred on the 12th day
of March, 2009 and _____
(list other dates if applicable)

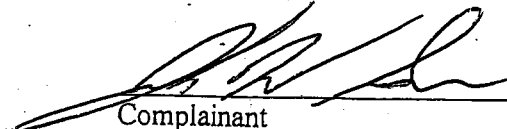
3. The events about which the undersigned complains occurred on the above date(s) in the
matter of State of Iowa vs. John Sickels &
James Christensen
(list name of case[s])

4. That said matter was in the District Court of the State of Iowa in and for Union tried in
Woodbury County (county)
county(ies). That the number of said matter was _____
(list case number[s])

That the events about which the undersigned complains are as follows: _____

Please See all attached Documents

Attach additional pages if necessary.


Complainant
Jana A. Christensen

Cc. Governor Terry Branstad

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

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

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

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

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

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

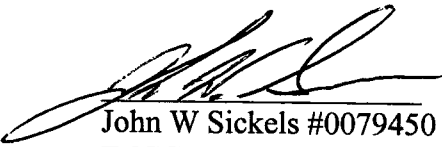
Judge Gamble erred in not granting the defendant's motion for a mistrial. The attempts by the Court to address the aforementioned errors in instructions and rulings on objections were insufficient and inconsistent with the law. The jury's view of the defendants was so prejudiced and inflamed that no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

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

Exhibit A Pages 33-44

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

Respectfully Submitted for Consideration



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



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

Cc: Governor Branstad

1 may proceed.

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

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

18 The other thing that we have heard some
19 mention of about is the warrant. She has lots of
20 motives I think is what we heard. We hadn't heard
21 about the warrant. There was some discussion that
22 maybe there was a warrant out. You heard the
23 testimony that neither she nor either one of the
24 defendants --

25 MR. MCCONVILLE: Excuse me, Your Honor. I

1 think there was something mentioned that is
2 improper rebuttal and I would object to that also.

3 THE COURT: Sustained.

4 MS. GOETTSCH: When you're done looking at
5 all the facts, there's no reasonable doubt here.
6 There's no reasonable doubt left. All the things
7 that they want you to believe, all the rabbit holes
8 that they want you to go through don't hold water.

9 In order to find the defendants not guilty,
10 there has to be some element in you to believe what
11 the defendants have told you in their statements
12 and in their testimony.

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

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

19 * * *

20 (Jury exits courtroom.)

21 * * *

22 THE COURT: You can be seated. The record
23 will reflect that hearing is being held outside the
24 presence of the jury. During the State's rebuttal
25 argument, there was a request of defense counsel.

1 Did you want to make a record?

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

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

20 And five times is just too many, Judge. And
21 I know we spent nine days here, but this is just
22 unbelievable. I have never seen this. It's
23 prosecutorial misconduct to try to get in a
24 statement that this Court has already stricken once
25 in the same closing argument, and I move for a

1 mistrial.

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

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

14 It's been an ongoing thing that they have to
15 believe something that these defendants say in
16 order to find them not guilty. It is absolutely a
17 misstatement of the law and, again, of a
18 constitutional proportion. Thank you.

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

20 MR. PROSSER: Your Honor, I -- I just can't
21 agree with any of that. I think the substance and
22 the intent of counsel's comment has to do with the
23 statements of the defendants that the
24 untruthfulness of the statements of the defendants
25 and the potential effect that those statements may

1 be having on the jurors' mind.

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

12 And I think that was the intent -- the
13 substance and the intent of the argument. And I
14 don't think it's been done five times, and I think
15 there was one comment up at the beginning that was
16 taken off before any comment was made.

17 And I don't recall five other times that
18 this was done, but I think counsel is a little
19 angry right now and I think that may have been an
20 exaggeration. I don't know how many times, but
21 this argument has not been done five times, and I
22 think it's a fair argument.

23 THE COURT: Let's just review the record to
24 see if it's been done twice. Could you put up,
25 please, the first three lines of the rebuttal

1 argument that the Court asked you to take down.

2 MR. PROSSER: I will try.

3 THE COURT: All right. So the first three
4 lines of the slide that the Court struck before the
5 arguments began was quote, unquote, "Not guilty
6 requires you to believe defendants and not believe
7 Lisa Smith."

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

15 So it's the same thing. And the Court is
16 troubled by the fact that the Court sustained the
17 objection, struck the argument, and then at the
18 conclusion of the State's rebuttal we have exactly
19 the same argument that the Court previously struck.

20 MS. GOETTSCH: Judge, I'm commenting on the
21 fact -- I'm not stating the law, but I'm saying
22 that common sense dictates if you're going to
23 disregard Ms. Smith, you're somehow giving credence
24 to what the defendants said. And they have given
25 statements. They don't have to, but they did.

1 They testified. They don't have to, but they did,
2 and I should be able to comment on their
3 believability.

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

15 THE COURT: You're shocked?

16 MS. GOETTSCHE: I guess I don't think that is
17 improper when I'm saying this is your common sense
18 way of viewing this evidence.

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

21 MR. MCCONVILLE: I think it was a
22 misstatement of the law, Your Honor. It shifted
23 the burden and it wrongly said -- and I'm
24 paraphrasing. I don't recall everything I said,
25 but it wrongly implied to the jury that these

1 defendants have to prove something when all the
2 instructions and the law is to the contrary. And
3 if you don't believe them, you have to --

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

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

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

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

11 MS. GOETTSCH: Well, I apologize.

12 THE COURT: Well, the question is whether
13 it's improper shifting of the burden of proof over
14 to the defense and whether it misstates the burden
15 of proof in this case.

16 The burden of proof is stated in Instruction
17 Number 4. The burden is on the State to prove the
18 defendants guilty beyond a reasonable doubt. And
19 that instruction provides, in part, if after a full
20 and fair consideration of all the evidence you are
21 firmly convinced of the defendant's guilt, then you
22 have no reasonable doubt and you should find the
23 defendant guilty. But if, after a fair and full
24 fair consideration of all the evidence in the case,
25 from the lack or failure of evidence produced by

1 the State, you are not firmly convinced of the
2 defendant's guilt, then you have a reasonable doubt
3 and you should find the defendant not guilty.

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

17 So the question is whether or not there
18 should be a mistrial. The defendant's motion for
19 mistrial is denied. The objection will be
20 sustained. We're going to bring the jury in and
21 we're going to finish this closing argument and
22 we're going to submit this case.

23 MS. GOETTSCH: I apologize. Nothing was
24 intentional. When I was saying that an element is
25 that -- Of course, they have testified, so that's

1 in their head. So I'm saying an element of your
2 not guilty verdict would to a certain extent
3 involve believing what the defendant is saying.
4 But I'm going to leave that alone. It was not
5 intentional. I apologize.

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

17 MR. SCOTT: Your Honor --

18 THE COURT: That's all I --

19 MR. SCOTT: I understand you have sustained
20 the objection. I would like to be heard on this
21 for one brief moment.

22 THE COURT: Sure.

23 MR. SCOTT: In addition to that line on the
24 Power Point presentation and the closing argument
25 that was made, I do believe that -- Well, I believe

1 that it is prosecutorial misconduct and I believe
2 one other thing that indicates that, Your Honor, is
3 that this is the exact same language that was
4 presented in their proposed jury instructions that
5 you denied that they have been trying to get in
6 throughout this entire closing argument.

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

18 And that's the additional record that I
19 would like to make on that motion for mistrial,
20 Your Honor.

21 THE COURT: All right.

22 MR. MCCONVILLE: Could I say one other
23 thing? I'm not going to argue with your ruling. I
24 wanted to clear up the record.

25 THE COURT: Sure.

1 MR. MCCONVILLE: When I said this is the
2 fifth time, I also said the second time on this
3 statement. I have made -- And I will stand on
4 whatever Misty shows, because I'm sure the record
5 is going to show it. I have made five objections
6 in this closing rebuttal and all five of them have
7 been sustained.....

8 THE COURT: That's right.

9 MR. MCCONVILLE: So that was not a
10 misstatement and that was not an exaggeration even
11 though the Court knows I am occasionally in the
12 position where I do have a tendency to exaggerate.
13 This time it was not.

14 THE COURT: The motions for mistrial are
15 overruled. Have Patti bring in the jury.

16 * * *

17 (Jury enters courtroom.)

18 * * *

19 THE COURT: Thanks. Be seated. The
20 objection is sustained.

21 Ms. Goettsch, you may proceed.

22 MS. GOETTSCH: Thank you. We have the
23 burden of proof in this case. You heard the
24 defendants testify. You have to ask yourselves
25 about their believability. You know what the truth