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Stanley, WI 54768-6500

August 5th, 2003

Honorable Patrick J. Madden  
Iron County Courthouse  
300 Taconite St.  
Hurley, WI 54534

RE: Patrick Shilling's Motion to Dismiss John Doe Petition Allegations against Martin J. Lipske

Dear Judge Madden,

This letter is in response to Special Prosecutor Patrick G. Schilling's letter to the court dated July 28<sup>th</sup>, 2003 that included a motion to dismiss the John Doe Petition allegations filed by myself against Martin J. Lipske, Iron County District Attorney. As the complainant in this matter, I would like to address the issues Mr. Schilling raises in his motion and then state my position.

1. In his motion, Mr. Schilling stated several times that "perjury charges" shouldn't apply to Mr. Lipske, because he was "not under any oath" in court. However, Mr. Lipske is under oath when in court, by virtue of his oath of office: "The district attorney who permits his zeal to secure convictions to cause him to disregard his duty as a "sworn minister of justice" not only wrongs the defendant, he impedes the administration of criminal justice and brings the administration of the criminal law into disrepute," **O'Neill v. State**, 207 N.W. 280 189 Wis. 259;
2. By reading the John Doe Petition filed in this matter, one will learn that the claim against Mr. Lipske is not one of 'perjury', but is an allegation of the crime of eliciting false testimony (John Doe Petition, pg.2). 'Eliciting' perjury is subornation of perjury. Convicting on subornation does not first require that the actor be placed under oath before committing the crime. "A prosecutor who procures false testimony is subject to penalty under subornation of perjury statute", **U.S. v. Singleton** 165 F.3d 1297 (C.A.10 (Kan.) 1999) ;
3. The petition also states that Mr. Lipske, "*failed* to correct testimony known to be false ". This is, in and of itself, evidence of his intent to mislead the court and jury, though not a crime in itself. Nowhere in the petition does it state that Mr. Lipske committed 'perjury'. Therefore, much of Mr. Schilling's argument in his motion is irrelevant where arguing that Mr. Lipske cannot be charged with 'perjury'. Subornation of perjury is a crime, as is attempted subornation of perjury, **Schultz v. Sykes**, 638 N.W.2d 604 (paragraph 33) and, 248 Wis.2d 746 ;

4. "Perjury" and its "subornation" are considered as part and parcel of the same offense, since no distinction between procurement and perpetration obtains. U. S. v. Silverman, C.C.A.3 (Pa.) 1939, 106 F.2d 750. A prosecutor also has a duty not to use knowingly false evidence, including false testimony. Napue v. Illinois, 360 U.S. 264, 269, 79 S.Ct. 1173, 3 L.Ed.2d 1217 (1959).
5. Mr. Schilling's statement on (pg.2) of his motion contends that the letters sent to him by myself, are "generally restatements of information already in the petition..." and, that they are "repetitive and emotional". However, most letters sent to Mr. Schilling provided him with *further evidence* relevant to the issues complained of in the John Doe Petition. These letters contained:
  - a. Background history: Concerning Mr. Lipkse being sanctioned in two states (Minnesota/Wisconsin), for having been caught *lying* in court, *lying* to clients, *lying* to other attorneys, *misrepresenting* himself, and many other complaints against him by two states, and by his clientele. This is 'other acts, character, habit, and plan evidence' all highly probative and relevant to the matter at hand ;
  - b. Repeated requests: I asked Mr. Schilling to obtain highly relevant and very important evidence which I cannot obtain, such as police records, home phone records, and interviews of certain persons ;
  - c. Affidavits and statements: Alan Prezkop swore out an affidavit to the effect that Connie had confessed to him that she falsely accused me. Several statements also were included **from** individuals who personally heard Connie directly threaten to '*make me pay*' if I should ever leave her. Others heard her threaten that she will '*make sure*' that I '*never*' have another girlfriend 'as *long as I live*' if I were ever to leave her, and that she also said, "*the police will believe anything I tell them*". The witnessed confession and threats are relevant and highly probative in nature, and have been executed in full ;
  - d. Information from Gogebic County: This evidence concerns Connie's accusations against others within a six-month period surrounding her accusations against myself, all of which are very similar in nature. This included evidence that she pursued serious accusations against another man in a Michigan court while I was awaiting trial on her accusations in Wisconsin! I **further** informed Mr. Schilling that after I went to prison, she made accusations alleging that her Michigan social worker sexually assaulted her ;
  - e. Evidence Connie fled to lower Michigan after newspapers announced the John Doe proceeding: Under the law, flight evidence is evidence of her consciousness of guilt ;
  - f. Requests for Mr. Schilling to investigate Connie accusing a prior boyfriend of sexual assault: I was denied this information under The Privacy Act after I had made a FOIA request, so asked that Mr. Schilling obtain this information. (Connie ***told me*** she sent another man to prison for 5-years) ;
  - g. Invitations for Mr. Schilling to question and interview myself here in prison: I can offer much in the way of precise details and information to assist any serious and meaningful investigation ;
  - h. Requests for polygraph testing: I asked Mr. Schilling to subject me to any and all forms of polygraph, psychological, and/or chemical testing. I have been **asking/begging** for a polygraph since prior to trial ;
  - i. Requests that Mr. Schilling interview Connie Vargovich, and Michelle Vargovich: I believe with only a little effort that Connie would confess completely that she falsely accused me. ***Michelle Vargovich was inside my home at the exact time Connie testified that an assault was allegedly in progress***, and Michelle's testimony would easily prove that Connie perjured herself repeatedly under oath ;

All of the letters should be read THOROUGHLY as they contain *evidence and details of crime*, going well beyond 'repetition, emotion, and generally restatements of material in the John Doe Petition'.

The John Doe tribunal's purpose is to determine whether crime has been committed. The letters supplement the petition with additional evidence that crimes *have* been committed. Letters containing evidence, information, details and important and relevant requests should not be shunned or ignored if the crime inquiry investigation truly is a sincere, competent and meaningful one. I admit that *some* emotion may have been evident. It is *exceedingly* difficult to detach myself from my writings due to the implications and circumstances relating to the particular issues. I thought only that the extra information would be helpful. But as requested, I have ceased sending anything further until asked to do so. I apologize to Mr. Schilling and to Your Honor if *any* of the letters offended in *any* way.

6. According to Deputies Wicklund and **Robinson**, the clothing in evidence was not recovered from my home. This contradicts Mr. Lipske's assertion to the **jury** that the clothes were recovered on Sunday the 19<sup>th</sup> when Connie allegedly went back there with the deputy, and contradicts Mr. Schilling's speculation that the clothing '*could have been*' recovered from my house when Connie returned with police *on the 21<sup>st</sup>*. **Trial testimonies of Deputies Robinson and Wicklund refute this speculation ;**
7. Connie brought the clothing to the Ironwood, MI. police station a day (or two) after my arrest. This conflicts with what Mr. Lipske and Connie portrayed to the **jury**. The trial transcript pgs. 186 to 188 show that it was clearly established in the jury's mind that Connie went back to the house *with* Deputy Robinson on Sunday Oct. 19<sup>th</sup>, 1997 (or '*Monday maybe*') where she "**THEW**" gave the deputy the clothes in evidence. The Office of Lawyer Regulation even admits that Mr. Lipske presented conflicting statements concerning the clothing. A John Doe judge is not to choose between conflicting facts or inferences prior to a John Doe hearing, as *this is one of the functions of the John Doe hearing itself*: **STATE V SCHOBBER**, 167 Wis.2d 371,381,481 N.W.2d 689 (Ct.App.1992); **STATE ex rel REIMANN V CIRCUIT COURT FOR DANE COUNTY**, 214 Wis.2d 605,609 571 N.W.2d 385 ;
8. Mr. Schilling misconstrues Connie's testimony and speculates that she "*could have*" meant that she had gone back to my house on the 21<sup>st</sup> with officers on the search warrant dated the 21<sup>st</sup>, to get the clothes, contrary to the plain language of the testimony. This construction opposes the fact that Deputy Robinson himself testified that the clothes were brought to the Ironwood police station after her exam at the hospital, which was on the 20<sup>th</sup>, not Sunday the 19<sup>th</sup>, and not Tuesday the 21<sup>st</sup> –the date of the search warrant ;
9. If Mr. Schilling's *guess* were true that she '*could have*' gone back on the 21<sup>st</sup> with Deputy Robinson on a search warrant to get the clothing, why then were the clothes brought to the Ironwood Police? --- **Why would Connie need to bring the clothes to the Ironwood police station to give them to Deputy Robinson if she was ever at the house recovering the clothes with Deputy Robinson on a search warrant?!** -- It is made *glaringly obvious* by the sworn testimony of two Iron County Sheriffs Deputies that Connie and Mr. Lipske *were* misleading the court and **jury** ;

10. Mr. Robinson's testimony is clear: "I personally **DIDN'T** get clothes from out there, **NO.**" (Tr.317:2);
11. "One accused of subornation of perjury CANNOT shield himself with subjective defense that he had no knowledge of falsity of testimony when as a matter of fact *the evidence objectively gave him good reason to believe that such testimony was false,*" **State ex rel. Milwaukee Bar Ass'n v. Aderman,** 105 N.W.2d 284 11 Wis.2d 319; **State v. Koberstein,** 298 N.W. 205 238 Wis. 418. (*emphasis mine*);
12. Mr. Schilling argues that Mr. Lipkse may not have had the duty to correct Connie's denial of one of her criminal convictions at trial. A pre-trial hearing was held to determine how many convictions Connie had, what they were, and which ones were admissible. Mr. Lipkse was at this hearing, yet allowed her denial to go uncorrected. "...[I]f the evidence presented might create a false inference, the State has a duty to correct that inference even if it did not knowingly and intentionally create the inference." **Rohl v. State,** 279 N.W.2d 722 90 Wis.2d 18. Mr.Lipkse had the duty but failed to meet it. "Prosecutor has *a constitutional duty* to correct evidence he knows is false, even if he did not intentionally submit it." **Giles v. Maryland,** 386 U.S.66, 87 S.Ct. 793, 17 L.Ed.2d 737 (1967).
13. Testimonies and irrelevant physical evidence created false inferences that were allowed by Mr. Lipkse to go uncorrected at trial despite the fact that he had the duty to correct them. The jury never heard the state admit her conviction which involved lying to police in the past. Her criminal convictions would weigh against her credibility at trial. Also, by placing my son's *deer rifle* scope into evidence, Mr. Lipske created a false inference that the scope was relevant, where in fact the scope was *absolutely irrelevant*. Simply introducing this rifle scope into evidence falsely inferred that it *was* relevant ;
14. Mr. Lipkse's knowing use of false inferences, testimonies, and evidence shows an overall and pervasive intent to mislead the jury. This intent is relevant and supportive of my allegations that he suborned perjury during different portions of trial. [See 2 Wayne R. LaFave & Jerold H. Israel, Criminal Procedure § 19.5, at 534 (1984) ("This obligation [of the prosecutor to disclose] requires that it not suborn perjury, not use evidence known to be false, and not allow known false testimony of its witnesses to stand uncorrected.")]. All of this was routinely violated by Mr. Lipske ;
15. Though Connie and Mr. Lipkse stated that she had gone back *with the deputy to recover clothes*, Mr. Schilling admits that, "The most likely scenario of events. is that Connie Vargovich went out to the Miller home on Sunday, 1997, ALONE."(see pg.6,second paragraph, Motion To Dismiss) While I was in jail, Connie trespassed unsupervised in my home without my permission and was fully in control of the alleged 'crime scene' coming and going as she pleased prior to the execution of the search warrant two days later. Connie was free to remove, plant, alter and/or fabricate any and all (perceived) evidence at my home for two days prior to the search warrant! ;

16. The above proofs, facts, and law are such that a John Doe hearing is required, STATE ex. rel. REIMANN V CIRCUIT COURT FOR DANE COUNTY, 214 Wis.2d 605, 571 N.W.2d 385 (1997). The complained of incidents regarding Mr. Lipske's elicitation (subornation) of known false testimony (perjury) is a crime...*even an attempt to do so is a crime*. Mr. Lipske cannot shield himself by claiming he was 'not under oath', or that he had 'no knowledge' that the testimony was false where the objective evidence proved Connie's testimony to be false. REIMANN mandates a John Doe hearing in regards to Mr. Lipske, as I have presented evidence of *mv belief* that a *crime* has been committed. A John Doe Judge is not to choose between (perceived) conflicting facts and inferences, and the John Doe complainant *need not* set forth facts sufficient to support that a crime has probably been committed before he is entitled to a John Doe Hearing. WASHINGTON, 83 Wis.2d at 822, REIMANN, at 609 and 624. Mr. Schilling's Motion to Dismiss misses these critical points ;
17. In all due respect to Your Honor, to Mr. Schilling, and to Mr. Lipske, I have stated many times that It is Not My Intention To Cause Anyone Problems, Nor Do I Desire To Be Vindictive In Any Way. My sole purpose is to call attention to these issues hoping that Your Honor will acknowledge the fact that evidence makes it clear that I have been convicted on criminal lies, deception, and fraud. I offered (and still offer) to *dismiss* the entire John Doe petition if someone would obtain the confession ~~from~~ Connie that she falsely accused me. She will readily confess if someone would determinedly approach her concerning these issues, and it *should be* a crime that nobody has tried by now ;
18. Mr.Lipkse avoided addressing the 'Michelle Vargovich Issue' at trial whenever her name came up. Michelle is an ewewitness who was inside mv home at the exact time that Connie testified an assault was in progress. Michelle's truthful testimony would prove Connie's story to be utter fabrication and false. Mr. Lipske knows this because I repeatedly told him, the police, and my attorney about her prior to trial, which the police admitted at trial. Why did Mr. Lipske not call Michelle to trial to corroborate Connie's testimony? Because *he knew* she would expose Connie as a perjurer and false accuser ;
19. I repeatedly tried to obtain Mr. Lipske's cooperation prior to the John Doe petition, asking him to investigate Connie's perjury. But by repeatedly ignoring my letters, he left me with no other choice but to bring these legitimate issues by John Doe Petition. I did so only after it became obvious that Mr. Lipske was refusing to act as a 'minister of justice' by investigating the overwhelming evidence of Connie's perjury. Because of the evidence available to him prior to and after trial, he cannot shield himself from any charges by pleading ignorance to the fact that his 'client' (as he referred to Connie at trial), was lying on the stand time and time again. He himself elicited (suborned )some of the perjury. His *intent* was to deceive the court and jury, which answers the question of why he would later refuse to investigate the evidence that proves that Connie repeatedly committed perjury under oath ;

**I have presented clear showings and proofs that the allegations against Mr. Lipkse as contained in The John Doe Petition should NOT be dismissed, and that they are all true.**

In regards to Mr. Lipkse, I would hope that this court takes notice of the fact that Mr. Lipkse has a well-established history of misleading both the courts and clients alike. Though sanctioned and reprimanded severely several times for his illicit actions in two states, he continues on this course of conduct.

Though I have shown clearly that my allegations have merit, I acquiesce. I do so in a good faith effort to show that my intentions never have been and never will be to cause problems for anyone, but that I am trying desperately only to obtain much deserved, desired, and overdue justice in this case. I won't, however acquiesce concerning Connie Vargovich, whose long history of lying and falsely accusing others is well known. Her proven perjury resulted in my conviction and I will continue pursuing actions against her to the full extent of the law, unless and until she comes forward to confess fully and completely.

### **IN CONCLUSION?**

IN AND AS A GOOD FAITH SHOWING, ON THIS DATE OF AUGUST 4<sup>th</sup>, 2003 I RESPECTFULLY WITHDRAW ALL ALLEGATIONS AGAINST MARTIN J. LIPKSE AS CONTAINED IN THE JOHN DOE (WIS.STAT. 968.26) PETITION FILED UNDER AFFIDAVIT IN SEPTEMBER OF 2002 IN THE IRON COUNTY CIRCUIT COURT. I FURTHER REQUEST THAT THE HONORABLE JUDGE MADDEN DISMISS COMPLETELY THE CRIMINAL ASPECTS OF THE ALLEGATIONS RAISED BY MYSELF AGAINST MARTIN J. LIPKSE AS FOUND IN THE AFOREMENTIONED JOHN DOE PETITION.

I reserve my right to raise post-conviction and non-criminal aspects of the issues that pertain to the subject matter contained in the above named petition regarding Martin Lipske. I further reserve my right to raise or renew allegations of crime by Mr. Martin J. Lipkse upon revelation or discovery of new evidence going to level or degree of implication in the same, related, or different crimes against myself or others.

Thank You, Your Honor.

Sincerely,

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Donald R. Miller, John Doe Complainant  
#343005-2C, SCI-100 Corrections Dr.  
Stanley, WI 54768-6500

cc:pjm;pgs;mjl;rmd;ndm;wsc