

April 19, 2012

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There needs to be a law.....

Residents in the State of Montana cannot receive a fair trial or a fair sentencing when *Prosecutors* and *Probation Officers*, fabricate information. A bill needs to be drafted for the 2013 Legislature to make it unlawful for all public employees to make statements that are not true, especially when it affects people's lives. People in authority must be held accountable, making it a felony, if they fabricate their statements and investigations.

For example: During the closing statement from the trial for my son, Don, the Prosecutor told the jury that Don's DNA was all over his adoptive son's mattress - which was a total lie. During the trial the Crime Lab from Missoula testified that they had found fragments of skin cells, ("*skin cell fractions*"), that could have come from my son - but were not matched specifically to my son. The skin cells could also have come from someone else who has some of the same *skin cell fractions*.

The Crime Lab reported that the sperm DNA found on the mattress belonged only to the adoptive son. No sperm cells were a match to my son. However, the Prosecutor made it sound like my son's "DNA" was all over, confusing the jury right before they started their deliberations. No wonder the prison is full - Prosecutors are misleading the jurors into convicting people when there is no evidence presented at trial.

The Prosecuting Attorney also fabricated words during his closing statements concerning the young daughter. Words that she was too young to know or understand and did not use during her testimony at trial. The Prosecutor was acting in a vindictive manner by making false statements, against my son, for the jurors.

During the sentencing, the Probation Officer told the Court that she did the *pre-sentencing investigation (PSI)* and relied upon information from the County Attorney's office, instead of doing her own research. She used the misinformation from the Prosecutor as well as fabricating her own investigation.

The *pre-sentencing investigation (PSI)* is of extreme importance. This report from the investigation is given to the Judge and is the basis for recommending what the sentence will be for the convicted person. When this information is fabricated, a convicted person cannot receive a fair sentence. This PSI record will follow the person everywhere – prison, treatment, probation and in the community. The importance of the PSI cannot be understated.

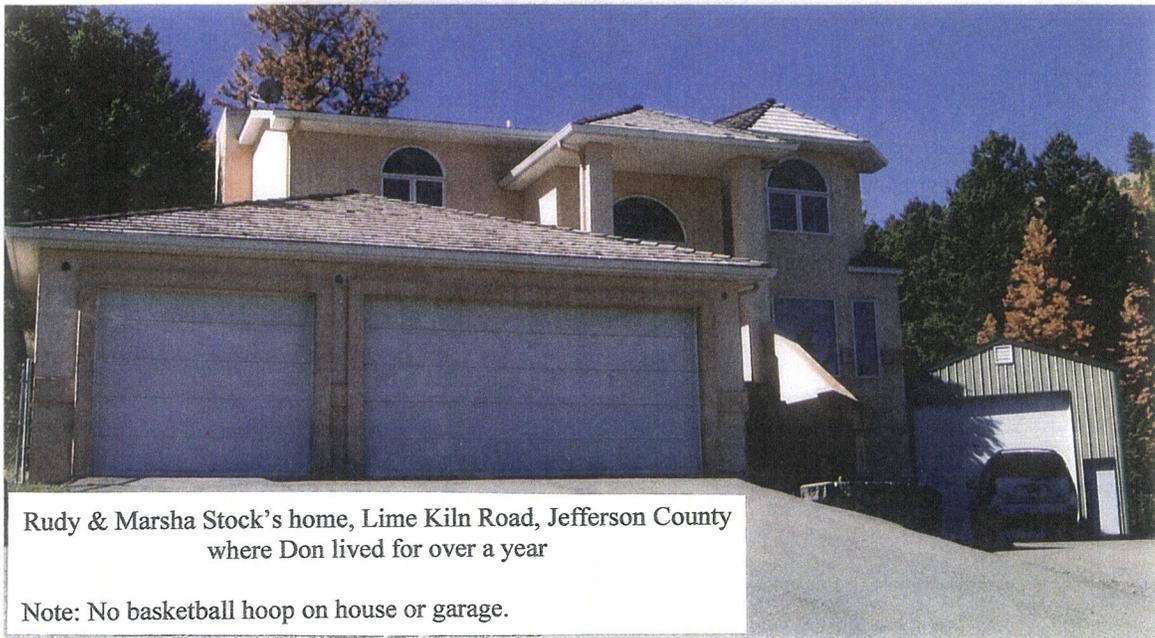
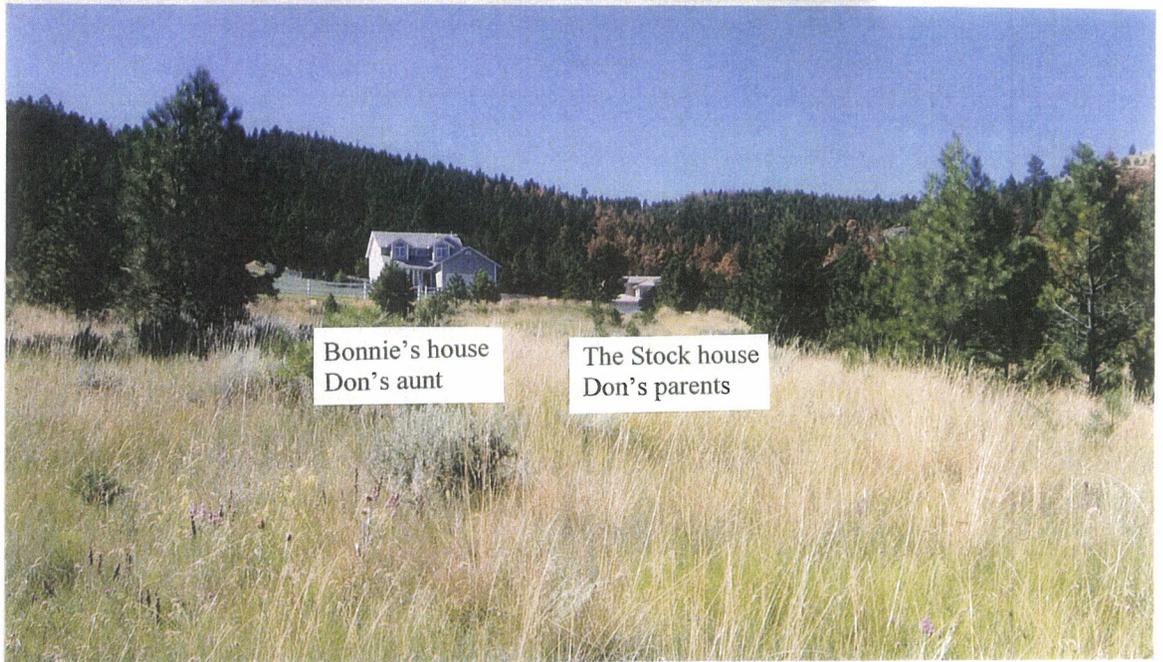
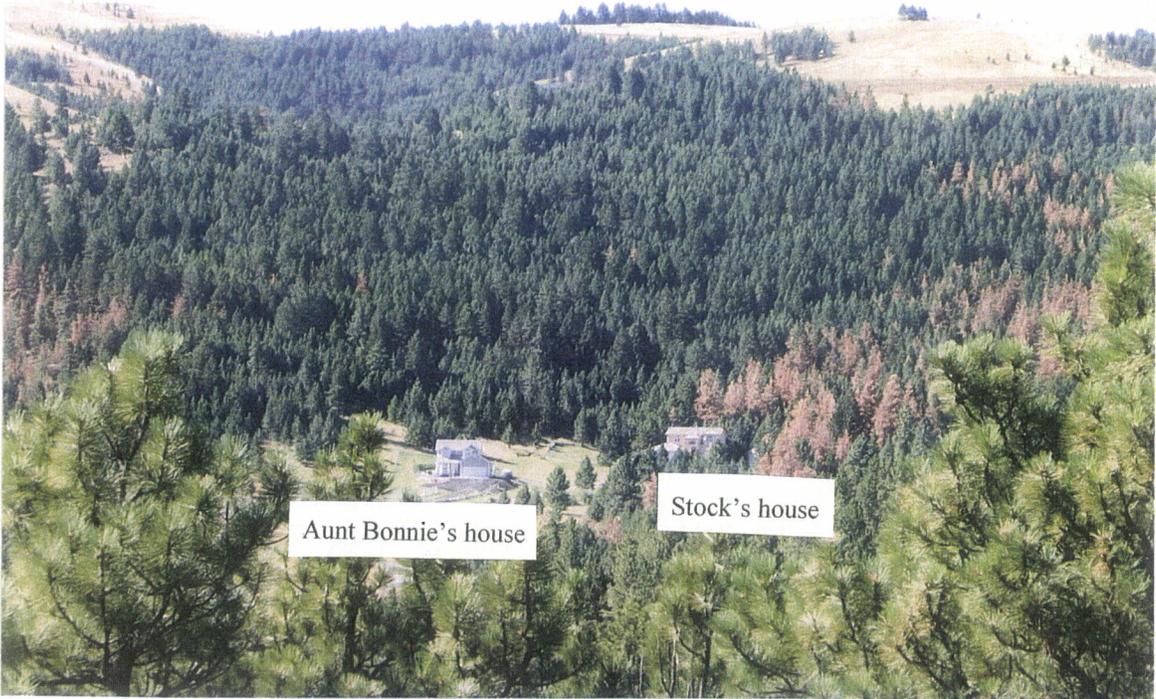
See the enclosed:

Sentencing Transcript of Proceedings for the following information contained in the PSI that was *fabricated as evidence* by the Probation Officer, Kathy Murphy during court testimony:

**“A”** (pages 45 – 48 and 50) Don's conduct concerns Kathy Murphy.

False and misleading testimony by Kathy Murphy was based upon hearsay from uninformed individuals and was proven to be inaccurate and admittedly incorrect. Ms. Murphy wrote in her investigative report and testified that boys were playing basketball at his parent's house up on Lime Kiln Road. She told the Court “there's a lot of houses up there and I assume bus stops” – neither is true. On the next page there are photographs showing the location of my salmon colored stucco house where Don had been living for more than a year. My sister's house is gray and white and is located in the meadow near mine. My sister has no children and no grandchildren. Please note that there are no basketball hoops on the front of my house or on the garage.

The Probation Officer did not even drive up to my house to see if this “neighbor” (a friend of the ex-wife) was reporting the truth about my son's conduct or trying to cause trouble. The “neighbor” lives in East Helena and could not possibly look out the window and see my house, which sits in the meadow, above Helena, next to Mount Ascension.



Rudy & Marsha Stock's home, Lime Kiln Road, Jefferson County where Don lived for over a year

Note: No basketball hoop on house or garage.

On May 1, 2009, Don's adoptive son accused Don of sexual abuse during the time that Don and his wife were in the middle of an acrimonious divorce. Don's adoptive son had been living with his sister, younger brother and Don. Judge Sherlock found their mother to be "*emotionally abusive*" to the three children and he removed them from her care. Don's adoptive son wanted to live with his biological mother and was very *unhappy* with the Court's decision. Don and his wife were in the middle of a divorce during the aforementioned accusation and his son was just helping out his mom – she apparently wanted to get Don out of their lives. We suspect that the mother was coaching her son with this accusation of abuse.

**"B"** (bottom of page 50) Don's living arrangement.

False testimony was given regarding Don's living arrangement with his parents on Lime Kiln Road in Jefferson County. On May 1, 2009, when Don was first accused of a crime, Kathy Murphy's testimony indicated that he was "*told* to live with his parents and not to remain at his home" after the children were removed from their home. Don made his own choice to live with his parents for his own safety because of his abusive wife and the contentious divorce and custody battle they were engaged in.

**"C"** (page 51, top of page 52) Evaluation by Dr. Robert N. Page.

In May, 2009, after Don was accused of abusing his son, it was Court ordered that Don take a Mental Health/Psychosexual Evaluation administered by Dr. Page. Ms. Murphy's testimony indicated that Dr. Page had given the Abel Assessment test to Don on two different occasions, when in fact, it was only administered one time. Christopher E. Quigley, the State's Forensic Examiner/Criminal Justice Specialist did administer this test to Don on two separate occasions. Subsequent testimony indicated that Don had taken the test *four* times. The more times a person takes a test, the better the results, says Kathy Murphy. However, Don did well on the test the *first* time he took it from Dr. Page. On the Abel Assessment, Don's profile indicated that his *sexual interest is only in adult females*. Interest in adult females is physiologically normal in adult males. "Therefore, Don is *not* viewed as having pedophilic interest which leaves his risk of sexually offending prepubescent children in order to gain sexual gratification *low*." "No signs of paraphilic interest surfaced either by history or on the Abel Assessment" when administered by Dr. Page or by Specialist Quigley.

**“D”** (pages 52 thru 54) DNA

Most important was DNA findings from the crime lab in Missoula. Court testimony stated that microscopic skin cell fractions consistent with Don's DNA were found on his son's mattress. As stated earlier, skin cells that were found *could* have come from Don but they were not matched specifically to Don. The skin cells could also have come from someone else who has some of the same *skin cell fractions*. The crime lab had Don's daughter's DNA but did not test the skin cells to see if they matched her. Also the skin cells could have belonged to Don's biological son, or to one of the children's friends when they visited, or any number of persons with *similar* DNA properties consistent with Don.

Don was also the parent who did the laundry, taking sheets out of the dryer and making the beds, which would likely transfer skin cells onto the bed. When sheets are removed from a bed, these skin cells fall onto the mattress pad, and when the pad is removed for laundering, cells fall onto the mattress. After using a mattress year after year, these skin cells accumulate and would be all over the mattress – this would be expected and is not a crime! Kathy Murphy agreed that sperm cells found on the son's mattress *matched only the son*. No sperm cells on the mattress were a match to Don.

**“E”** (page 53) Psychosexual Evaluation

Don was ordered to have a Psychosexual Evaluation after he was convicted. Ms. Murphy referred him to Christopher E. Quigley, the State's Forensic Examiner/Criminal Justice Specialist. When the results interpreted by Mr. Quigley did not agree with Kathy Murphy's position, she criticized the report and testified that “his report was such that it appeared he was working for the defense.” Kathy Murphy was acting in an arbitrary manner and does not have the expertise or the authority to question this psychosexual evaluation. If she had the education or credentials for giving this evaluation herself, she would not have referred Don to a specialist in the field.

Don maintains his innocence of all charges against him. His mother and I believe him, we support him, and we know that he is innocent. On page 62, Kathy Murphy has objected to us supporting our son and she states that “his parents stood blindly by him while he asserts his innocence.”

On pages 78 and 79, it states that “people like Chris Quigley and (Counselor) Andy Hudack, say that Don does not pose a danger and that *incarceration is not necessary based on their objective criteria that they tested him for.*” When a specialist interprets test results and the convicted person scores as a Tier 1, Low Risk offender, that person may not need to be sent to prison to protect society.

In preparing for sentencing, Don’s attorneys prepared a memorandum for the Court’s use. The request to the Court was for a *twenty year suspended sentence to the Department of Corrections, the condition of GPS monitoring while in treatment and that he not be allowed to enter the county where he was living.* The Probation Officer did not investigate the home where the attorneys suggested Don live while in treatment and being monitored, the treatment program itself, where he might work, or talk to the probation officer in the new community. The Probation Officer instead recommended a long harsh prison sentence to the Court.

Enclosure: Pages from Sentencing Transcript of Proceedings to support letter.

1 **MONTANA FIRST JUDICIAL DISTRICT COURT**  
2 **LEWIS AND CLARK COUNTY**

3  
4 CAUSE NO. ADC-2009-183

5 STATE OF MONTANA,

6 Plaintiff,

7 vs.

8 DONALD RUDOLPH STOCK,

9 Defendant.

10  
11 \*\*\*\*\*

12 **TRANSCRIPT OF PROCEEDINGS**

13 SENTENCING

14 Held at:

15 Lewis and Clark County Courthouse  
16 208 Broadway Street  
17 Helena, MT 59601  
18 June 11, 2010  
19 9:00 a.m.

20 **The Honorable Dorothy McCarter, Presiding**

21 \*\*\*\*\*

22 **Julie L. Sampson**  
23 **Court Reporter**  
24 **For The Record Reporting Services**  
25 **PO Box 176**  
**Butte, Montana 59703**  
**(406) 498-3941**

Questions asked by Defense Attorney

Answered by Probation Officer

5 Q. The second paragraph there. The whole  
6 paragraph talks about **conduct of Mr. Stock.** Where did  
7 that conduct take place, in your understanding?

8 A. What part of this? I'm sorry. I'm on Page  
9 5.

10 Q. On the second paragraph of Page 5.

11 A. Okay.

12 Q. And let me maybe back up. **Don has been living**  
13 **with his parents since these charges were brought,**  
14 **right?**

15 A. Right.

16 Q. **So what is your understanding of where this**  
17 **occurred?**

18 A. **At his parents' home.**

19 Q. Okay. **And where is his parents' home?**

20 A. **On Lime Kiln.**

21 Q. **Out on Lime Kiln Road?**

22 A. **Yeah.**

23 Q. Okay. **And do you know if it has a driveway or**  
24 **a basketball hoop in his house out on Lime Kiln Road?**

25 A. **Yes.**

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*For The Record Reporting Services*  
*(406) 498-3941*

1 Q. He does? You've been out there and seen it?

2 A. No, but you indicated that there was one

3 there.

4 Q. I never indicated that. I'm asking if you

5 know that personally.

6 A. Oh. I have not seen it, no.

7 Q. Lime Kiln Road, his parents' house is a pretty

8 remote location, right?

9 A. I believe it's up, yes, in the mountains.

10 Q. And so why would children be walking by that

11 kind of remote location?

12 A. There's a lot of houses up there and, uhm, I

13 assume bus stops.

14 Q. And so, you assumed that these two people that

15 called in lived around that area, too?

16 A. They said they did.

17 Q. They said they lived up by Lime Kiln Road?

18 A. Yes.

19 Q. And you have that documented some place?

20 A. Well, I wrote it down when they called.

21 Q. What their address was?

22 A. Uhm, I didn't write down their address, but

23 they gave me their first and last names and the names of

24 other people who have observed that.

25 Q. Did they tell you where they lived?

\*\*\*\*\*

1 A. The other people?

2 Q. No, where these two people lived.

3 A. If she did, if she said I'm a neighbor or a  
4 next door neighbor, I don't remember, but that was the  
5 impression I got from talking to her. She said  
6 something to indicate that.

7 Q. Okay. And if that's incorrect, that's just  
8 because you didn't follow through with your  
9 investigation, if she doesn't live up on Lime Kiln Road?

10 A. I really didn't care if she lived on Lime Kiln  
11 because she indicated that she saw the children there.  
12 And she has to live there if she saw this in the morning  
13 and the afternoon, as did her husband.

14 Q. She has to live on Lime Kiln Road?

15 A. Well, unless she is stalking them and there  
16 before school and after school, she has to live there.

17 Q. So when I looked up her address and it's 3937  
18 Remington, she doesn't live on Lime Kiln Road?

19 A. If the phone book is correct, Remington is not  
20 on Lime Kiln.

21 Q. Okay. So that's just an error in your  
22 reporting, then, or your understanding of where Don  
23 lives or where this conduct occurred?

24 A. No. She indicated that she was a neighbor,  
25 and that she and her husband both -- that he's usually

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1 home in the morning and he seen that happen, and she  
2 seen in it in the afternoon.

3 Q. But you believed this happened out at Lime  
4 Kiln Road, right?

5 A. If that's where he's living.

6 Q. Okay. And that's where your understanding of  
7 where he's living, right?

8 A. Right.

9 Q. And you didn't do any other follow-up  
10 investigation?

11 A. The PSI was already turned in at this point.  
12 I did forward this information to the County Attorney's  
13 office and to you and I provided you with her name and  
14 phone number.

15 Q. Okay. So the woman's name was Loendorf; is  
16 that correct?

17 A. Right.

18 Q. And you don't know the anonymous male's name,  
19 you don't know that source at all?

20 A. He did not provide me with that name. She did  
21 provide me with three other names.

22 Q. Well, I just want to know that -- in your  
23 report that's all I'm asking to strike. I don't want  
24 you to put any new information in it. So, in this  
25 report what was the woman's name now? Can you tell us

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1 A. That who does?

2 Q. The woman who submitted the affidavit?

3 A. I didn't notice the address.

4 Q. Okay. So you didn't view it so carefully,  
5 right?

6 A. Well, I didn't memorize it.

7 Q. But the address would have been important,  
8 wouldn't it?

9 A. Uhm, the fact that you told me that a woman  
10 trusted him. That was my big concern there, was that  
11 her children had been allowed to go to where he was and  
12 to play basketball.

13 Q. But you don't even know where the other folks  
14 live or where this conduct occurred that you're  
15 reporting in a document that will travel with Mr. Stock  
16 for the whole period that he's under supervision?

17 A. Uhm, I didn't ask her what her address was.  
18 (Nods head affirmatively)

19 Q. But you don't know where this -- I mean, after  
20 our discussion today, you don't know where this conduct  
21 occurred.

22 A. No. But when he was told to live with his  
23 parents and not to remain at his home I guess I did  
24 assume that he was living with his parents.

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20 our discussion today, you don't know where this conduct  
21 occurred.

22 A. No. But when he was "told" to live with his  
23 parents and not to remain at his home I guess I did  
24 assume that he was living with his parents.

25 Q. And so that's a yes, you don't know where this

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1     **conduct occurred?**

2             A.    Right, I don't know where that conduct  
3     occurred.

4             Q.    Okay.  The pretrial evaluation from Dr. Page,  
5     did you review **Dr. Page's** testimony at trial?

6             A.    His testimony at trial?

7             Q.    Did you understand that he had testified at  
8     **trial?**

9             A.    Yes, I understood that.  And I didn't have a  
10    written report of his testimony.

11            Q.    Okay.  And you said he took two Abels of Don  
12    at trial, two -- and **conducted two Abel evaluations?**

13            A.    **That's my understanding, yes, that he had two**  
14    **-- that he did two of those on him.**

15            Q.    **It didn't say that in Dr. Page's report, did**  
16    **it?**

17            A.    No.

18            Q.    **So where are you getting that Don took two**  
19    **Abel evaluations?**

20            A.    Well, **in determining how many he had, I asked**  
21    **the County Attorney's Office.**

22            Q.    **But you didn't read -- it's not in Dr. Page's**  
23    **report that he gave two Abel evaluations.**

24            A.    **It's not in his report that he gave him two,**  
25    **no.**

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1 Q. So if that information is incorrect, it's just  
2 because you were relying on the County Attorney rather  
3 than doing your own independent investigation?

4 A. Yes.

5 Q. Okay. Did you review the DNS -- DNA testimony  
6 from trial?

7 A. Uhm, I read through that -- all of the  
8 information that was provided in the County Attorney's  
9 Office, so, yes. And I don't know what specifically  
10 you're talking -- you're asking me.

11 Q. Well, you said you disagreed with  
12 Mr. Quigley's presentation of the DNA evidence at trial,  
13 the microscopic skin cells.

14 A. No. I felt that he was being biased or  
15 possibly trying to put Mr. Stock in a better light in  
16 that he minimized. He used those minimizing-type words  
17 rather than saying there was just plain -- there were  
18 skin cells or whatever.

19 Q. Well, if that's the truth, that those skin  
20 cells were microscopic skin cells that you couldn't  
21 see --

22 A. Yeah. He could say that, yes.

23 Q. Let me finish. If that's the truth, that that  
24 was the evidence presented at trial, that those were  
25 microscopic skin cells, how is that minimizing in a

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1 **report when he describes it as so?**

2 A. That was one example. I was trying to  
3 indicate the flavor of his report was such that it  
4 appeared he was working for the Defense.

5 **Q. But that was the testimony at trial, right,**  
6 **that those skin samples were microscopic?**

7 MS. HARRIS: Objection, Your Honor. I  
8 think that, as far as the testimony at trial, we  
9 can leave that when there's an actual transcript  
10 and that that will speak for itself. At this point  
11 I just want to make very clear on the record that  
12 Ms. Murphy hasn't had the ability to review a  
13 transcript because there isn't a complete  
14 transcript of the trial. So, I don't know how many  
15 questions Mr. Wright plans on asking about whether  
16 she's reviewed a transcript, but it's kind of hard  
17 to read something that doesn't exist.

18 MR. WRIGHT: May I continue?

19 **Q. (By Mr. Wright) So, you don't know whether or**  
20 **not that's minimizing or not because that could be the**  
21 **absolute truth of the proof that was presented at trial.**

22 A. I'm sure that probably it was indicated that  
23 there were, what, minuscule skin cells or whatever the  
24 qualifying word was. I'm sure that that probably did  
25 come from the crime lab.

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1 Q. Okay. And so it wouldn't be minimizing it if  
2 it was the truth?

3 A. No. But it would not be as non biased, I  
4 guess, from an evaluator who's supposed to be doing a  
5 report.

6 Q. But wasn't the point that they found just skin  
7 cells through their microscopic examination but they  
8 didn't find any semen cells of Mr. Stock during the DNA  
9 evaluation?

10 A. Right.

11 Q. Isn't that the primary point that Mr. Quigley  
12 is trying to make there?

13 A. I have no idea. I don't know what his primary  
14 point was.

15 Q. But you certainly have enough idea that he's  
16 minimized it.

17 A. Based on the whole rest of the report, yes.  
18 It wasn't just that one sentence.

19 Q. And then you reviewed through the video and  
20 you thought it was inappropriate for children.

21 A. Yes, I did.

22 Q. Okay. So if I told you that my daughter came  
23 home after viewing that video at school you would think  
24 it was inappropriate for a teacher to show that to her  
25 classroom?

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24 qualifying word was. I'm sure that that probably did  
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1 **victims?**

2 A. I'm sorry. Could you repeat that whole  
3 question again?

4 **Q. Well, I'm trying to understand your sentence**  
5 **recommendation, and you are saying it has nothing to do**  
6 **with his decision to go to trial?**

7 A. Correct.

8 **Q. If he had plead guilty would you have made a**  
9 **lower sentencing recommendation?**

10 A. No. I would make the sentencing  
11 recommendation based on all of those things that I  
12 indicated before, the -- we'd be in exactly the same  
13 place right now. He would have plead guilty rather than  
14 having been found guilty, the crime would stay the same,  
15 the effect on the victims would stay the same, the  
16 desire to protect society would stay the same.

17 **Q. And then can you clarify your comments that**  
18 **his parents stood blindly by him while he asserted his**  
19 **innocence?**

20 A. I'd be happy to. Because I've clarified  
21 really well in the other pertinent information  
22 indicating that the purpose for entering that in the  
23 PSI, and as you indicated earlier today, this PSI is  
24 going to follow him everywhere he goes, on probation, et  
25 cetera, when he's in treatment, whether it's at the

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1 and I want to make it very clear, that the State in  
2 no way is asking for this sentence because he went  
3 to trial, and I don't want Mr. Wright to, you know,  
4 try to make some kind of argument about that  
5 because that's not accurate. The State believes  
6 that the sentence is appropriate because of the  
7 offenses themselves. He has now been convicted of  
8 them. And what the victims have had to suffer,  
9 and, frankly, will have to suffer for the rest of  
10 their lives, they have a lot of work that they are  
11 going to have to do, and that's a result of what  
12 happened to them. And I think it's important that  
13 they know that the Court considers this serious and  
14 is willing to protect the victims in this case.

15 THE COURT: Thank you.

16 MS. HARRIS: Thank you.

17 THE COURT: Chad.

18 MR. WRIGHT: Thank you, Your Honor. As  
19 you know, we are in a difficult position because  
20 Don is maintaining his innocence and will be  
21 appealing the conviction. But I think what we  
22 would like to do here today is just point out that  
23 even the people who recognize the guilty verdict,  
24 and continue to recognize that, people like Chris  
25 Quigley and Andy Hudack, say that Don does not pose

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1 a danger and that incarceration is not necessary  
2 based on their objective criteria that they tested  
3 him for.

4 And it should be pointed out that Andy  
5 Hudack, in his letter, said that he would use  
6 extensive polygraph testing, and that that's part  
7 of his treatment program, and that's something that  
8 Ms. Murphy concurred was a beneficial part of  
9 treatment I think here today.

10 Uhm, we, too, do not believe that he  
11 needs to be incarcerated. He certainly needs to be  
12 excluded from this community -- we've seen  
13 the conflicts that happen in this community -- and  
14 we have proposed how to do that. And I think that  
15 that would provide for any safety concerns for the  
16 Johnson and Wakeland family, and also safety  
17 concerns for Don, as well. And under our  
18 recommendation, which is the 20 year suspended  
19 sentence, any misstep would put him in prison for  
20 the length of time that was recommended by Ms.  
21 Wakeland here today, as well.

22 I think the best option at this point,  
23 Your Honor, though, is that, as I saw through trial  
24 and we see here today, is that the opportunity for  
25 -- to let the system continue to work and to let

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