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April 11, 2012

James L. Kennedy  
Sheriff of Monroe County, Indiana  
301 N. College Ave.  
Bloomington, IN 47404

Re: The disciplinary proceedings against David Schalk, Cause Number 53S00-1104-DI-244

Dear Sheriff Kennedy:

I am sorry that Seth Pruden of the Disciplinary Commission has subpoenaed you to be deposed in Indianapolis. I looked up Rule 45 of the Indiana Rules of Trial Procedure. Here is what it says about your being required to go to Indianapolis for your deposition:

Rule 45 (D)(2) An individual may be required to attend an examination only in the county wherein he resides or is employed or transacts his business in person, or at such other convenient place as is fixed by an order of court.

That couldn't be any plainer. We don't have to go to Indianapolis for your deposition. I will gladly enter my appearance on your behalf and get the location of the deposition changed to your headquarters in Bloomington. Just say the word. I would be adequately compensated by not having to drive to Indianapolis and find a parking garage next Wednesday.

I don't think there is any good reason for taking your deposition. I was asked in an interrogatory to explain in detail why I put you on my witness list. My answer was "James Kennedy is the elected sheriff of Monroe County, Indiana. He can confirm that nothing in the Sheriff's Office suggests that my 1985 appointment as a deputy sheriff had been revoked prior to June 25, 2007, the day I met with Lisa Edwards at Arby's in Ellettsville."

Seth Pruden named as a witness Charles Braun, a staff attorney for the Law Enforcement Training Board. His phone number is 317-839-5191. I looked up the version of Title 5, Article 2 in effect in 1985, when I was appointed. Then, as now, unpaid deputies and deputies paid only for lake patrol duties had no statutory training requirements. I have not attended the Indiana Law Enforcement Academy but that has any bearing on my status as an unpaid deputy. Of course, I would need training or a waiver in order to wear the uniform of your office.

I acted with honor and integrity in the service of Monroe County in my capacity as the Bloomington City Chemist during the early 1980's. I spoke the truth in public in order to stop an ill-conceived plan to build a hazardous waste incinerator in Monroe County. It was a terrible idea. As you might recall, I was fired and the mayor was ordered to reinstate me by U.S. Department of Labor after that agency investigated and determined that I was unlawfully fired for protecting the environment. I settled with the City and my honest and capable assistant took charge of the lab. I remained very interested in protecting Monroe County from those who would contaminate it with toxic chemicals.

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Jim Young let it be known where he stood in my confrontation with the Westinghouse Corporation and the City of Bloomington by making me a deputy sheriff. I appreciated that vote of confidence very much, and I resolved to assert my authority if the need ever arose.

I also appreciated your not revoking my deputy status when we met in your office a few years ago. Since then, a trial court judge, the Attorney General's office, the Court of Appeals, and now the Disciplinary Commission have all piled on top of me. I knew the prosecutor and city narc squad would be angry, but I thought fairness and the rule of law would keep their retribution from going very far. I was wrong about that. There seems to be a widespread perception that we live in some sort of police state, where the police may disregard the laws of the land without legislative authorization or any obligation to explain themselves.

Seth Pruden went so far as to tell me that perhaps it is illegal for anyone in Indiana to encourage, facilitate, or participate in drug sting operations. He didn't see any problem with rampant official lawlessness and the selective prosecution of me. He said prosecutors have the discretion to prosecute, and not prosecute, whomever they please. That coming from the Disciplinary Commission is quite appalling. Prosecutors aren't allowed to grant themselves immunity. They are required to request special prosecutors whenever they break the law, even when they believe their transgressions are justified.

One irony of my present predicament is that I could have lured Brandon Hyde outside to sell a felony amount of drugs, had some helpers take him to the ground and fasten his hands behind his back, and called 911 for assistance. The citizen's arrest statute says "any person" is authorized to do that. How odd that Seth Pruden is trying to prove that I didn't have the right to encourage his cohort to take some of his dope to the police for a change.

Another irony is the fact that my efforts were instrumental in the police distancing themselves from Brandon Hyde and his serving some time for continuing to deal cocaine. The effort against Chad Pemberton failed in its purpose to coerce Pemberton to testify against Carlton White. I think he would have had to commit perjury in order to say anything helpful to the State. It did get him incarcerated on a dealing charge. The truly ironic part is that prosecuting me had absolutely nothing to do with the purpose of the marijuana prohibition. I was trying to save a man from a very lengthy prison sentence under our draconian drug laws, and prevent a fraud on the court by witnesses prepared to falsely testify that Brandon Hyde was not continuing to deal drugs while doing special favors for the police. Deterring me and other attorneys from exposing dealers just results in more marijuana being available on the market. The subjective motivations of law enforcement officers are usually not considered important; but be that as it may, my attackers criticizing my motives is surely an instance of the pot calling the kettle black.

Please let me know as soon as possible if you want me to have the deposition location changed to your headquarters in Bloomington. Thanks.

Yours truly,



David E. Schalk