

**BOARD OF PROFESSIONAL RESPONSIBILITY OF THE  
SUPREME COURT OF TENNESSEE**

*Complaint With Supporting Documents<sup>1</sup> Against  
District Attorney General James Dunn, Assistant District Attorney  
George Ioannides, and Assistant District Attorney Ashley McDermott*

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*a. D.A.G. James Dunn, A.D.A. George Ioannides, and A.D.A. Ashley McDermott knew or should have known that people with some knowledge of key circumstances would likely perceive a correlation between their prosecution of Lipton and his earlier allegation that Sevier County, Tennessee Sheriff Ronald L. Seals obstructed a DUI investigation .... 8*

*b. Rather Than Reinforce The Sanctity Of First Amendment Activities Expressly Encouraged By Tennessee Statutes and/or Protected By Our U.S. Constitution, And Avoid Exposing Sevier County As Well As Hamblen County, Tennessee To Civil Liability For Negligent Hiring, Negligent Training, and/or Negligent Employee Supervision, D.A.G. James Dunn, A.D.A. George Ioannides, and A.D.A. Ashley McDermott Advanced Improbable Allegations Of Criminal Activity Against Former Sevier County And Hamblen County, Tennessee Deputy Sheriff Mark P. Lipton, Which Charges Remained Riddled With Factual Inconsistencies, And Went Uncorroborated If Not Directly Contradicted By Forensic As Well As Other Objective Evidence Through Trial..... 11*

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<sup>1</sup> Complainants’ Exhibits A-P are supplied by CD with the complaint at hand. The exhibits are also accessible online at <https://www.dropbox.com/s/g2ly9hajx4awkkh/Cmplnts%20Ex%20A%20-%20P.pdf>

VI. D.A.G. James Dunn, A.D.A. George Ioannides, And A.D.A. Ashley McDermott Knowingly Acted In Derision Of Tennessee’s Rather Stellar Whistleblower/Political Participant/Witness Protection Laws As Well As The First Amendment Of Our U.S. Constitution..... 12

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**I. The Complainants**

**Plea for Justice Program** – The “Plea for Justice Program” (P4J) is a grassroots initiative to reform plea bargaining as it is presently instituted in America. Legal scholars and other commentators as well as activists have equated this plea bargaining with coercion, suggesting it exceeds the pressure lawfully imposed on defendants to plead guilty. While the problem impacts over-charged and outright guilty defendants, P4J is primarily a response to innocent defendants who plead guilty to avoid the risk of wrongful conviction and a lengthy jail or prison sentence. In addition to the corresponding “trial penalty” (*i.e.* the vast lengthening of sentences upon trial conviction as opposed to plea deal), P4J highlights the undue prospect of wrongful conviction faced by Americans who cannot afford criminal defense “dream teams”. So P4J addresses the unduly coercive aspects of plea bargaining, and the dynamics of wrongful convictions in America.

Learn more at <http://www.plea4justice.org>

**Golden Badge** – “Golden Badge” is an international union of current and former criminal law enforcement as well as correctional officers and public officials who were wrongfully disciplined, terminated, sued, or even prosecuted in apparent retaliation for their respective attempt(s) to fairly and impartially enforce law and regulations in accord with their professional obligations.

Learn more at <http://goldenbadge.tumblr.com>

**Tennessee State Community Council - Sevier County Division (TennSCC-SCD)** – TennSCC-SCD is a regional human rights organization geared for community policing and criminal justice system reform through anti-corruption initiatives. While its primary focus is criminal law matters, each TennSCC division addresses a wide variety of government misconduct allegations and public integrity concerns. The Sevier County Division of TennSCC serves residents of Sevier County, Tennessee and is also headquarters for the entire TennSCC.

TennSCC is part of a growing network of State Community Councils affiliated with POPULAR (Power Over Poverty Under Laws of America Restored), a national legal reform organization, committed to helping poor and other disadvantaged people access affordable and competent legal representation, important civil and criminal justice system reforms, as well as appropriate judicial oversight.

Learn more at <http://50states.ning.com/profile/TennStateCommunityCouncil>

## II. Our Complaint

Come now the Plea for Justice Program, Golden Badge, and the Tennessee State Community Council - Sevier County Division, hereinafter referred to as Complainants, pursuant to Tennessee Supreme Court Rule of Professional Conduct 8.4 (a), and allege that District Attorney General (D.A.G.) James Dunn, Assistant District Attorney (A.D.A.) George Ioannides, and Assistant District Attorney (A.D.A.) Ashley McDermott “violate(d) . . . the Rules of Professional Conduct, knowingly assist(ed) or induce(d) another to do so, (and/or did) so through the acts of another”. *See, Tenn. Sup. Ct. R. 8, RPC 8.4(a)*. [MISCONDUCT]. More specifically, Complainants contend that said lawyers and each of them in their respective role as D.A.G. or A.D.A., engaged in professional misconduct in that they knowingly disregarded their respective obligation to:

1. consider “what is at stake” in all criminal prosecutions (*as contemplated by Rule 1.1[5] of the Tennessee Supreme Court Rules of Professional Conduct*), including but not limited to those that (a). may precipitate a reduction in America’s ranks of trained, experienced criminal law enforcers based on improbable allegations against one or more of them, riddled with factual inconsistencies, and uncorroborated if not directly contradicted by forensic and other objective evidence; (b). suggest that for years the Sevier County, Tennessee Sheriff’s Department employed and armed a deputy sheriff prone to unprovoked violence and inclined to feign personal injury for profit, which tendencies apparently went undocumented until purportedly confirmed by the officer’s unprovoked, aggravated assault against his neighbor and corresponding lawsuit for injuries supposedly feigned with help from his fiancé, now wife<sup>2</sup>; (c). and/or deride state whistleblower/political participant/witness protection laws as well as the First Amendment of our U.S. Constitution. *See, Tenn.*

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<sup>2</sup> A.D.A. Ioannides commented to Mr. Lipton during cross examination that “Yeah. You were building a case that day, weren’t you?”, (*For the full related exchange, See, Trial Transcript p 586, lines 2-25, and p 587, lines 1-8*), which effort would have had to have been coordinated with his fiancé in advance given that she purportedly described related events as they transpired to a 911 dispatcher. *State of Tennessee v. Mark P. Lipton*, Cause No. CR15118 before the Circuit Court for Sevier County - Sevierville, Tennessee, *Trial Exhibit 507*.

*Sup. Ct. R. 8, RPC 1.1: COMPETENCE - Comment [5] - [Lawyer's Thoroughness Includes Considering "what is at stake"];*

2. contemplate the prudence or imprudence of plea bargaining and/or proceeding to trial based on improbable allegations of criminal activity triggering the pre-conviction termination of a Hamblen County, Tennessee Deputy Sheriff, which charges were riddled with factual inconsistencies and went uncorroborated if not directly contradicted by forensic as well as other objective evidence through trial, all in derision of Tennessee's whistleblower/political participant/witness protection laws as well as the First Amendment of our U.S. Constitution. *Cf, Tenn. Sup. Ct. R. 8, RPC PREAMBLE (10) - [Zealously Protect and Pursue Client's Legitimate Interests], 1.0(h) - [TERMINOLOGY - Reasonable Lawyer Conduct], 1.1: COMPETENCE - Comment [5] - [Lawyer Thoroughness Includes Considering "what is at stake"], 3.1: MERITORIOUS CLAIMS AND CONTENTIONS - Comment [1] - [Encouraging Findings of Reasonable Basis in Law and Fact and Avoiding Abuse of Legal Procedure];*
3. zealously "protect and pursue" the State's "legitimate interests" in avoiding (a). the termination of a trained, experienced deputy sheriff based on improbable allegations of criminal activity against him, riddled with factual inconsistencies and uncorroborated if not directly contradicted by forensic as well as other objective evidence; (b). the suggestion that for years the Sevier County, Tennessee Sheriff's Department employed and armed a deputy sheriff prone to unprovoked violence and inclined to feign personal injury for profit, which tendencies apparently went undocumented until purportedly confirmed by the officer's unprovoked, aggravated assault against his neighbor and corresponding lawsuit for injuries supposedly feigned with help from his fiancé, now wife; (c). and the derision of state whistleblower/political participant/witness protection laws as well as the First Amendment of our U.S. Constitution. *Cf, Tenn. Sup. Ct. R. 8, RPC PREAMBLE (10) - [Zealously Protect and Pursue Client's Legitimate Interests];* and
4. "... seek justice rather than merely to advocate for the State's victory at any given cost" as they are admonished to do in *State v. Superior Oil, Inc.*, 875 S.W.2d 658 (Tenn. 1994) and its progeny.

### **III. Introduction To Operative Facts And Relevant Rules Of Professional Conduct As Well As Other Substantive Law**

Mark P. Lipton is a former Sevier County and Hamblen County, Tennessee Deputy Sheriff, as well as a Plea for Justice Program (P4J) participant and member of both Golden Badge as

well as the Tennessee State Community Council – Sevier County Division. Lipton contends that after rejecting an offer to plead guilty on a charge of disorderly conduct, he proceeded to jury trial on the matter and was wrongfully convicted in 2012 for aggravated assault against a neighbor.<sup>3</sup> Fortunately the propriety or impropriety of Mr. Lipton’s underlying prosecution does not totally hinge on judicial assessments of the propriety or impropriety of that conviction.<sup>4</sup> “Implicit in (the conclusion that prosecutors do have some duty to serve ‘justice’) is a recognition that the criminal investigative and trial (as well as appellate/post-conviction) processes are fallible and that prosecutors therefore have some functions, beyond simply presenting the prosecutions’ case, that compensate for the fallibility of the process.”<sup>5</sup>

While Tennessee prosecutors are obliged “to be impartial in the sense that charging decisions should be based upon the evidence, without discrimination or bias for or against any groups or individuals”, *State v. Culbreath*, 30 S.W.3d 309 at 314 (Tenn. 2000), “. . . the basic principles underlying (Tennessee’s Rules of Professional Conduct) . . . include (a prosecutor’s) obligation zealously to protect and pursue (the state’s) legitimate interests”. *See, Tenn. Sup. Ct. R. 8, RPC, Preamble (10)*. Among them is Tennessee’s documented or otherwise apparent interest in avoiding (a). the termination of a trained, experienced deputy sheriff based on improbable allegations of criminal activity against him, riddled with factual inconsistencies and uncorroborated if not directly contradicted by forensic as well as other objective evidence; (b). the suggestion that for years the Sevier County, Tennessee Sheriff’s Department employed and armed a deputy sheriff prone to unprovoked violence and inclined to feign personal injury for profit, which tendencies apparently went undocumented until purportedly confirmed by the officer’s unprovoked, aggravated assault against his neighbor and corresponding lawsuit for injuries supposedly feigned with help from his fiancé, now wife; (c). and the derision of state whistleblower/political participant/witness protection laws as well as the First Amendment of our U.S. Constitution. *Cf, Tenn. Sup. Ct. R. 8, RPC PREAMBLE (10) - [Zealously Protect and Pursue Client’s Legitimate Interests]*. Yet, D.A.G. James Dunn, A.D.A. George Ioannides, and A.D.A. Ashley McDermott persisted in prosecuting the referenced Mark P. Lipton based on improbable allegations of criminal activity against him, riddled with factual inconsistencies and uncorroborated if not directly contradicted by forensic as well as other objective evidence through trial — all in derision of Tennessee’s

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<sup>3</sup> *See, State of Tennessee v. Mark P. Lipton*, Cause No. CR15118 before the Circuit Court for Sevier County - Sevierville, Tennessee, as of March 2012.

<sup>4</sup> Trials, appeals, and other post-conviction procedures simply fail to exonerate “a substantial number” of innocent criminal defendants in America. *See*, Gross, Samuel, R., How Many False Convictions Are There? How Many Exonerations Are There? in *Wrongful Convictions And Miscarriages Of Justice: Causes And Remedies In North American And European Criminal Justice Systems*, C. R. Huff & M. Killias Eds. (Routledge: March 2013, In Press). Electronic copy available at: <http://ssrn.com/abstract=2225420>

<sup>5</sup> Zacharias, Fred C. and Green, Bruce A., “The Duty To Avoid Wrongful Convictions: A Thought Experiment In The Regulation Of Prosecutors”, 89 *B.U.L. Rev.* 1 at 31 (2009).

rather stellar whistleblower/political participant/witness protection laws as well as the First Amendment of our U.S. Constitution. See, *U.S. Const. amend. I* and, for example, Tennessee's Whistleblower Protection Act, *Tenn. Code Ann. § 8-50-116 (2013)*; Tennessee's False Claims Act, *Tenn. Code Ann. § 4-18-105 (2013)*; Tennessee's Anti-SLAPP Act of 1997, *Tenn. Code Ann. § 4-21-1001 (2013)*; and *Cmplnt Exhibit A*.

#### **IV. A Tennessee Prosecutor's Obligation To Seek Justice Encompasses Reasonable Whistleblower/Political Participant/Witness Protection Among Other Compatible Goals**

Ironically, only months before the 2009 altercation that ostensibly ended Mark P. Lipton's law enforcement career, two law school professors noted that . . .

(a)s tort law has developed, prosecutors who fail to exercise reasonable care in performing their duties are immune from lawsuits brought by injured persons. This immunity eliminates civil liability as a mechanism for regulating prosecutorial conduct. It also impedes the development of alternative means of regulating prosecutors, because it encourages wrongfully convicted defendants to shift blame from prosecutors to other state actors who are potentially subject to liability. Prosecutors' participation in faulty convictions therefore is less likely to be exposed.

Prosecutorial immunity places an emphasis on self-regulation by prosecutors and their offices and, in theory, shifts the burden of external regulation to the disciplinary process. In the seminal decision establishing prosecutorial immunity, *Imbler v. Pachtman*, the U.S. Supreme Court assumed that attorney discipline would play a significant role in deterring prosecutorial misconduct. The Court observed that 'a prosecutor stands perhaps unique, among officials whose acts could deprive persons of constitutional rights, in his amenability to professional discipline by an association of his peers.'

Despite the Supreme Court's expectations, professional discipline has had little practical effect in constraining prosecutorial behavior that risks faulty convictions.

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Zacharias, Fred C. and Green, Bruce A., "The Duty To Avoid Wrongful Convictions: A Thought Experiment In The Regulation Of Prosecutors", 89 *B.U.L. Rev.* 1 at 11-12 (2009). (internal footnotes omitted).

The professors also observed that . . .

(t)o the extent . . . general ethical principles have the potential to constrain a broad range of unreasonable prosecutorial behavior, disciplinary agencies have never tapped into that potential. Many ethics codes forbid ‘conduct that is prejudicial to the administration of justice,’ but no jurisdiction has interpreted this prohibition with an eye toward developing prosecutorial standards. Language in the codes exhorting prosecutors to serve justice has been similarly ignored, largely because of the codes’ failure to define the meaning of ‘justice.’

*Id. at 12.* (internal footnotes omitted).

Fortunately, Tennessee’s legislature (I). has proclaimed its “. . . intent . . . to provide protection for individuals who make good faith reports of wrongdoing to appropriate governmental bodies”, [**Tennessee’s Anti-SLAPP Act of 1997, Tenn. Code Ann. § 4-21-1001 (2013)**]; (II). prohibits “. . . any rule, regulation, or policy preventing an employee from disclosing information to a government or law enforcement agency or from acting in furtherance of a false claims action . . .”, [**Tennessee’s False Claims Act, Tenn. Code Ann. § 4-18-105 (2013)**]; (III). encourages state employees “. . . to report verbally or in writing to their supervisor, department head, or other appropriate authority or entity, evidence of activity by a state agency or state employee or state contractor constituting violations of state or federal law or regulations, fraud in the operations of government programs, misappropriation of state or federal resources, acts which endanger the health or safety of the public or employees, and mismanagement of programs, funds, or abuses of authority”, [**Tennessee’s Whistleblower Protection Act, Tenn. Code Ann. § 8-50-116 (a)(1) (2013)**]; (IV). “declares that public servants best serve the citizens when they can be candid and honest without reservation in conducting the public’s business”, [**Tenn. Code Ann. § 8-50-116 (a)(2) (2013)**], and further (V). proclaims its “. . . intent . . . that state employees be free of intimidation or harassment when reporting to public bodies about matters of public concern . . .”, [**Tenn. Code Ann. § 8-50-116 (a)(3) (2013)**]. Moreover, Title 18 U.S.C. §241 criminalizes conspiracies to impede the “the free exercise or enjoyment” of U.S. constitutional and federal statutory rights. **Title 18 U.S.C. §241.**

Clearly the concept of “justice” as contemplated by *State v. Superior Oil, Inc.*, 875 S.W.2d 658 (Tenn. 1994) and its progeny, is inextricably intertwined with reasonable whistleblower/political participant/witness protection among other compatible goals. *See, U.S. Const. amend. I and, for example, Tennessee’s Whistleblower Protection Act, Tenn. Code Ann. § 8-50-116 (2013); Tennessee’s False Claims Act, Tenn. Code Ann. § 4-18-105 (2013); Tennessee’s Anti-SLAPP Act of 1997, Tenn. Code Ann. § 4-21-1001 (2013); and Cmplnt Exhibit A.* So the “Board of Professional Responsibility of the Supreme Court of Tennessee” need not be reticent in looking beyond the “SPECIAL RESPONSIBILITIES OF A PROSECUTOR” set forth at Tennessee Supreme Court Rule of Professional Conduct 3.8, to find that D.A.G. James Dunn, A.D.A. George Ioannides, and A.D.A. Ashley McDermott

“violate(d) . . . the Rules of Professional Conduct, knowingly assist(ed) or induce(d) another to do so, (and/or did) so through the acts of another” as the Complainants propose. *See, Tenn. Sup. Ct. R. 8, RPC 3.8* [SPECIAL RESPONSIBILITIES OF A PROSECUTOR], and *8.4(a)*. [MISCONDUCT]. To assist with that effort, the Complainants provide what they contend are the operative facts.

**V. The Operative Facts: Evidence That Mark Lipton’s Prosecution At The Behest Of Henry Sutton Was The Kind Of Reckless Use Of Tennessee’s Criminal Justice System That D.A.G. Dunn Reportedly Denounced And Would Not Tolerate With Regard To Sevier County, Tennessee Sheriff Ronald L. Seals —**

- a. D.A.G. James Dunn, A.D.A. George Ioannides, and A.D.A. Ashley McDermott knew or should have known that people with some knowledge of key circumstances would likely perceive a correlation between their prosecution of Lipton and his earlier allegation that Sevier County, Tennessee Sheriff Ronald L. Seals obstructed a DUI investigation**

It appears that Knoxville, Tennessee attorney David Wigler arranged for his then client, former Sevier County and Hamblen County, Tennessee Deputy Sheriff Mark P. Lipton, to undergo a polygraph examination on or about March 19, 2010. *See, Cmplnt Exhibit B*. The corresponding polygraph report reflects that . . .

(d)uring the pre-test interview, Mr. Lipton advised approximately 2 years ago he was employed as a Deputy Sheriff for the Sevier County Sheriffs (*sic*) Office in Sevierville, Tennessee. He stated the Sheriff of Sevier County was and continues to be Ronald L. Seals. Mr. Lipton indicated he was forced by Sevier County Sheriff Ronald L. Seals to surrender an individual he had arrested for driving under the influence of alcohol to Sevier County Sheriffs (*sic*) Office Supervisor Wayne Patterson against his will and was told by Supervisor Patterson if he did not surrender this individual, he and the Supervisor would lose their jobs. Mr. Lipton further advised he was required to turn over corresponding paperwork to the Sheriff the following day and he understood the arrest was taken out of the computer system so that it would appear the arrest never occurred.

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*Cmplnt Exhibit B, Polygraph Report, p 1.*

According to Mr. Lipton, several months to a year or so before he described with “No Deception Indicated”, (*See, Cmplnt Exhibit B*), the referenced DUI arrest, he reported it to the Tennessee Bureau of Investigation (TBI).<sup>6</sup> June 17<sup>th</sup>, 2009 print media reports indicate that “(t)he TBI received a request from District Attorney General Jimmy Dunn to investigate allegations that Sheriff Ron ‘Hoss’ Seals possibly interfered with a DUI arrest made by a deputy within his apartment (*sic*), according to TBI spokesperson Kristin Helm.” *See, Cmplnt Exhibits C & D.* Dunn’s investigation request was reportedly made on June 11, 2009. *See, Cmplnt Exhibits C & D.*

The Complainants have been advised that Lipton’s claim to have been thwarted on the aforementioned DUI arrest was deemed unsubstantiated by the TBI, supposedly due to lack of documentation and/or computer generated proof, though one or more witnesses reportedly corroborated his account of events.<sup>7</sup> Online is what seems to be a verbatim reproduction of an August 15<sup>th</sup>, 2009 article by “The Mountain Press” in which D.A.G. Dunn emphasizes that presumably Lipton “couldn’t tell investigators a specific date or time that (his disputed DUI arrest) occurred, and he couldn’t identify the subject.”<sup>8</sup> *Cmplnt Exhibit F.*<sup>9</sup> The article purportedly quotes Sheriff Seals attributing the investigation to “the same group of disgruntled citizens who have brought several lawsuits against the county and recently convinced a Sevier County grand jury to request an investigation into allegations that County Mayor Larry Waters and his uncle, Solid Waste Department Director Jack Waters, misused the county garage to repair personal vehicles”, and concluding “(t)hey are, as Mayor Waters said, a cancer on our community . . .”.<sup>10</sup> *Cmplnt Exhibit F.* Almost exactly three (3) months later, D.A.G. Dunn signed an indictment providing that . . .

“(t)he Grand Jurors for the State of Tennessee, having been duly summoned, elected, impaneled, sworn, and charged to inquire for the body of the County and State aforesaid, present that **MARK LIPTON** on or about **November 16, 2009**, . . . did

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<sup>6</sup> Lipton reports that he talked directly with TBI about the matter, apparently prompting the agency to secure authorization for a related investigation from D.A.G. Dunn. Lipton indicates that at the time he had voluntarily left the Sevier County and went to the Hamblen County, Tennessee Sheriff’s Department, and had been a criminal law enforcer for approximately seven (7) years.

<sup>7</sup> The Complainants have also been advised that to no avail, a witness came forth in 2012 to attest to the deliberate destruction of related paperwork. In addition, Sevierville, Tennessee mayoral candidate Kim Pierce claims to have information that would support Lipton’s account of relevant events. *See, Cmplnt Exhibit E.*

<sup>8</sup> Lipton explains that he made dozens of subsequent arrests, which is why he could not remember the exact date and/or time of the disputed D.U.I arrest. He admits having been unable to select “the subject” from a photo array provided him by the TBI, but reports having shared that person’s name with the agency and offered to provide it a picture of the gentleman in advertising for his real estate business.

<sup>9</sup> This content is as it appeared on February 3, 2014 at <http://www.smokykin.com/tng/getperson.php?personID=1150897&tree=smokykin#cite12>

<sup>10</sup> Mark Lipton is among several people derided as “Pityful (*sic*) Pathetic Losers” in an online “Sevier County Forum” at <http://www.topix.com/forum/county/sevier-tn/T60KB7025GNATBVN1> as of February 3, 2014.

unlawfully, feloniously and knowingly by the display of a deadly weapon, to wit” A PISTOL, cause the victim, HENRY STANTON (*sic*), to reasonably fear imminent bodily injury, in violation of T.C.A. §39-13-102, contrary to the statute, and against the peace and dignity of the State of Tennessee.

*See, Cmplnt Exhibit G.* (emphasis in original).

The Complainants have been advised, but have yet to independently confirm that a daughter of Lipton’s alleged victim, Henry Sutton, is part of Sheriff Seals’ family by marriage.

A November 23<sup>rd</sup>, 2009 media report confirms that Mr. Lipton was immediately fired by the Hamblen County, Tennessee Sheriff’s Department “after he was charged with aggravated assault on a neighbor”, *i.e.* Henry Sutton. *See, Cmplnt Exhibit H, p 1.* In covering Lipton’s related lawsuit against Sutton for defamation, the November 23<sup>rd</sup> media report notes that Lipton “recently made news after saying Sevier County’s Sheriff interfered with a DUI traffic stop he made while he was a deputy but those charges were unsubstantiated.” *See, Cmplnt Exhibit H, p 1.* Even at that time, Lipton publicly attributed Sutton’s ability to precipitate criminal charges against him to retaliation for the investigation he precipitated of Sheriff Seals. Referencing those criminal charges and Lipton, the media reported “(h)e feels it is retaliation by the Sheriff . . . retaliation Sheriff Ron Seals denies.” *See, Cmplnt Exhibit H, p 2.*

A.D.A. Ioannides referenced Lipton’s defamation lawsuit against Sutton and corresponding news coverage during Lipton’s trial for aggravated assault. *See, Cmplnt Exhibit I.* But there is even more compelling evidence that D.A.G. James Dunn, A.D.A. George Ioannides, and A.D.A. Ashley McDermott knew or should have known that people with some knowledge of key circumstances would likely perceive a correlation between their prosecution of Lipton and his earlier allegation that Sevier County, Tennessee Sheriff Ronald L. Seals obstructed a DUI investigation. *To wit:* In explaining why he saw “no reason to dismiss charges against Mark Lipton”, D.A.G. investigator, H. David Hutchison, reported in writing that “Lipton’s creditability (*writer may have meant “credibility”*) would be in question, based on allegations previously made by Lipton against the Sevier County Sheriff Ron Seals that were investigated and unfounded by the TBI.” *See, Cmplnt Exhibit J.*

**b. Rather Than Reinforce The Sanctity Of First Amendment Activities Expressly Encouraged By Tennessee Statutes and/or Protected By Our U.S. Constitution, And Avoid Exposing Sevier County As Well As Hamblen County, Tennessee To Civil Liability For Negligent Hiring, Negligent Training, and/or Negligent Employee Supervision, D.A.G. James Dunn, A.D.A. George Ioannides, and A.D.A. Ashley McDermott Advanced Improbable Allegations Of Criminal Activity Against Former Sevier County And Hamblen County, Tennessee Deputy Sheriff Mark P. Lipton, Which Charges Remained Riddled With Factual Inconsistencies, And Went Uncorroborated If Not Directly Contradicted By Forensic As Well As Other Objective Evidence Through Trial**

The Complainants are unaware of any public report(s) concluding that Sevier County, Tennessee Sheriff Ronald L. Seals did not obstruct a DUI arrest by his former deputy Mark P. Lipton. Instead, there is D.A.G. Dunn's related statement that "(w)e are not going to guess anybody into the penitentiary and we aren't going to guess anybody out of a job." *See, Cmplnt Exhibit F.* Yet, D.A.G. James Dunn, A.D.A. George Ioannides, and A.D.A. Ashley McDermott allowed Henry Sutton, a man with a history (*albeit relatively remote*) of suicidal and homicidal ideations, (*See, Cmplnt Exhibit K*), as well as his wife who, at the time, had recently pled guilty to illicit drug sales, (*See, Cmplnt Exhibit L*), help end Mr. Lipton's law enforcement career by portraying him as a well known menacing character (*among children anyway*), prone to unprovoked violence and to feign personal injuries — all without direct verification from disinterested sources, forensic evidence, or even consistent testimony by complaining witnesses. *See, State of Tennessee v. Mark P. Lipton*, Cause No. CR15118 before the Circuit Court for Sevier County - Sevierville, Tennessee, as of March 2012.

So as to avoid seeming unduly subjective, the Complainants will not attempt listing all the factual inconsistencies that have riddled the State's case since it issued a warrant to arrest Mark Lipton on November 17, 2009, until he was found guilty of underlying charges on March 23, 2012. Lipton's defense counsel noted at least some of those inconsistencies in person and by letter to A.D.A. Ioannides. *See, Cmplnt Exhibit M.* Many if not all of the inconsistencies clearly troubled the Honorable Richard R. Vance as he presided over Lipton's criminal trial. *See, Cmplnt Exhibit N.* They concern forensic expert, Dr. Michael J. Spence. *See, Cmplnt Exhibit O.* The inconsistencies, and his conviction despite them, so troubled and trouble Mr. Lipton that on April 18, 2012, he submitted to and passed with "No Deception Indicated" a polygraph examination "(t)o determine if (he) at any time exposed his weapon to a member of the Sutton family on 11/16/09". *See, Cmplnt Exhibit P.*

## **VI. D.A.G. James Dunn, A.D.A. George Ioannides, And A.D.A. Ashley McDermott Knowingly Acted In Derision Of Tennessee's Rather Stellar Whistleblower/Political Participant/Witness Protection Laws As Well As The First Amendment Of Our U.S. Constitution**

The late Professor Fred C. Zacharias and Professor Bruce A. Green explain that . . .

. . . most ethics codes address prosecutors' screening function solely through provisions forbidding prosecution on less than probable cause. These provisions fail to implement the intuition (accepted by many prosecutors) that it is unreasonable for a prosecutor to pursue a case when he has significant doubts about the defendant's guilt, even though a conviction might be obtained. Likewise, the codes seem to allow prosecutors to offer questionable evidence unless they 'know' it to be false, even though exploiting unreliable evidence may lead to an unjust conviction.

Zacharias, Fred C. and Green, Bruce A., "The Duty To Avoid Wrongful Convictions: A Thought Experiment In The Regulation Of Prosecutors", 89 *B.U.L. Rev.* 1 at 22 (2009). (internal footnotes omitted).

The Complainants contend that Tennessee Supreme Court Rules of Professional Conduct and other substantive law, including but not limited to the First Amendment of our U.S. Constitution, oblige prosecutors to reasonably determine when an arguable need to deter alleged criminal activity through conviction and corresponding punishment is outweighed by a patent state and/or federal government interest in encouraging good faith attempts to disclose serious public and/or private sector misconduct, as well as in reasonable whistleblower/political participation/witness protection. [See, *U.S. Const. amend. I and, for example, Tennessee's Whistleblower Protection Act, Tenn. Code Ann. § 8-50-116 (2013); Tennessee's False Claims Act, Tenn. Code Ann. § 4-18-105 (2013); Tennessee's Anti-SLAPP Act of 1997, Tenn. Code Ann. § 4-21-1001 (2013); and Cmplnt Exhibit A.] D.A.G. James Dunn, A.D.A. George Ioannides, and A.D.A. Ashley McDermott essentially transformed Sevier County, Tennessee's criminal justice system into a guilt or innocence crap shoot, apparently to provide a platform for vindicating improbable allegations of criminal activity against Mr. Lipton, which claims were riddled with factual inconsistencies and uncorroborated if not directly contradicted by forensic as well as other objective evidence through trial.<sup>11</sup> Mr. Lipton was accordingly convicted<sup>12</sup>, after having his life substantially derailed within*

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<sup>11</sup> It would seem that such allegations invite scrutiny of Mr. Lipton's entire service record as a criminal law enforcer and similar claims in hindsight that create civil liability exposure for Sevier County and Hamblen County, Tennessee.

<sup>12</sup> The Complainants are privy to multiple post-conviction statements of jurors who convicted Mr. Lipton. The overwhelming impression they convey is that the jury perceived Lipton as arrogant and evasive and

months of implicating Sevier County, Tennessee Sheriff Ronald L. Seals for obstruction of a DUI arrest.<sup>13</sup> Provisions for whistleblower, political participation, and/or witness protection may not have been expressly violated or even circumvented in the process, but they were certainly derided.

## VII. Conclusion

For the foregoing reasons, the Complaints respectfully request that D.A.G. James Dunn, A.D.A. George Ioannides, and A.D.A. Ashley McDermott and each of them be determined to have engaged in professional misconduct in that they knowingly disregarded their respective obligation to:

1. consider “what is at stake” in all criminal prosecutions (*as contemplated by Rule 1.1[5] of the Tennessee Supreme Court Rules of Professional Conduct*), including but not limited to those that (a). may precipitate a reduction in America’s ranks of trained, experienced criminal law enforcers based on improbable allegations against one or more of them, riddled with factual inconsistencies, and uncorroborated if not directly contradicted by forensic and other objective evidence; (b). suggest that for years the Sevier County, Tennessee Sheriff’s Department employed and armed a deputy sheriff prone to unprovoked violence and inclined to feign personal injury for profit, which tendencies apparently went undocumented until purportedly confirmed by the officer’s unprovoked, aggravated assault against his neighbor and corresponding lawsuit for injuries supposedly feigned with help from his fiancé, now wife; (c). and/or deride state whistleblower/political participant/witness protection laws as well as the First Amendment of our U.S. Constitution. *See, Tenn. Sup. Ct. R. 8, RPC 1.1: COMPETENCE - Comment [5] - [Lawyer’s Thoroughness Includes Considering “what is at stake”];*
2. contemplate the prudence or imprudence of plea bargaining and/or proceeding to trial based on improbable allegations of criminal activity triggering the pre-conviction termination of a Hamblen County, Tennessee Deputy Sheriff, which charges were riddled with factual inconsistencies and went uncorroborated if not directly contradicted by forensic as well as other objective evidence through trial, all in derision of Tennessee’s whistleblower/political participant/witness protection laws as well as the First Amendment of our U.S. Constitution. *Cf, Tenn. Sup. Ct. R. 8, RPC PREAMBLE (10) - [Zealously Protect and Pursue Client’s Legitimate*

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convicted him primarily for that reason. These very same traits are consistent with Mr. Lipton being a professional witness as a law enforcement officer and frustrated with being on trial for a crime after nearly a decade of apparently unblemished service as a criminal law enforcer.

<sup>13</sup> Mr. Lipton, who has a wife and six (6) children, has been unemployed or under-employed since November 2009, rendering futile his training and experience as a criminal law enforcer.

**Interests], 1.0(h) - [TERMINOLOGY - Reasonable Lawyer Conduct], 1.1: COMPETENCE - Comment [5] - [Lawyer Thoroughness Includes Considering “what is at stake”], 3.1: MERITORIOUS CLAIMS AND CONTENTIONS - Comment [1] - [Encouraging Findings of Reasonable Basis in Law and Fact and Avoiding Abuse of Legal Procedure];**

3. zealously “protect and pursue” the State’s “legitimate interests” in avoiding (a). the termination of a trained, experienced deputy sheriff based on improbable allegations of criminal activity against him, riddled with factual inconsistencies and uncorroborated if not directly contradicted by forensic as well as other objective evidence; (b). the suggestion that for years the Sevier County, Tennessee Sheriff’s Department employed and armed a deputy sheriff prone to unprovoked violence and inclined to feign personal injury for profit, which tendencies apparently went undocumented until purportedly confirmed by the officer’s unprovoked, aggravated assault against his neighbor and corresponding lawsuit for injuries supposedly feigned with help from his fiancé, now wife; (c). and the derision of state whistleblower/political participant/witness protection laws as well as the First Amendment of our U.S. Constitution. *Cf, Tenn. Sup. Ct. R. 8, RPC PREAMBLE (10) - [Zealously Protect and Pursue Client’s Legitimate Interests];* and
4. “. . . seek justice rather than merely to advocate for the State’s victory at any given cost” as they are admonished to do in *State v. Superior Oil, Inc.*, 875 S.W.2d 658 (Tenn. 1994) and its progeny.

*Respectfully Submitted,*

### **Plea for Justice Program**

by: *George Stokes, Sr.*

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George Stokes, Sr., P4] Co-administrator  
and President, Texas State Community  
Council - Abilene Division (TSCC-AD)

### **Golden Badge**

by: *Dr. Andrew D. Jackson*

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Dr. Andrew D. Jackson, Co-administrator

**and**

**Tennessee State Community Council - Sevier County Division**

by: *Catherine Gebhardt*

and *Clark K. King*

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Catherine Gebhardt, President

**and** Clark K. King, Due Process Advocate

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*\*Bar admissions limited to 7th Cir COA*