

# Montana National Organization for Women

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Judicial Standards Commission  
State of Montana  
901 S. Park, Suite 328  
Helena, MT 59620

VIA FAX

RE: File No. 13-054

Ladies and Gentlemen:

Below is Montana NOW and Pennsylvania NOW's Response to the letter by G. Todd Baugh to our joint Complaint filed with your office on September 24, 2013.

We have examined the comments made and find them factually incorrect and believe he does not completely understand what we are alleging.

## INTRODUCTION

In our initial Complaint, Montana NOW and Pennsylvania NOW alleged that Judge G. Todd Baugh violated the following three Ethics Rules:

- Rule 1.2 says **promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.**
- Rule 2.2 says **shall uphold and apply the law, and shall perform all duties of judicial office fairly and impartially.**
- Rule 2.3 says **shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, or engage in harassment, including but not limited to bias, prejudice, or harassment based upon race, sex, gender, ...socioeconomic status, ...**

We have now reviewed Judge Baugh's response to our Complaint. He acknowledges he violated Rule 1.2 but denies any violation of Rule 2.2 or 2.3. We believe he is in error and continues to violate these two rules in addition to Rule 1.2.

Judge Baugh claims in his response to our Complaint that he did not violate either Rule 2.2 or 2.3 because he "read" the materials presented to him and goes on to say, "Some phrases [of what I read] stuck in my mind, but it was inappropriate to repeat them."

Baugh does not state in his response to our Complaint exactly what he read or what was "inappropriate" before making his decision. His defense of the sentence alludes to the victim's video testimony and the written materials (not submitted to us). Based on what we have here before us, he appears to have at least partially based his biased decision on this video and written materials rather than the clear statement of the law as written. He denies the admonition of the prosecuting attorney for a 20-year sentence with 10 years suspended. He ignores the fact that Rambold and his attorney agree that the legally acceptable mitigating circumstances for less than the minimum required sentence did not apply in this case.

However, his statements from the bench and in public as well as the sentence he imposed on Stacey Rambold resulted in judicial impropriety via victim-blaming and bias towards a white, middle-class educated adult male resulting in a minimal 30-day sentence. He also ignored the law and showed bias against the victim's status.

In Judge Baugh's response, he says he "conferred with its [the Commission's] delegate in October. I agree to the Commission's suggested disposition." Then in an interview with the Associated Press on December 3, 2013 ([http://billingsgazette.com/news/national/ap-exclusive-judge-says-he-broke-ethics-code/article\\_1b683f48-dc7f-558b-bca9-5f482d3fb53f.html](http://billingsgazette.com/news/national/ap-exclusive-judge-says-he-broke-ethics-code/article_1b683f48-dc7f-558b-bca9-5f482d3fb53f.html)), Judge Baugh commented that a member of the state judicial ethics panel told him in October that he would be recommended for censure by the state Supreme Court over his comment. However, Judge Baugh did not name the member of the panel. We find this is similar to putting the "cart before the horse" since all evidence in this investigation has not been completed.

We are therefore filing this additional response. The following supports our initial Complaint of the violation of Rules 1.2, 2.2, and 2.3 based upon Judge Baugh's response. We are adding additional comments about this particular case. In addition, we include supporting information as to what other judges throughout the country have said in relation to adjudicating and sentencing in sexual assault cases in general. We believe that this supporting commentary from fellow judges backs up our concerns about the mishandling of this case.

## **JUDGE BAUGH'S VICTIM-BLAMING AND BIAS**

First, it appears to us that Judge Baugh is saying that victim blaming by others affected his decision to ignore the law. According to Rambold's attorney and Rambold, they both agreed on

record that none of the “special circumstances” allowing for ignoring the minimum sentence mandated by Montana law applied in this case. So what we see as a result is that Judge Baugh failed to properly perform his duties because he was using what “stuck in his mind” rather than the law. He disregarded the law on the age of consent and was not impartial in upholding and applying the law to protect 14-year old Cherice Morales and other potential victims of this rapist.

Second, Baugh admits to violating Rule 1.2 in that he failed to promote public confidence and failed to avoid impropriety in his statements and minimal sentencing of Rambold. This violation, in our opinion, is compounded with his violation of acting in an unbiased manner as described in Rules 2.2 and 2.3. Bias and prejudice, we believe is grounded in his use of a white, male privilege lens.

As we stated in the initial Complaint, “Judge Baugh's bias is clearly rooted in the child victim's (lower-income minor, Hispanic female) and the rapist's (middle-class adult, white male), socioeconomic status, age, race and gender.” The myths or biases can be seen when one view this decision through the lens of contrast:

1. Adults “know better” than children what is right and wrong.
2. Middle-class people are “more reliable” than lower income people. So, if something “bad” occurs, it is the fault of the lower-income person.
3. White people have more privilege than Hispanics. So, crimes committed against a Hispanic person are “lesser” crimes than those committed against a white person.
4. Females “ask for it.” Don’t blame the guy.

## **WHAT OTHER JUDGES SAY ABOUT SEXUAL ASSAULT**

In 2011, the National Judicial Education Program, a project of Legal Momentum and the National Association of Women Judges, published a 21-page report<sup>1</sup> on what judges who had attended a training program on adjudicating sexual assault cases in a fair and unbiased manner said they should know before sitting on the bench in a sexual-assault trial. There are 25 comments in this report. We have pulled a few of the comments from this report that we believe address the bias and mistaken procedures used by Judge Baugh in this particular case. Some of these comments are self-evident as they relate to this case. For the rest, we are presenting the

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<sup>1</sup>Lynn Hecht Schefran, Claudia Bayliff, Tracey Vris, Jillian Weinburger, Gemma Striker, Rachel Goot, Lauren Jamiol, & Lauren Sisler (2011). *Judges Tell: What I Wish I had Known Before I Presided in an Adult Victim Sexual Assault Case*. NYC: National Judicial Education Program, A project of Legal Momentum in cooperation with the National Association of Women Judges.

comments with background information and then commenting on how they relate to Judge Baugh's violations of these rules.

***Comment: The widespread misconception that rape is about sexual desire - rather than power and control - colors every aspect of the justice system's response to sexual assault.***

In 1992, Justice Richard Andrias, in his article *Rape Myths: A Persistent Problem in Defining and Prosecuting Rape*<sup>2</sup>, writes,

*"Rape myths are false and stereotyped views about rape, rape victims and offenders. Among the most common...is that [r]ape is an expression of sexual (albeit misplaced) desire."*

Judge Baugh claimed the girl "looked older than her chronological age." By implication, he was saying she both sexually desired AND could consent "like any consenting adult" to have sex with her teacher. Rather than looking at the power and control a teacher has over his student, he blamed the victim--a clear bias in his treatment of this case.

***Comment: Victims of stranger and non-stranger rape almost always sustain profound, long-lasting psychological injury.***

In this case, the victim committed suicide about two years after Stacey Rambold was charged with the rapes. To not have taken this into account when sentencing Rambold shows a serious lack of concern and impartiality towards the victim. This is important considering each delay in the initial trial was a result of the defendant's request for delay and the delays caused the victim psychological injury with peers, community and family. Again, this can be seen as a bias in sentencing and is relevant to Rule 2.2 in that Judge Baugh failed to take into account the effects of his initial decisions on the bench and therefore failed to appropriately apply the law and perform his duties fairly and impartially.

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<sup>2</sup> Hon. Richard T. Andrias, *Rape Myths: A Persistent Problem in Defining and Prosecuting Rape*, CRIMINAL JUSTICE, Summer 1992 at 2.

***Comment: The vast majority of sexual assaults are committed by someone the victim knows.***

The stereotyped image of a rapist is commonly thought of as a stranger jumping out of the bushes. In a study conducted by Drs. Patricia Tjaden and Nancy Thoennes in 2000<sup>3</sup>, most women who reported being sexually assaulted as a minor said they were raped by someone they knew:

*Only 14.3 percent of the women and 19.5 percent of the men raped before age 18 were raped by a stranger. In comparison, nearly half of the women and men (46.7 and 44.2 percent, respectively) raped before age 18 were raped by an acquaintance; about one-third (38.8 and 30.5 percent, respectively) were raped by a relative other than a spouse; and 15 percent of the women and 6.5 percent of the men were raped by a current or former intimate partner.*

Like the vast majority of sexual assault cases, Stacey Rambold knew and regularly interacted with Cherice Morales. He was her teacher. See the next comment as to how this common form of rape coupled with the “good guy” mentality used in sentencing Rambold is part of Judge Baugh’s bias and lack of impartiality.

***Comment: The typical rapist is neither a brutal stranger nor a “good guy” who had a bit too much to drink one night. Rather, he knows his victims, premeditates and uses little overt violence.***

Judge Baugh initially made statements from the bench about the victim’s chronological age when he sentenced Rambold. He then followed up with a comment to the press minimizing the rape by stating that “it wasn’t this forcible beat-up rape.” He then followed this bias and lack of impartiality up with a new response to our initial Complaint. He said that Rambold “did the morally right thing” in 2010 in accepting sexual offender treatment and then again “did the morally right thing” in agreeing to plead guilty to one count of sexual assault in 2013 after failing to follow through on the “rigorous and specialized” sex offender treatment program (see next comment on the need for such treatment). These statements are indicative of the “good guy” view that Judge Baugh holds toward Rambold.

Stacey Rambold was a teacher! As such, the families of his students expect that he (or any other teacher) would morally and ethically keep the children in his care safe from harm! Make no mistake; the victim in this case was a child. This is not a “good” guy who did the “morally right thing.” He sexually assaulted a child. What is morally right about this behavior?

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<sup>3</sup> Thoennes N., and P. Tjaden. [Full Report of the Prevalence, Incidence, and Consequences of Violence Against Women: Findings From the National Violence Against Women Survey](#). Washington, DC: U.S. Department of Justice, National Institute of Justice, November 2000, NCJ 183781.

According to David Lisak (2008)<sup>4</sup> and Lisak and Miller (2002)<sup>5</sup>:

*Until recently it was believed that rapists were overtly violent men who attacked strangers, used weapons, and inflicted brutal injuries. As awareness of the non-stranger rapist grew, and the trivializing terms “date rape” and “acquaintance rape” became popular, the stereotype evolved of a “nice guy” who drank too much, had some miscommunication with his date, did not premeditate a rape, and would not do it again. Moreover, the myth evolved that victims of non-stranger rape were not as harmed as victims of stranger rape.*

*We now have extensive research with incarcerated stranger and non-stranger rapists, as well as men in the general population who freely acknowledge committing acts that meet a conservative definition of rape and attempted rape--all against women they knew. Most of these rapes were never reported. These men feel free to acknowledge their acts because they do not consider themselves rapists--they are not violent men in ski masks...*

*[Snip].*

*As a consequence of these rapists’ modus operandi, the strategies they use to groom their victims and make them vulnerable often look like ordinary social interactions. It is only by looking carefully at the way these offenders operate, for example strategically and reportedly maneuvering their victims into an isolated situation where no one will intervene, that the pattern and premeditation become clear.*

Granting a minimal sentence is usually given for mitigating circumstances. None of what happened here was a mitigating circumstance; instead it was bias and use of myths about a “good” guy. In this case, judge both blamed the victim and essentially made the decision to ignore the minimum sentencing guidelines because Stacey Rambold - the adult responsible for the rape – is essentially a “good guy” since he allegedly made the correct “morally right” decision to plead guilty when the “morally right” decision would have been not to rape in the first place. This is a true violation of Rules 2.2 and 2.3 and is NOT a “fair, impartial judicial decision without bias and prejudice.”

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<sup>4</sup> David Lisak, *Understanding the Predatory Nature of Sexual Violence* (2008).

<sup>5</sup> David Lisak & Paul M. Miller, *Repeat Rape and Multiple Offending Among Undetected Rapists*, 17 VIOLENCE AND VICTIMS 73 (2002).

***Comment: Sex offender treatment is rigorous and specialized. Traditional outpatient psychotherapy is NOT appropriate for these types of offenders.***

As stated in the previous comment, bias towards the defendant in stating that he did the “morally right” thing by plea bargaining after he failed to cooperate shows further bias, particularly in the light of the need of rigorous, specialized treatment that MUST be followed for the safety of the community. Baugh’s statements that the violations of his sex offender treatment, including lack of attendance and violation of the treatment center’s stay-away orders shows bias, impropriety, and a lack of concern for the community.

The need for complete follow-through with the sex offender (as opposed to traditional psychotherapy) treatment is clearly expressed by Kurt Bumby (2006)<sup>6</sup>:

*It is essential that judges imposing treatment as a sentencing condition require specialized, rigorous sex offender treatment. Optimally, this treatment should be coupled with incarceration. Traditional, individual, insight-oriented counseling is never appropriate for sex offenders. This type of therapy aims to make individuals feel good about themselves. The therapist is used to dealing with people who want to change and may be unaccustomed to the capacity for total denial and manipulation that characterizes sex offenders. The result is that sex offenders treated with traditional psychotherapy by nonspecialists emerge even more rooted in denial and other thinking errors than when they began. Nonspecialized treatment does not create victim empathy or teach the offender to understand his own cycle of deviance and how to stop himself when he begins to relapse into that pattern.*

*Psychopaths should never be considered for any kind of treatment as it only makes them more skilled at offending.*

We believe that Bumby’s last sentence regarding treatment is particularly appropriate to this case and points to the inaccuracy and bias in Judge Baugh’s statement that Rambold was “morally right” in pleading guilty to the single charge of rape. Feeding into a sex offender’s *mea culpa* for failing to meet the demands of his treatment program only makes him “more skilled at offending.” Thirty-one days in jail both violates the law and violates the need for rigorous treatment.

We believe that Judge Baugh’s statement violates both Rule 2.2 and 2.3. It trivializes Rambold’s violations of his initial court-ordered treatment. It shows that the judge may have felt “sorry” for “good-guy” Rambold and therefore failed to uphold the law when he handed down a less than

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<sup>6</sup> Kurt Bumby, Center for Sex offender Management, UNDERSTANDING TREATMENT FOR ADULTS AND JUVENILES WHO HAVE COMMITTED SEX OFFENSES (2006) available at [http://www.csom.org/pubs/treatment\\_brief.pdf](http://www.csom.org/pubs/treatment_brief.pdf)

mandatory minimum sentence. It also indicates use of bias and lack of impartiality by essentially allowing Rambold to continue his predatory behaviors.

## **SUMMARY**

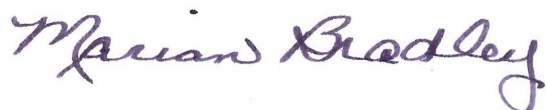
We believe that Judge Baugh violated all three rules (1.2, 2.2, and 2.3). He agrees with us that he violated Rule 1.2 in that he failed to promote public confidence and failed to avoid impropriety in his statement and minimal sentencing of Rambold.

We disagree completely in his refusal to acknowledge the violation of Rules 2.2 and 2.3. He did NOT uphold and apply the law relating to the sexual assault of a minor. He did not perform his duties fairly and impartially. His words, his conduct throughout this case and in the media, and his response to our Complaint continue to show bias or prejudice based upon race, sex, gender, and socioeconomic state.

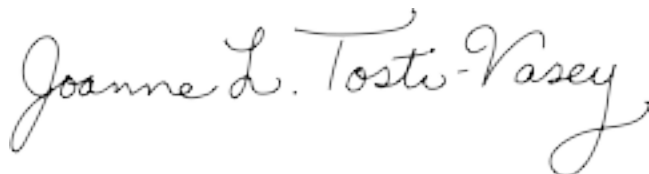
Judge Baugh's statements and behavior need more than a letter of censure which he claims he was told he would get by a member of the panel. Judge Baugh listened to the recommendations of the Defendant and not to the law. Again, with his Response to our Complaint, Judge Baugh continues to show that he has no regard for the law in the area of sexual assaults of minors and thus believes that censure is the correct remedy for the violation "only" Rule 1.2. He takes no responsibility whatsoever for violating Rules 2.2. and 2.3.

Hopefully the Judicial Standards Commission will do the morally and legally right thing, find that he violated all three rules, and remove Judge G. Todd Bench from the bench. And if the case is remanded back to the local court by the Supreme Court for resentencing, we hope that this case will be given to another judge.

Respectfully submitted,



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