FILED
AUG 15 2013
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

IN THE MATTER OF:
MICHAEL THORNSBURY, JUDGE
OF THE 30TH JUDICIAL CIRCUIT

COMPLAINT NO. 111-2013

REPORT OF JUDICIAL DISCIPLINARY COUNSEL

TO THE HONORABLE BRENT D. BENJAMIN, CHIEF JUSTICE, SUPREME COURT OF APPEALS OF WEST VIRGINIA:

Comes now Judicial Disciplinary Counsel pursuant to Rule 2.14 of the Rules of Judicial Disciplinary Procedure and submits this report on the above-referenced complaint filed by the Administrative Director of the Courts:

1. Rule 2.14(a) of the Rules of Judicial Disciplinary Procedure provides in pertinent part that "[w]hen the Administrative Director of the Courts has received information that a judge . . . (2) has been indicted or otherwise charged with a serious offense, [or] (3) has engaged or is currently engaging in a serious violation of the Code of Judicial Conduct" . . . , the Administrative Director may file a complaint with Disciplinary Counsel.

2. Rule 2.14(b) of the Rules of Judicial Disciplinary Procedure states in relevant part:

> Upon receipt of such complaint, Disciplinary Counsel shall conduct an immediate investigation and shall within ten days present to the Chief Justice of the Supreme Court a report indicating whether, in the opinion of Disciplinary Counsel, the integrity of the legal system has been placed into question by virtue of a judge's . . . (2) having been indicted or otherwise charged with a serious offense; [or] (3) having engaged in or currently engaging in a serious violation of the Code of Judicial Conduct. . . . The Office of Disciplinary Counsel shall attempt to provide reasonable notice to the judge prior to the filing of this report.

3. Rule, 2.14(c) of the Rules of Judicial Disciplinary Procedure states that upon receipt of Counsel's report, the Supreme Court shall make a determination whether probable cause exists. If such a finding is made, the Court may then direct Disciplinary Counsel to file formal charges with the Clerk of the Supreme Court or may remand the complaint to the Judicial Investigation Commission for further action.

4. If a judge has been indicted or otherwise charged with a serious offense or if probable cause is found to believe that a judge has engaged or is currently engaging in a serious violation of the Code of Judicial Conduct, the Court may also "order the judge not to hear any further civil or criminal matters or perform other judicial functions" during the pendency of the proceedings. *See* Rule 2.14(d) of the Rules of Judicial Disciplinary Procedure. Such suspension may be with or without pay. *Id. See also In re Fouty,* 229 W. Va. 256, 728 S.E.2d 140 (2012) (Court has the authority to suspend a judge with or without pay until the underlying disciplinary proceeding has been completed); *In re Grubb,* 187 W. Va. 228, 417 S.E.2d 919 (1992); and *In re Atkinson*, 193 W. Va. 258, 456 S.E.2d 202 (1995).

5. Rule 3.12 of the Rules of Judicial Disciplinary Procedure provides that the State Supreme Court "may consider the discipline of a judge for conduct that constitutes a violation of the Rules of Professional Conduct."

6. Rule 3.27 of the West Virginia Rules of Lawyer Disciplinary Procedure provides a mechanism for the Court to suspend a lawyer during the pendency of lawyer disciplinary proceedings when he or she has committed a violation of the Rules of Professional Conduct and poses a substantial threat of irreparable harm to the public. This Court has long recognized that "[t]he primary purpose of the ethics committee is not punishment,

but is the protection of the public and the reassurance of the public as to the reliability and integrity of attorneys." *Committee on Legal Ethics v. Ikner,* 190 W. Va. 433, 438 S.E.2d 613 (1993). This Court has also stated that because of the "enormous amount of trust that the public places in its lawyers, this Court must insure that the public's interests are protected and that the integrity of the legal profession is maintained." *See Office of Lawyer Disciplinary Counsel v. Albers,* 214 W. Va. 11, 585 S.E.2d 11 (2003).

7. On August 15, 2013, the Administrative Director of the Courts filed a complaint against Michael Thornsbury, Judge of the 30th Judicial Circuit (hereinafter "Respondent") alleging that he engaged in serious violations of the Code of Judicial Conduct (*See* Exhibit No. 1 attached hereto and made a part hereof by reference). A memorandum in support was attached to the complaint (Exhibit No. 1).

8. In the complaint and memorandum in support thereof it is alleged that Respondent had been indicted by a federal grand jury on two felony counts of conspiracy to violate a person's civil rights in violation of 18 U.S.C. § 241.

9. Upon the filing of the complaint by the Administrative Director of the Courts, the Judicial Investigation Commission began an immediate investigation which is still ongoing.

10. To date, the investigation has revealed the following facts concerning Respondent and the instant judicial ethics complaint:

    a. Respondent received his Juris Doctorate from the University of Kentucky in 1980. He became licensed to practice law in the State of West Virginia on September 30, 1980;

b. On or around January 10, 1997, Respondent became Judge of the 30th Judicial Circuit. He has served continuously in that capacity since that time. The 30th Judicial Circuit is comprised of Mingo County, West Virginia, and is a single judge Circuit;

c. On or about August 14, 2013, Respondent was indicted by a federal grand jury sitting in the United States District Court for the Southern District of West Virginia on two counts of conspiracy to violate the constitutional rights of the husband of a former employee in violation of 18 U.S.C. § 241 which provides:

> If two or more persons conspire to injure, oppress, threaten, or intimidate any person in any State, Territory, Commonwealth, Possession, or District in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same . . . . They shall be fined under this title or imprisoned not more than ten years, or both . . . .

The case is styled *United States v. Michael Thornsbury,* Criminal Case No. 2:13-cr-00208. A certified copy of the Indictment is attached hereto as Exhibit No. 2;

d. Specifically, the Indictment alleges that at one time, Respondent was involved in a relationship with his former secretary, K.W. through the first half of 2008. The alleged relationship ended in June 2008. In an effort to remove his romantic rival, Respondent purportedly conspired to plant illegal drugs on the husband's pickup truck; to have the husband arrested for thefts he did not commit; to commandeer a state grand jury and use it to oppress the husband and his family; and, after an incident in which the husband was the victim of an assault, to arrange for the husband, rather than the perpetrator, to receive an exceptionally harsh sentence. The alleged acts occurred in 2008 and 2009 and again in 2012 (See Exhibit No. 2). The majority of the alleged acts occurred while Respondent was cloaked in his judicial robe;

e. Respondent is also alleged to have violated state law by appointing the Mingo County Director of Emergency Services as foreperson of the grand jury looking into some of the matters involving the husband. Pursuant to W. Va. Code § 52-1-8(d), it is unlawful for such an officeholder to serve on a state grand jury.

f. Respondent was arraigned on the charges on August 15, 2013. Based upon information and belief, Respondent was given a personal recognizance bond; and

11. The undersigned has conferred with Chief Lawyer Disciplinary Counsel Rachael Fletcher Cipoletti who stated that based on the allegations contained in the Indictment she would petition the Court for his immediate suspension as well.

12. While the Judicial Investigation Commission continues to investigate this matter, the evidence uncovered thus far suggests that the integrity of the Court system has been called into question by virtue of Respondent's actions when viewed in light of the following Canons of the Code of Judicial Conduct:

Canon 1:

A judge shall uphold the integrity and independence of the judiciary.

A. An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing high standards of conduct, and shall personally observe those standards so that the integrity and independence of the judiciary will be preserved. The provisions of this Code are to be construed and applied to further that objective.

Canon 2:

A judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities.

A. A judge shall respect and comply with the law, shall avoid impropriety and the appearance of impropriety in all of the judge's activities, and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

B. A judge shall not allow family, social, political, or other relationships to influence the judge's judicial conduct or judgment. A judge shall not lend the prestige of judicial office to advance the private interests of the judge or others; nor shall a judge convey or knowingly permit others to convey the impression that they are in a special position to influence the judge. . . .

Canon 3:

A judge shall perform the duties of judicial office impartially and diligently.

A. Judicial duties in general. The judicial duties of a judge take precedence over all the judge's other activities. The judge's judicial duties include all the duties of the judge's office prescribed by law. In the performance of these duties, the following standards apply.

B. Adjudicative responsibilities.

(1) A judge shall hear and decide matters assigned to the judge except those in which disqualification is required.

(2) A judge shall be faithful to the law and maintain professional competence in it. A judge shall not be swayed by partisan interests, public clamor, or fear of criticism. . . .

(5) A judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, including but not limited to bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation, or socioeconomic status, and shall not permit staff, court officials and others subject to the judge's direction and control to do so.

(7) A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law. A judge shall not initiate, permit or consider ex parte communications, or consider other communications made to the judge outside the presence of the parties concerning a pending or impending proceeding.

(11) A judge shall not disclose or use, for any purpose unrelated to judicial duties, nonpublic information acquired in a judicial capacity.

C. Administrative responsibilities.

(1) A judge shall diligently discharge the judge's administrative responsibilities without bias or prejudice and maintain professional competence in judicial administration, and should cooperate with other judges and court officials in the administration of court business.

(2) A judge shall require staff, court officials, and others subject to the judge's direction and control to observe the standards of fidelity and diligence that apply to the judge and to refrain from manifesting bias or prejudice in the performance of their official duties.

(3) A judge with supervisory authority for the judicial performance of other judges shall take reasonable measures to assure the prompt disposition of matters before them and the proper performance of their other judicial responsibilities.

(4) A judge shall not make unnecessary appointments. A judge shall exercise the power of appointment impartially and on the basis of merit. A judge shall avoid nepotism and favoritism.

E. Disqualification.

(1) A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where:

(a) the judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of disputed evidentiary facts concerning the proceeding. . . .

Canon 4:

A judge shall so conduct the judge's extra-judicial activities as to minimize the risk of conflict with judicial obligations.

A. Extra-judicial activities in general. A judge shall conduct all of the judge's extra-judicial activities so that they do not:
(1) cast reasonable doubt on the judge's capacity to act impartially as a judge;
(2) demean the judicial office; or
(3) interfere with the proper performance of judicial duties.

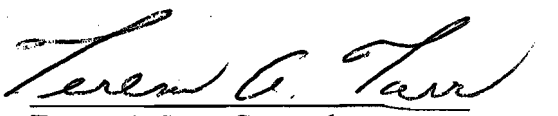
(11) The evidence uncovered thus far also indicates that the integrity of the legal profession has been called into question by virtue of Respondent's actions when viewed in light of the following Rules of Professional Conduct:

Rule 8.4 Misconduct.

It is professional misconduct for a lawyer to:
(a) Violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
(b) Commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;
(c) Engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
(d) Engage in conduct that is prejudicial to the administration of justice.

Based upon the foregoing, the undersigned avers that there is probable cause to believe that Respondent has engaged in serious violations of Canons 1, 2A, 2B, 3A, 3B(1), 3B(2), 3B(5), 3B(7), 3B(11), 3C(1), 3C(2), 3C(3), 3C(4), 3E(1) and 4A of the Code of Judicial Conduct The undersigned, having reported to the Chief Justice pursuant to Rule 2.14 of the Rules of Judicial Disciplinary Procedure, respectfully requests that this matter be reviewed by the Court and that if it finds probable cause that such action be taken as is deemed fit and proper in this case pursuant to Rule 2.14(c) of the Rules of Judicial Disciplinary Procedure. The undersigned further recommends that, upon a finding of probable cause, the Court suspend Respondent from his judicial office without pay during the pendency of the proceedings because of the serious nature of the charges, the fact that the majority of the alleged acts occurred while Respondent was cloaked in his judicial robe and to ensure the public's continued faith in the integrity, independence and impartiality of the judicial system in West Virginia. The undersigned also respectfully requests that this Court suspend the Respondent's license to practice law in the State of West Virginia during the pendency of these proceedings to safeguard the integrity of the legal profession.

Respectfully submitted,



Teresa A. Tarr, Counsel
Judicial Investigation Commission
WV Bar I.D. No. 5631
City Center East Suite 1200A
4700 MacCorkle Avenue SE
Charleston, WV 25304
(304) 558-0169

Delivered by hand to: Judicial Investigation Commission Post Office Box 1629 Charleston, West Virginia 25326	Complaint No.: 111-2013 Date filed: August 15, 2013

BEFORE THE JUDICIAL INVESTIGATION COMMISSION OF WEST VIRGINIA

COMPLAINT CONCERNING A JUSTICE, CIRCUIT JUDGE, FAMILY COURT JUDGE, MAGISTRATE, MENTAL HYGIENE COMMISSIONER, JUVENILE REFEREE, SPECIAL COMMISSIONER OR SPECIAL MASTER.

NAME AND ADDRESS OF JUDICIAL OFFICER:

Circuit Judge Michael Thornsbury
Mingo County Courthouse
75 E. Second Avenue
Williamson, WV 25661

NATURE OF COMPLAINT: (Give complete details with names and specific dates. If additional space is needed, continue on Page Two of this form. Copies of any pertinent documents, letters, or other materials which you refer to in this complaint, may be attached at the time of filing.)

TYPE OR USE BLACK OR DARK INK ONLY - DO NOT USE A PENCIL!

Pursuant to the provisions of Rule 2.14 of the Rules of Judicial Disciplinary Procedure, this complaint is filed upon information received that 30th Judicial Circuit Judge Michael Thornsbury has been indicted by a federal grand jury for serious offenses, namely, two alleged violations of Title 18 United States Code, Section 241: conspiring to violate a person's civil rights. Each of these charged offenses are felonies that, upon conviction, could result in a fine of not more than $10,000, or imprisonment for not more than ten years, or both.

YOUR NAME AND ADDRESS:

Steven D. Canterbury
Administrative Director
Supreme Court of Appeals of West Virginia
Building 1, Room E-100, State Capitol
Charleston, WV 25305

TELEPHONE NO.: (304) 558-0145

The attached Affidavit must be signed by you before a Notary Public as a part of this complaint. Please mail complaint to the address shown at the top of this page.

MEMORANDUM IN SUPPORT OF COMPLAINT CONCERNING
CHIEF JUDGE MICHAEL THORNSBURY

In a two count federal indictment, filed in United States District Court for the Southern District of West Virginia on August 14, 2013, the grand jury charged Michael Thornsbury, Circuit Judge for the 30th Judicial Circuit, with two felony violations of Title 18, United States Code, Section 241: conspiracy to violate a person's civil rights. Conviction upon each of these charges can result in a fine of not more than $10,000, imprisonment for not more than ten years, or both.

The indictment alleges that in 2008 and 2009, and again in 2012, Circuit Judge Michael Thornsbury engaged in criminal conspiracies to violate the constitutional rights of victim R.W., using the authority of the police, the state grand jury, and the courts. The indictment further alleges that R.W. was the husband of Judge Thornsbury's secretary, with whom Judge Thornsbury had an extramarital relationship. The indictment further alleges that Judge Thornsbury conspired to plant illegal drugs on R.W's pickup truck; to have R.W. arrested for thefts he did not commit; to commandeer a state grand jury and use it to oppress R.W. and his family; and, after an incident in which R.W. was the victim of an assault, to arrange for R.W., rather than the perpetrator, to receive an exceptionally harsh sentence.

AFFIDAVIT

STATE OF WEST VIRGINIA

COUNTY OF KANAWHA, ss:

This day personally appeared before the undersigned authority, a Notary Public in and for the State and County aforesaid, Steven D. Canterbury, Administrative Director of the West Virginia Supreme Court of Appeals, who swears or affirms that the statements contained in the foregoing Complaint are true except as to those stated to be upon information, and as to those statements, he believes them to be true.

Steven D. Canterbury
Administrative Director
Complainant

Taken, subscribed, and sworn to before me this 15th day of August, 2013.

My commission expires 12-14-2017.

OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRGINIA
JOAN MULLINS
West Virginia Supreme Court of Appeals
Building 1, Room E-100, 1900 Kanawha Blvd. E.
Charleston, WV 25305
My commission expires December 14, 2017

Notary

SEALED

FILED

AUG 14 2013

TERESA L. DEPPNER, CLERK
U.S. District Court
Southern District of West Virginia

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON GRAND JURY 2012
AUGUST 13, 2013 SESSION

UNITED STATES OF AMERICA

v.

CRIMINAL NO. 2:13-cr-00208
18 U.S.C. § 241

MICHAEL THORNSBURY

INDICTMENT

The Grand Jury charges:

Summary

1. In 2008 and 2009, and again in 2012, defendant, Circuit Judge MICHAEL THORNSBURY ("Judge THORNSBURY"), engaged in criminal conspiracies to violate the constitutional rights of victim R.W., using the authority of the police, the state grand jury, and the courts. R.W. was the husband of Judge THORNSBURY's secretary, with whom Judge THORNSBURY had an extramarital relationship. Judge THORNSBURY conspired to plant illegal drugs on R.W.'s pickup truck; to have R.W. arrested for thefts he did not commit; to commandeer a state grand jury and use it to oppress R.W. and his family; and, after an incident in which R.W. was the victim of an assault, to arrange for R.W., rather than the perpetrator, to receive an exceptionally harsh sentence.

A TRUE COPY CERTIFIED ON

AUG 15 2013

TERESA L. DEPPNER, CLERK
U.S. District Court
Southern District of West Virginia

By _____ Deputy

Count One
(Conspiracy Against Rights)

2. Beginning in or around 1997 and at all relevant times, defendant Judge THORNSBURY was the sole Circuit Judge of West Virginia's Thirtieth Judicial Circuit, a single-county circuit consisting of Mingo County, West Virginia.

3. From in or about January 2008 or earlier, through in or around the spring of 2009, K.W. was a female employee who worked as THORNSBURY's secretary.

4. At all relevant times, R.W. was K.W.'s husband and was employed by H. Coal Co. at a coal mining facility in Mingo County.

5. From in or about 2007 through in or about early 2010, Trooper Brandon Moore ("Tpr. Moore") was a member of the West Virginia State Police (WVSP) assigned to duty in Mingo County, West Virginia. Tpr. Moore was assigned to Mingo County at the beginning of his career in the WVSP. From the time Tpr. Moore began working in Mingo County, THORNSBURY purposely cultivated a relationship with Tpr. Moore that allowed THORNSBURY to influence Tpr. Moore's performance of his official duties and his use of his authority as a member of the WVSP.

6. At all relevant times, Jarrod Fletcher ("Fletcher" or "Foreperson Fletcher") was a close friend of Judge THORNSBURY, as well as Mingo County's Director of Homeland Security and Emergency Management. In or about early 2008, Fletcher and Judge THORNSBURY became partners, along with a third partner (the "Third Partner") in a business called Williamson Renaissance Development Inc., which was created to acquire and manage commercial real estate in and around Williamson, Mingo County, West Virginia. In or about May 2008, Fletcher and Judge THORNSBURY, along with the Third Partner, jointly borrowed approximately $1.6 million from Community Trust Bank, Inc., and approximately $200,000

from the Bank of Mingo. In or about late 2008 and the first half of 2009, Fletcher and Judge THORNSBURY were also joint owners of a wine shop in Williamson, Mingo County, West Virginia. The business relationship between Fletcher and Judge THORNSBURY was not widely known until mid 2009.

7. At all relevant times, Jeff Cline ("Cline") was a resident of Mingo County, West Virginia, and a close friend and confidant of Judge THORNSBURY.

8. From approximately in or about 2008 through approximately in or about January 2012, Eugene Crum ("Magistrate Crum") was a magistrate for the Thirtieth Judicial Circuit in Mingo County, West Virginia, and had a close personal and political relationship with Judge THORNSBURY.

9. At all relevant times, Michael Sparks ("Prosecuting Attorney Sparks" or "Sparks") was the Mingo County Prosecuting Attorney.

10. At all relevant times, D. B. & C., Inc. ("DBC, Inc."), was a West Virginia corporation with its headquarters in Justice, West Virginia, doing business as a general contractor primarily for customers in the mining industry. At all relevant times, DBC, Inc.'s president and custodian of records was H.E., who was the nephew of R.W.

11. At all relevant times, R.B., Inc., was a West Virginia corporation with its headquarters in Mingo County, West Virginia, which, among other things, refurbished used mine-roof drill bits for various coal mines in and around Mingo County, West Virginia, so that the bits could be reused. R.B., Inc. was owned and operated by D.B., who was the brother-in-law of R.W.

The Romantic Relationship

12. In or about the first half of 2008, Judge THORNSBURY initiated a romantic relationship with K.W., his secretary. On numerous occasions in or about the first half of 2008, Judge THORNSBURY and K.W. engaged in intimate physical contact. On numerous occasions in or around the first half of 2008, Judge THORNSBURY insisted that K.W. leave her husband, R.W., in order to establish a deeper romantic involvement with Judge THORNSBURY. Judge THORNSBURY attempted to persuade K.W. to leave R.W. by telling her that R.W. was unfaithful to her and was an unlawful drug user.

13. Despite Judge THORNSBURY's insistence, K.W. refused to leave R.W., her husband. In or about June 2008, K.W. terminated the romantic relationship with Judge THORNSBURY, citing her marriage. In or about the second half of 2008 and the first half of 2009, Judge THORNSBURY continued to approach K.W. privately in their shared workplace, insisting that K.W. resume their romantic relationship and engage in intimate physical contact with him.

The Scheme to Plant Drugs on R.W.'s Pickup Truck

14. In or about the second half of 2008, Judge THORNSBURY told Fletcher that R.W. was selling illegal drugs that he concealed underneath his pickup truck. Judge THORNSBURY told Fletcher to relay this information to Tpr. Moore and to other members of the WVSP with whom Fletcher was acquainted, and Fletcher did so. Judge THORNSBURY told Fletcher that the police should be prepared to stop R.W. if Judge THORNSBURY received specific information that R.W. was transporting illegal drugs at a particular time. Both Fletcher and Tpr. Moore knew and had reason to know, at the time Judge THORNSBURY made these

claims, that Judge THORNSBURY had been involved in a romantic and physically intimate relationship with R.W.'s wife, K.W.

15. In or about the second half of 2008, Judge THORNSBURY telephoned Cline late one evening to summon Cline to his judicial chambers. Cline went to Judge THORNSBURY's judicial chambers. There, Judge THORNSBURY showed Cline a metal box with magnets attached to it. The box contained a small plastic bag containing illegal drugs. Judge THORNSBURY directed Cline to plant the box under the frame of R.W.'s pickup truck. Judge THORNSBURY told Cline that after the illegal drugs were thus planted, Judge THORNSBURY would telephone Fletcher and direct Fletcher to notify Tpr. Moore that R.W. was in possession of a significant quantity of illegal drugs hidden under his pickup truck. Prior to this event, Judge THORNSBURY told Cline repeatedly about his romantic and physically intimate relationship with R.W.'s wife, K.W., and told Cline that if R.W. lost his job, K.W. would, out of financial necessity, resume the romantic relationship with Judge THORNSBURY.

16. Cline indicated to Judge THORNSBURY that he would comply with Judge THORNSBURY's instructions and plant the box containing illegal drugs under R.W.'s pickup truck. Cline left Judge THORNSBURY's judicial chambers with the box containing illegal drugs. Cline decided, however, not to follow through with the plan and did not plant the box. Judge THORNSBURY's plan thus failed.

The Arrest of R.W.

17. In or about 2008 and 2009, R.B., Inc. regularly refurbished used mine-roof drill bits for H. Coal Co. Representatives of R.B., Inc., regularly collected used bits from H. Coal Co., refurbished them, and then returned the refurbished bits to H. Coal Co., charging a price substantially lower than the cost of purchasing new bits.

18. From in or about 2006 through in or about December 2008, R.W. salvaged scrap mine-roof drill bits from the coal preparation plant at H. Coal Co. and transported them to R.B., Inc. for refurbishing. R.W. had permission from his supervisors to collect the scrap bits, which would have been disposed of if they were not salvaged. R.B., Inc. paid R.W. about twenty cents for each scrap bit he salvaged.

19. In or about the second half of 2008, Judge THORNSBURY told Tpr. Moore that R.W. was stealing scrap mine bits from H. Coal Co. Judge THORNSBURY told Tpr. Moore to pursue a criminal case against R.W. and to keep secret the fact that Judge THORNSBURY was the source of the allegation.

20. Tpr. Moore pursued a criminal investigation of R.W. but soon learned that H. Coal Co. permitted R.W. to salvage scrap bits from his workplace. Tpr. Moore also learned that the scrap bits R.W. salvaged were of insubstantial value, and that H. Coal Co. routinely purchased refurbished bits from R.B., Inc.

21. In or about the second half of 2008, Judge THORNSBURY repeatedly insisted that Tpr. Moore charge R.W. with grand larceny, that is, larceny of goods whose value exceeds $1000, based on the scrap bits that R.W. salvaged from H. Coal Co. Tpr. Moore, in response, told Judge THORNSBURY that R.W. had permission to salvage scrap bits from H. Coal Co., and that there was no evidence to establish that the value of the scrap bits R.W. salvaged exceeded $1000. Judge THORNSBURY nonetheless demanded that Tpr. Moore charge R.W. with grand larceny.

22. On or about December 1, 2008, Tpr. Moore filed a criminal complaint charging R.W. with grand larceny and related offenses. The criminal complaint falsely alleged that R.W.

took scrap mine bits without permission from H. Coal Co. and falsely alleged that the value of the bits R.W. salvaged exceeded $1000.

23. On or about December 1, 2008, Magistrate Crum issued an arrest warrant for R.W. based on the false criminal complaint. On or about December 2, 2008, Tpr. Moore caused R.W. to be arrested pursuant to the arrest warrant.

24. At the time R.W. was arrested, Prosecutor Sparks knew and had reason to know that Judge THORNSBURY had been in a romantic relationship with R.W.'s wife, K.W., and knew that Judge THORNSBURY exerted great influence over Tpr. Moore in the performance of Tpr. Moore's official duties. Prosecutor Sparks recognized that the criminal charges against R.W. were improper, and on or about December 18, 2008, Prosecutor Sparks disqualified himself from the matter involving R.W.

25. In or about late December 2008, Judge THORNSBURY was disqualified from the matter involving R.W.

26. Prosecutor Sparks' disqualification triggered a process that would lead to the appointment of a special prosecutor from outside Mingo County, which created a risk that Judge THORNSBURY's scheme would be discovered. On or about January 9, 2009, however, before an outside special prosecutor could be appointed, Magistrate Crum dismissed the case against R.W.

The State Grand Jury Scheme

27. In or about December 2008 and January 2009, Judge THORNSBURY and others known to the Grand Jury began to implement a scheme to misuse a state grand jury for Mingo County (the "Mingo County Grand Jury") to vindictively oppress R.W., with whose wife Judge THORNSBURY had been in a romantic relationship.

28. On or about January 20, 2009, the Mingo County Grand Jury was convened for the first time, and Judge THORNSBURY appointed his close friend and business partner Fletcher to be the foreperson of the Mingo County Grand Jury. It is unlawful for an officeholder under the laws of the State of West Virginia to serve on a state grand jury. W. Va. Code § 52-1-8(d). Yet when Fletcher was appointed foreperson, he was Mingo County's Director of Emergency Services, a position that is created by state statute, W. Va. Code § 15-5-8, whose duties and powers are defined in state statute, id. et seq., whose qualifications are defined in state statute, id. W. Va. Code § 15-5-15(a), and whose holder is required by state statute to take an oath of office before entering his position, id. -15(b).

29. Judge THORNSBURY planned to use the Mingo County Grand Jury to issue subpoenas duces tecum to harass and oppress R.W., members of his family, and his co-workers, and, ultimately, to procure an indictment of R.W. Ordinarily, however, a grand jury subpoena duces tecum is issued by a prosecutor on behalf of the grand jury, and proposed indictments are similarly presented to a grand jury by a prosecutor. Prosecutor Sparks, having disqualified himself from the criminal matter involving R.W., declined to participate in Judge THORNSBURY's plan.

30. Consequently, sometime between about January 20, 2009, and January 22, 2009, Judge THORNSBURY instructed Foreperson Fletcher to use his position as grand jury foreperson to carry out Judge THORNSBURY's scheme without the involvement of a prosecutor. Specifically, Judge THORNSBURY instructed Foreperson Fletcher to use his position as foreperson to call Tpr. Moore as a witness before the Mingo County Grand Jury, in the absence of any prosecuting attorney, and to have Tpr. Moore testify against R.W. Judge THORNSBURY further instructed Foreperson Fletcher to use his position as foreperson to have

the Mingo County Grand Jury vote to authorize Foreperson Fletcher to issue and sign, in the name of the Mingo County Grand Jury, subpoenas duces tecum demanding documents relating to R.W.

31. On or about January 22, 2009, Foreperson Fletcher, acting at Judge THORNSBURY's direction, brought Tpr. Moore before the Mingo County Grand Jury to testify. Tpr. Moore, under oath, falsely testified that informants from drug investigations he was conducting had informed him that R.W. was involved in thefts from H. Coal Co. In truth and fact, as the Tpr. Moore well knew, Judge THORNSBURY, not drug informants, was the source of the allegations against R.W. After Tpr. Moore testified, Foreperson Fletcher caused the Mingo County Grand Jury to vote to authorize Foreperson Fletcher to issue subpoenas duces tecum in its name.

32. On or about January 22, 2009, Judge THORNSBURY provided Foreperson Fletcher with several purported grand jury subpoenas duces tecum that Judge THORNSBURY had created and caused to be created (the "Purported Grand Jury Subpoenas"). Judge THORNSBURY instructed Foreperson Fletcher to sign the Purported Grand Jury Subpoenas and cause them to be served as if they were from the Mingo County Grand Jury, when in truth they were created and caused to be created by Judge THORNSBURY for the purpose of oppressing R.W. The Purported Grand Jury Subpoenas were not issued by the clerk of court, which is a requirement for a valid subpoena under the West Virginia Rules of Criminal Procedure.

33. The Purported Grand Jury Subpoenas demanded that their recipients surrender documents relating to R.W. and members of his family. Recipients of the Purported Grand Jury Subpoenas included H. Coal Co., which was R.W.'s employer; two other corporations related to

H. Coal Co.; DBC, Inc., which belonged to R.W.'s nephew; and R.B., Inc., which belonged to D.B., R.W.'s brother-in-law.

34. Several recipients of the Purported Grand Jury Subpoenas surrendered possession of private documents in the belief that the Purported Grand Jury Subpoenas represented a lawful command on behalf of the State of West Virginia to do so.

35. On or about March 20, 2009, DBC, Inc., through counsel, sought an extension of time to respond to the Purported Grand Jury Subpoena it had received (the "DBC Purported Subpoena"). On or about March 24, 2009, Judge THORNSBURY entered an order refusing the requested extension of time, even though he was disqualified from the criminal matter involving R.W. The order did not disclose that Judge THORNSBURY himself had created and caused to be created the DBC Purported Subpoena for the vindictive purpose of oppressing R.W.

36. On or about March 25, 2009, DBC, Inc. moved to disqualify Judge THORNSBURY from the matter of the DBC Purported Subpoena. On or about March 26, 2009, DBC, Inc. petitioned the Supreme Court of Appeals of West Virginia for a writ prohibiting Judge THORNSBURY from denying its requested extension of time to respond to the DBC Purported Subpoena. Rather than disqualify himself from the matter of the DBC Purported Subpoena, which he himself had created and caused to be created for the vindictive purpose of oppressing R.W., Judge THORNSBURY, on or about April 13, 2009, caused to be filed a brief in the Supreme Court of Appeals of West Virginia opposing DBC, Inc.'s petition, that is, for the purpose of requiring DBC, Inc. to immediately surrender documents relating to R.W. In this brief, Judge THORNSBURY did not reveal that he himself had created and caused to be created the DBC Purported Subpoena for the vindictive purpose of oppressing R.W.

37. On or about July 29, 2009, DBC, Inc. filed a supplemental motion to disqualify Judge THORNSBURY from the matter involving the DBC Purported Subpoena. This motion revealed that Judge THORNSBURY and Foreperson Fletcher were partners in a commercial property business and a wine shop, and were co-debtors on a loan of approximately $1.6 million. As a result of this motion, the close financial relationship between Judge THORNSBURY and Foreperson Fletcher became widely known for the first time.

38. On or about August 11, 2009, shortly after DBC revealed the close financial relationship between Judge THORNSBURY and Foreperson Fletcher, Judge THORNSBURY withdrew from the matter involving the DBC Purported Subpoena and abandoned his plan to use the Mingo County Grand Jury to oppress R.W.

The Conspiracy

39. Beginning in or about the second half of 2008 and continuing through in or about July 2009, in Mingo County, West Virginia, and within the Southern District of West Virginia, Judge THORNSBURY, together with others known and unknown to the Grand Jury, did knowingly conspire to injure, oppress, threaten, and intimidate, under color of law, a person, that is, R.W., in the free exercise and enjoyment of rights and privileges secured to him by the Constitution and laws of the United States, including his Fourth Amendment right against unreasonable seizure of his person and his Fourteenth Amendment right not to be deprived of his liberty without due process of law. Also beginning in or about the second half of 2008 and continuing through in or about July 2009, in Mingo County, West Virginia, and within the Southern District of West Virginia, Judge THORNSBURY, together with others known and unknown to the Grand Jury, did knowingly conspire to injure, oppress, threaten, and intimidate, under color of state law, persons, that is, the recipients of the Purported Grand Jury Subpoenas,

in the free exercise and enjoyment of rights and privileges secured to them by the Constitution and laws of the United States, including their Fourth Amendment rights against unreasonable seizures of their property and their Fourteenth Amendment rights not to be deprived of their property without due process of law. In violation of Title 18, United States Code, Section 241.

Manner and Means of the Conspiracy

40. It was a part of this conspiracy that illegal drugs would be planted on R.W.'s pickup truck, and that R.W. would then be stopped and his truck searched by police, so that R.W. would be arrested and convicted on the basis of falsely planted evidence.

41. It was further a part of this conspiracy that R.W. would be and was arrested on the basis of a false criminal complaint.

42. It was further a part of this conspiracy that Judge THORNSBURY would and did use Foreperson Fletcher and Tpr. Moore's official positions to commandeer the authority of the Mingo County Grand Jury for Judge THORNSBURY's own use, to issue Purported Grand Jury Subpoenas that Judge THORNSBURY created and caused to be created for the vindictive purpose of harassing and oppressing R.W. and his family, and to procure an indictment of R.W. for the same vindictive purpose.

43. It was further a part of this conspiracy that Judge THORNSBURY would use the Purported Grand Jury Proceedings to unreasonably seize documents from the recipients of those purported subpoenas and to deprive those recipients of property without due process of law.

Overt Acts

44. In or about the second half of 2008, Judge THORNSBURY, together with others known and unknown to the Grand Jury, put a bag containing illegal drugs inside a metal box to

which magnets were affixed and directed Cline to plant the box under a pickup truck belonging to R.W.

45. In or about the second half of 2008, Judge THORNSBURY directed Fletcher to tell Tpr. Moore and other members of the WVSP that R.W. was transporting illegal drugs concealed under the frame of his pickup truck.

46. In or about the second half of 2008, Judge THORNSBURY told Tpr. Moore that R.W. was stealing scrap mine bits from H. Coal Co., and directed Tpr. Moore not to reveal that Judge THORNSBURY was the source of this claim.

47. In or about the second half of 2008, Judge THORNSBURY repeatedly insisted that Tpr. Moore procure an arrest warrant for R.W. even though there was not probable cause to believe that R.W. was committing a crime.

48. In or about the second half of 2008, Judge THORNSBURY told Tpr. Moore to state in a criminal complaint that R.W. did not have permission to take scrap mine bits from H. Coal Co. and that the scrap mine bits R.W. had taken had a value of more than $1000, even though Tpr. Moore informed Judge THORNSBURY that those statements were false and that he lacked evidence that they were true.

49. On or about December 1, 2008, Tpr. Moore filed a criminal complaint seeking a warrant to arrest R.W. The criminal complaint falsely alleged, consistent with Judge THORNSBURY's direction to Tpr. Moore, that R.W. had taken scrap mine bits from H. Coal Co. without permission.

50. On or about December 2, 2008, Tpr. Moore caused R.W. to be arrested pursuant to the arrest warrant that Tpr. Moore had obtained.

51. On or about January 20, 2009, Judge THORNSBURY appointed Fletcher, who was Judge THORNSBURY's close personal friend and his partner in substantial business ventures, to be foreperson of the Mingo County Grand Jury.

52. On or about January 22, 2009, Judge THORNSBURY directed Tpr. Moore and Foreperson Fletcher to induce the Mingo County Grand Jury to vote to authorize Foreperson Fletcher to issue subpoenas duces tecum in the name of the Mingo County Grand Jury without the involvement of any prosecutor.

53. On or about January 22, 2009, Tpr. Moore falsely testified under oath in the Mingo County Grand Jury that informants he encountered in drug investigations had told him about thefts from H. Coal Co., when in truth the allegations regarding such thefts had come from Judge THORNSBURY.

54. On or about January 22, 2009, Foreperson Fletcher induced the Mingo County Grand Jury to vote to authorize Foreperson Fletcher to issues subpoenas duces tecum in the name of the Mingo County Grand Jury.

55. On or about January 22, 2009, Judge THORNSBURY created and caused to be created the Purported Grand Jury Subpoenas and caused them to be served as if they were legitimately issued by the Mingo County Grand Jury.

56. On or about March 24, 2009, Judge THORNSBURY entered an order for the purpose of requiring documents to be produced in response to the DBC Purported Subpoena, which Judge THORNSBURY himself had secretly created and caused to be created and served for the vindictive purpose of oppressing R.W. Judge THORNSBURY did this act even though he was disqualified from the matter involving R.W.

57. On or about April 13, 2009, Judge THORNSBURY caused to be filed a brief in the Supreme Court of Appeals of West Virginia for the purpose of requiring documents to be produced in response to the DBC Purported Subpoena, which Judge THORNSBURY himself had secretly created and caused to be created and served for the vindictive purpose of oppressing R.W.

In violation of Title 18, United States Code, Section 241.

COUNT TWO
(Conspiracy Against Rights)

58. The Grand Jury re-alleges paragraphs 1 through 57 as if fully incorporated herein.

59. On or about January 25, 2012, R.W. was involved in an incident at a convenience store in or around Gilbert, Mingo County, West Virginia. A police report authored by a Gilbert police officer described the incident as follows: R.W. was departing the store when he encountered his brother-in-law, D.B., and his nephew, C.B. D.B. and C.B. started an argument with R.W. C.B. then struck R.W. R.W. responded by kicking C.B. D.B. produced a weapon. R.W. retreated into the store and called police. Police then responded and recovered a .380 caliber pistol belonging to D.B.

60. Three witnesses reported to police that D.B. and C.B. were the aggressors, and at least one witness reported seeing D.B. with a gun in his hand during the incident. Police reviewed a video recording from the store's security system and confirmed that C.B. was the initial aggressor.

61. Despite this police report, on or about February 23, 2012, nearly a month after the incident, Gilbert Police Department Officer Nathan Glanden, who did not conduct the initial investigation of the incident, obtained an arrest warrant for R.W. on charges of assault and battery, and arrested him.

62. Between in or about February 2012 and in or about October 2012, Judge THORNSBURY directed Cline to instruct Prosecutor Sparks that R.W. should receive a sentence of six months' confinement in the case then pending against him. Cline then instructed Prosecutor Sparks, as well as an assistant prosecutor who handled cases in Mingo County Magistrate Court, as Judge THORNSBURY directed. It was ordinary practice in Mingo County Magistrate Court that if a defendant with no criminal history were convicted of a battery that

involved no injuries, the defendant would be sentenced to pay only a nominal fine plus court costs.

63. Between in or about February 2012 and in or about October 2012, a prosecutor from Prosecutor Sparks' office offered R.W. a plea agreement under which R.W. would plead guilty to one or more of the charges against him and receive a sentence of six months' confinement. R.W. and his attorney refused the offer and stated that they would go to trial on the charges.

64. On or about October 31, 2012, a day before R.W.'s trial was to begin, and contrary to Judge THORNSBURY's instructions, Sparks moved to dismiss the charges against R.W., stating, "After careful review of the video evidence, further prosecution of the charges would not be consistent with the public interest in the fair administration of justice." The motion was granted and the charges on which R.W. had been arrested were dismissed.

The Conspiracy

65. Between in or about January 2012 and in or about October 2012, in Mingo County, West Virginia, and within the Southern District of West Virginia, Judge THORNSBURY, together with others known and unknown to the Grand Jury, did knowingly conspire to injure, oppress, threaten, and intimidate, under color of law, a person, that is, R.W., in the free exercise and enjoyment of a right and privilege secured to him by the Constitution and laws of the United States, that is, his Fourteenth Amendment right not to be deprived of his liberty without due process of law, in violation of Title 18, United States Code, Section 241.

Manner and Means

66. It was a part of this conspiracy to cause R.W. to be sentenced to confinement not because of his offense or his characteristics as a defendant, which did not justify a sentence of

confinement, but because of Judge THORNSBURY's vindictive purpose to oppress R.W., the husband of his former secretary and romantic interest.

Overt Act

67. Between in or about February 2012 and in or about October 2012, at Judge THORNSBURY's direction, Cline instructed Sparks and others known to the Grand Jury that R.W. should be sentenced to six months' confinement.

In violation of Title 18, United States Code, Section 241.

R. BOOTH GOODWIN II
United States Attorney

By: _____
STEVEN R. RUBY
C. HALEY BUNN
Assistant United States Attorneys