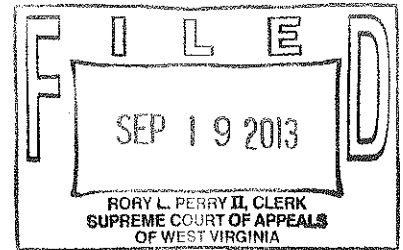


BEFORE THE SUPREME COURT OF APPEALS  
STATE OF WEST VIRGINIA



NO. 13-0954

OFFICE OF LAWYER DISCIPLINARY COUNSEL,

Petitioner,

v.

C. MICHAEL SPARKS, a member  
of the West Virginia State Bar,

Respondent.

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PETITION SEEKING IMMEDIATE SUSPENSION OF A LAWYER  
PURSUANT TO RULE 3.27 OF THE RULES OF LAWYER  
DISCIPLINARY PROCEDURE

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NOW COMES the Office of Disciplinary Counsel by Rachael L. Fletcher Cipoletti, its counsel, and reports to this Court pursuant to Rule 3.27 of the West Virginia Rules of Lawyer Disciplinary Procedure that the elected Prosecuting Attorney of Mingo County, West Virginia C. Michael Sparks (hereinafter "Respondent"), has committed violations of the West Virginia Rules of Professional Conduct and poses a substantial threat of irreparable harm to the public. Furthermore, pursuant to Rules of Lawyer Disciplinary Procedure the Office of

Disciplinary Counsel, that the Court immediately suspend Respondent from the practice of law until underlying disciplinary proceedings against him before the Lawyer Disciplinary Board have been completed.

In support of this request, the Office of Disciplinary Counsel states as follows:

### **FACTS**

1. Respondent was admitted to the West Virginia State Bar on September 30, 1996, and is therefore subject to the lawyer disciplinary jurisdiction of the Supreme Court of Appeals of West Virginia and the Lawyer Disciplinary Board. Respondent is the elected Prosecuting Attorney of Mingo County, West Virginia.
2. On or about August 14, 2013, an Indictment was issued and unsealed in the United States District Court for the Southern District of West Virginia against now suspended Circuit Court Judge Michael Thornsby. [Exhibit A].
3. The indictment alleged that Respondent, the Prosecuting Attorney for Mingo County, had knowledge that in 2008, 2009, and 2012, that the Circuit Court Judge “engaged in criminal conspiracies to violate the rights of R.W., using the authority of the police, the state grand jury, and the courts. R.W. was the husband of Judge Thornsby’s husband, with whom Judge Thornsby had an extramarital relationship. Judge Thornsby 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 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.”

4. To date, based upon information and belief, Respondent has not reported Judge Thornsby to the Judicial Investigation Commission in violation of Rule 8.3(b) of the Rule of Professional Conduct, which provides:
5. By failing to protect the interests of R.W. and by failing to report Judge Thornsby and the other individuals listed in the indictment to the appropriate authorities, Respondent has violated Rule 3.8; Rule 8.4(c); Rule 8.4(d) and Rule 8.4(f) of the Rules of Professional Conduct, which provides:
6. On or about August 15, 2013, the undersigned opened and docketed a complaint in the name of the Office of Disciplinary Counsel against Respondent.<sup>1</sup>
7. On or about September 18, 2013, a felony information was filed in the United States District Court for the Southern District of West Virginia against suspended Circuit Court Judge Michael Thornsby. [Exhibit B].
8. The information was presented to the Court by the United States Attorney R. Booth Goodwin, II, and Assistant United States Attorneys Steven R. Ruby and C. Haley Bunn.

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<sup>1</sup>Rule 2.6 of the Rules of Lawyer Disciplinary Procedure indicates in relevant part that the details of complaints filed with or investigations conducted by the Office of Disciplinary Counsel shall be confidential, except that when a complaint has been filed or an investigation has been initiated, the Office of Disciplinary Counsel or the lawyer may release information confirming or denying the existence of a complaint or investigation.

9. The information states in relevant part that “[i]n or about March 2013, in Mingo County, West Virginia, and within the Southern District of West Virginia, Judge Thornsby, Sheriff Crum, Prosecuting Attorney Sparks, Commissioner Baisden, Glenn White, and others known and unknown to the United States Attorney did knowingly conspire to injure, oppress, threaten and intimidate, under color of law, a person, that is, G.W., in the free exercise of rights and privileges secured to him by the Constitution and laws of the United States, including his right to counsel of his choosing under the Sixth and Fourteenth Amendments to the Constitution, in violation of Title 18, United States Code, Section 241.”
10. Moreover, the information further states that “[i]t was a part of this conspiracy that Sheriff Crum and Commissioner Baisden, among others, with the approval of Judge Thornsby, would and did advise Glenn White that G.W. would receive a lighter sentence if he would fire C.W. and replace him with an attorney favored [by] Sheriff Crum, Prosecuting Attorney Sparks, and Commissioner Baisden, for the purpose of preventing G.W. from further communicating to the FBI and others incriminating information regarding Sheriff Crum.”
11. The information indicates that the conspiracy, the manner and means of the conspiracy and the overt acts associated with the conspiracy are in violation of Title 18, United States Code, Section 241.

12. On or about September 29, 2013, the undersigned opened and docketed a second complaint in the name of the Office of Disciplinary Counsel against Respondent.<sup>2</sup>
13. To date, based upon information and belief, Respondent has not reported the actions of Judge Thornsby to the Judicial Investigation Commission in violation of Rule 8.3(b) of the Rule of Professional Conduct, which provides:
14. By failing to protect the interests of G.W., by failing to report Judge Thornsby and the other individuals listed in the information to the appropriate authorities, by overtly participating in the conspiracy against G.W. in violation of his civil rights, Respondent has violated Rule 3.8; Rule 8.4(a); Rule 8.4(b); 8.4(c); Rule 8.4(d) and Rule 8.4(f) of the Rules of Professional Conduct, which provides:

**Rule 3.8 Special Responsibilities of a Prosecutor.**

The prosecutor in a criminal case shall:

(a) refrain from prosecuting a charge that the prosecutor knows is not supported by probable cause;

(b) make reasonable efforts to assure that the accused has been advised of the right to, and the procedure for obtaining, counsel and has been given reasonable opportunity to obtain counsel;

(c) not seek to obtain from an unrepresented accused a waiver of important pretrial rights, such as the right to a preliminary hearing;

(d) make timely disclosures to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense, and, in connection with sentencing, disclose to the defense and to the tribunal all unprivileged mitigating information known to the prosecutor,

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<sup>2</sup>See FN1.

except when the prosecutor is relieved of this responsibility by a protective order of the tribunal; and

(e) exercise reasonable care to prevent investigators, law enforcement personnel, employees or other persons assisting or associated with the prosecutor in a criminal case from making an extrajudicial statement that the prosecutor would be prohibited from making under Rule 3.6.

**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;

(f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law.

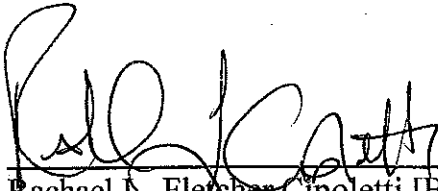
15. "The primary purpose of the ethics committee (Office of Disciplinary Counsel) is not punishment, but is the protection of the public and the reassurance of the public as to the reliability and integrity of attorneys." Lawyer Disciplinary Board v. Albers, 214 W.Va. 11, 12, 585 S.E.2d 11, 12 (2003) *citing* Committee of Legal Ethics v. Ikner, 190 W.Va. 433, 436, 438 S.E.2d 613, 616 (1993).
16. Rule 3.27 of the West Virginia Rules of Lawyer Disciplinary Procedure provides a mechanism to immediately suspend the license of a lawyer who (1) is accused of

- violating the West Virginia Rules of Professional Conduct and (2) who is alleged to pose a substantial threat of irreparable harm to the public.
17. The procedure outlined in Rule 3.27 of the West Virginia Rules of Lawyer Disciplinary Procedure is an extraordinary proceeding that should be used only in “the most extreme cases of lawyer misconduct.” See Syllabus Point 1, Office of Disciplinary Counsel v. Battistelli, 193 W.Va. 629, 457 S.E.2d 652 (1995).
  18. Respondent, the elected, chief law enforcement officer in the county, has engaged in a continued pattern of egregious misconduct under the color of his position as the Prosecuting Attorney of Mingo County, West Virginia.
  19. Respondent’s license should be immediately suspended, in part, because “lawyers holding public office [are held] to a higher standard of conduct.” Syllabus Point 3 of Committee on Legal Ethics v. Roark, 181 W.Va. 260, 382 S.E.2d 313 (1989), states, “[e]thical violations by a lawyer holding a public office are viewed as more egregious because of the betrayal of the public trust attached to the office.”
  20. 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).
  21. There is sufficient evidence to establish that Respondent has violated the Rules of Professional Conduct; that Respondent is a substantial threat of irreparable harm; he

is unable and/or unwilling to represent and protect the interests of the citizens of Mingo County, West Virginia; and there is good cause shown to immediately suspend his law license in the State of West Virginia.

**WHEREFORE**, the Office of Disciplinary Counsel requests that the Court immediately suspend the license of the Respondent until the underlying disciplinary proceedings against him before the Lawyer Disciplinary Board have been completed

*Respectfully submitted,*  
Office of Disciplinary Counsel, by



Rachael L. Fletcher Cipoletti [Bar No. 8806]  
Chief Lawyer Disciplinary Counsel  
City Center East, Suite 1200C  
4700 MacCorkle Avenue SE  
Charleston, West Virginia 25304  
(304) 558-7999  
(304) 558-4015 – *facsimile*



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**CERTIFICATE OF SERVICE**

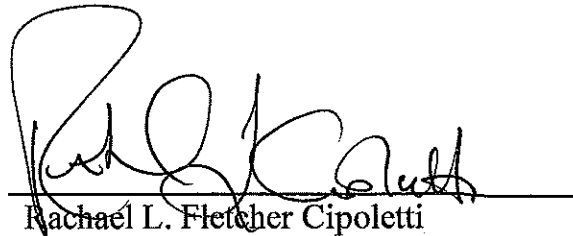
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This is to certify that I, **Rachael L. Fletcher Cipoletti**, Chief Lawyer Disciplinary Counsel for the Office of Disciplinary Counsel, have this day, the 19<sup>th</sup> day of September, 2013, served a true copy of the foregoing **"PETITION SEEKING IMMEDIATE SUSPENSION OF A LAWYER PURSUANT TO RULE 3.27 OF THE RULES OF LAWYER DISCIPLINARY PROCEDURE"** upon Lonnie C. Simmons, Esquire, counsel for Respondent, and Respondent, C. Michael Sparks, by mailing the same, United States Mail with sufficient postage, to the following address:

C. Michael Sparks, Esquire  
Post Office Box 627  
Williamson, West Virginia 25661

Lonnie C. Simmons, Esquire  
604 Virginia Street East  
Charleston, West Virginia 25301



Rachael L. Fletcher Cipoletti

# Exhibit A

~~SEALED~~

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

**FILED****AUG 14 2013**

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

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.

**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

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF WEST VIRGINIA  
AT CHARLESTON**

**UNITED STATES OF AMERICA**

**v.**

**CASE NUMBER: 2:13-cr-00208**

**MICHAEL THORNSBURY**

**SEALED ORDER**

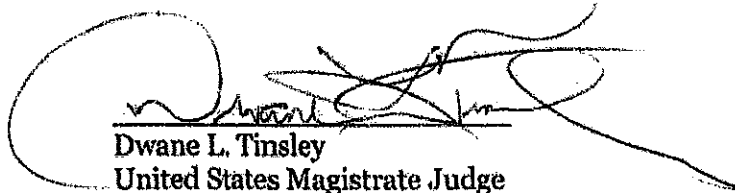
At Charleston, on August 14, 2013, the Grand Jury, after retiring to their chambers and having considered its presentments, returned a report to the Court and presented the above-captioned matter as an indictment to be returned this date.

Upon motion by the United States, it is hereby **ORDERED** that the indictment is **SEALED**.

Upon further motion by the United States, it is **ORDERED** that a bench warrant be issued forthwith for the defendant.

The Clerk is directed to send a copy of this Order to the United States Attorney, United States Marshal, and the United States Probation Office.

ENTER: August 14, 2013.

  
Dwane L. Tinsley  
United States Magistrate Judge

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF WEST VIRGINIA  
CHARLESTON DIVISION**

**UNITED STATES OF AMERICA**

**v.**

**Case Number: 2:13-cr-00208**

**MICHAEL THORNSBURY**

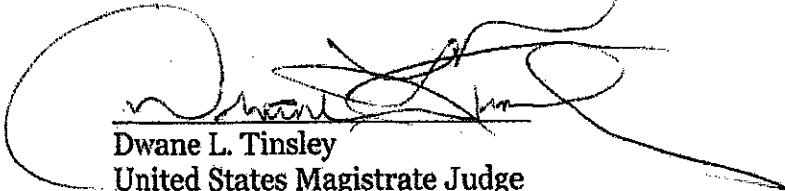
**ORDER**

Due to the arrest of the defendant in this matter, it is hereby **ORDERED** that the indictment is **UNSEALED**.

Further, it is **ORDERED** that the initial appearance will take place before the undersigned Magistrate Judge on Thursday, August 15, 2013 at 3:30 p.m. in Charleston.

The Clerk is directed to provide copies of this Order to all counsel of record, the Probation Department, and the United States Marshals Service.

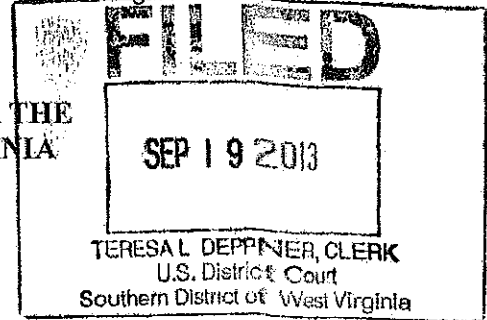
ENTER: August 15, 2013.



Dwane L. Tinsley  
United States Magistrate Judge

## Exhibit B

UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF WEST VIRGINIA  
CHARLESTON



UNITED STATES OF AMERICA

v.

CRIMINAL NO. 2:13-cr-00239  
18 U.S.C. § 241

MICHAEL THORNSBURY

INFORMATION

The United States Attorney Charges:

1. At all relevant times, victim G.W. owned a sign-making business in and around Delbarton, Mingo County, West Virginia, within the Southern District of West Virginia. During election campaigns, G.W. often was hired by political candidates in Mingo County to make signs and other promotional items for their campaigns.

2. In or about 2012, Eugene Crum ("Crum" or "Sheriff Crum") was a candidate for the office of sheriff in Mingo County. In or about 2012, Crum ordered several thousand dollars' worth of signs and promotional items for his campaign from G.W. G.W. made the promotional items and provided them to Crum's campaign on credit. In or about November 2012, after Crum was elected sheriff, Crum's campaign still owed G.W. approximately \$3000. In or about November 2012, G.W. advised Crum of the outstanding debt and insisted that it be repaid.

3. On or about January 1, 2013, Crum became sheriff of Mingo County. On or about January 2013, Crum's campaign still owed G.W. approximately \$3000. On or about January 24, 2013, Sheriff Crum arranged for a confidential police informant to attempt to purchase three oxycodone tablets from G.W. The confidential informant went to G.W.'s business and subsequently reported to Crum that he or she had purchased three oxycodone tablets from G.W. Crum signed a police report memorializing the controlled purchase, as did Carl David Rockel



("Chief Rockel"), then the Chief of Police of Williamson, West Virginia, which is the county seat of Mingo County. Rockel was a close associate and political ally of Crum's.

4. On or about January 25, 2013, Sheriff Crum and Chief Rockel jointly sought a warrant to search G.W.'s business, based on the January 24, 2013 controlled purchase of narcotics. A search warrant was issued that same day based on Sheriff Crum and Chief Rockel's application.

5. On or about January 30, 2013, Chief Rockel testified before a Mingo County grand jury that G.W. had unlawfully delivered controlled substances. Shortly after Chief Rockel gave this testimony, the Mingo County grand jury returned an indictment of G.W. for possession of controlled substances with intent to deliver.

6. On or about February 1, 2013, G.W. was arrested on the charges in the indictment against him. Sheriff Crum participated in the arrest. At the time of the arrest, Sheriff Crum's campaign still owed G.W. approximately \$3000.

7. After his arrest, G.W. retained attorney C.W. to represent him in his defense to the criminal charges.

8. In or about February 2013, G.W. and his attorney, C.W., met with agents of the Federal Bureau of Investigation (FBI). In this meeting, G.W. informed the FBI that on multiple occasions prior to his arrest, he unlawfully provided Crum with prescription narcotic pills at Crum's request. G.W. advised the FBI that these unlawful deliveries occurred while Crum was an elected magistrate in Mingo County. G.W. also advised the FBI of election law violations committed by Crum.

9. After this meeting, Sheriff Crum learned that G.W. had informed the FBI about criminal conduct by Sheriff Crum. Defendant MICHAEL THORNSBURY ("Judge THORNSBURY"), at all relevant times the sole circuit judge in Mingo County, was a close

associate and political ally of Crum's. Sheriff Crum and Mingo County Prosecuting Attorney Michael Sparks ("Prosecuting Attorney Sparks"), also a close associate and political ally of Sheriff Crum's, informed Judge THORNSBURY that G.W. had provided the FBI with incriminating information regarding Sheriff Crum.

10. In or about March 2013, Sheriff Crum, Prosecuting Attorney Sparks, Mingo County Commissioner David Baisden ("Commissioner Baisden"), and others known and unknown to the United States Attorney devised a scheme to prevent G.W. from further communicating to the FBI and others incriminating information regarding Sheriff Crum. In or about March 2013, Mingo County officials including Sheriff Crum, Prosecuting Attorney Sparks, and Commissioner Baisden arranged a meeting with Glenn White, G.W.'s brother. In this meeting, Sheriff Crum and Commissioner Baisden, among others, advised Glenn White that Judge THORNSBURY would give G.W. a light sentence if he fired attorney C.W. and replaced him with another attorney favored by Judge THORNSBURY, Sheriff Crum, Prosecuting Attorney Sparks, and Commissioner Baisden. Immediately after this meeting, Glenn White informed G.W. of the offer of a light sentence if G.W. would fire attorney C.W.

11. In or about March 2013, Sheriff Crum informed Judge THORNSBURY of the scheme to coerce G.W. into firing attorney C.W. and replacing him with another attorney in order to prevent G.W. from further communicating to the FBI and others incriminating information regarding Sheriff Crum. Judge THORNSBURY agreed that it would be in G.W.'s best interest to obtain new counsel, by which Judge THORNSBURY meant that the replacement of counsel would result in a lighter sentence for G.W.

12. Later that same day, G.W., along with attorney C.W., appeared at a hearing before Judge THORNSBURY. Attorney C.W. informed Judge THORNSBURY that his client G.W. had terminated him. Judge THORNSBURY then approved attorney C.W.'s replacement with a

different attorney, one whom Sheriff Crum, Prosecuting Attorney Sparks, and Commissioner Baisden wanted to represent G.W. Prosecuting Attorney Sparks then arranged for a more favorable sentence for G.W. as a reward for G.W.'s replacing his counsel.

13. After G.W. fired C.W. as his attorney and obtained the attorney that Sheriff Crum, Prosecuting Attorney Sparks, and Commissioner Baisden desired him to have, Sheriff Crum directed one of his deputies to obtain a statement from G.W. that G.W. had never provided controlled substances to Sheriff Crum.

### **The Conspiracy**

14. In or about March 2013, in Mingo County, West Virginia, and within the Southern District of West Virginia, Judge THORNSBURY, Sheriff Crum, Prosecuting Attorney Sparks, Commissioner Baisden, Glenn White, and others known and unknown to the United States Attorney did knowingly conspire to injure, oppress, threaten, and intimidate, under color of law, a person, that is, G.W., in the free exercise of rights and privileges secured to him by the Constitution and laws of the United States, including his right to counsel of his choosing under the Sixth and Fourteenth Amendments to the Constitution, in violation of Title 18, United States Code, Section 241.

### **Manner and Means of the Conspiracy**

15. It was a part of this conspiracy that Sheriff Crum and Commissioner Baisden, among others, with the approval of Judge THORNSBURY, would and did advise Glenn White that G.W. would receive a lighter sentence if he would fire attorney C.W. and replace him with an attorney favored Sheriff Crum, Prosecuting Attorney Sparks, and Commissioner Baisden, for the purpose of preventing G.W. from further communicating to the FBI and others incriminating information regarding Sheriff Crum.

**Overt Acts**

16. In or about March 2013, Sheriff Crum and Commissioner Baisden told Glenn White to tell G.W. that G.W. would receive a lighter sentence from Judge THORNSBURY if he would fire attorney C.W. and replace him with an attorney favored by Sheriff Crum, Prosecuting Attorney Sparks, and Commissioner Baisden.

17. In or about March 2013, Glenn White told G.W. that G.W. would receive a lighter sentence from Judge THORNSBURY if he would fire attorney C.W. and replace him with an attorney favored by Sheriff Crum, Prosecuting Attorney Sparks, and Commissioner Baisden.

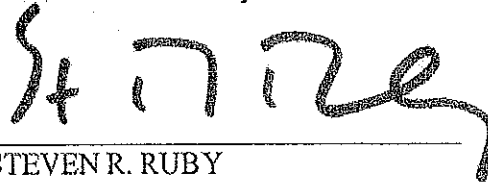
18. In or about March 2013, Judge THORNSBURY approved attorney C.W.'s replacement with a different attorney, one whom Sheriff Crum, Prosecuting Attorney Sparks, and Commissioner Baisden wanted to represent G.W.

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

UNITED STATES OF AMERICA

R. BOOTH GOODWIN II  
United States Attorney

By:

A handwritten signature in black ink, appearing to read 'S. R. Ruby', written over a horizontal line.

STEVEN R. RUBY  
C. HALEY BUNN  
Assistant United States Attorneys