

DANIEL BREWINGTON, Plaintiff,)	IN THE SUPERIOR COURT II
)	DEARBORN COUNTY, INDIANA
v.)	GENERAL TERM 2019
)SS:	
DEARBORN SUPERIOR COURT II/ JUDGE)	CAUSE NO 15D01-1702-PL-00013
SALLY MCLAUGHLIN,)	
JUDGE BRIAN HILL,)	
COURT REPORTER BARBARA RUWE)	
Defendants.)	

MOTION TO COMPEL DEFENDANTS TO APPEAR AT AUGUST 2, 2019 HEARING

Plaintiff, Daniel Brewington, files this Motion to Compel Defendants to Appear at August 2, 2019 Hearing and in support provides as follows:

DEFENDANTS' ACTIONS REQUIRE THEIR PERSONAL APPEARANCE

To place context on the importance of the Defendants' personal appearance at the hearing set for this matter on August 2, 2019, this Court should consider Defendants' actions as criminal acts of Obstruction of Justice. The failure to compel the appearance of the Defendants greatly prejudices Brewington.

BREWINGTON'S RIGHT TO RECORDS

Special Judge D.J. Mote must first understand the fact that the Dearborn Superior Court II already authorized the release of the audio of the grand jury investigation of Daniel Brewington. In an order dated April 20, 2016, Defendant Brian Hill, special judge for the Dearborn Superior Court II ordered the following [Order attached hereto as "Exhibit A"]:

The Court Reporter is hereby ORDERED to prepare a compact disc of audio recordings of the Grand Jury proceedings regarding this matter conducted on February 28, 2011, March 1, 2011, and March 2, 2011.

The Dearborn Superior Court II failed to produce a complete copy of the audio to Brewington. The audio provided to Brewington contained *LESS* dialogue than the

transcript, while omitting all portions of the record occurring prior to witness testimony. Nothing in Indiana law vests authority in this Court to grant Defendants relief from having to comply with their own April 20, 2016 order.

RESPONSIBILITY TO RECORD PROCEEDINGS

Section 3 (d) of I.C. 35-34-2-3 clearly establishes the guidelines for the recording of grand jury proceedings.

The clerk shall keep minutes of the grand jury proceedings. The court shall supply a means for recording the evidence presented before the grand jury and all of the other proceedings that occur before the grand jury, except for the deliberations and voting of the grand jury and other discussions when the members of the grand jury are the only persons present in the grand jury room. The evidence and proceedings shall be recorded in the same manner as evidence and proceedings are recorded in the court that impaneled the grand jury.

The Dearborn Superior Court II has already prepared two “versions” of the record from the grand jury investigation of Daniel Brewington, both of which are inarguably incomplete. It would be prejudicial to Brewington for this Court to assume that the production of the incomplete records was accidental.

PREJUDICE TO BREWINGTON

“The law presumes that a judge is unbiased and unprejudiced.” *Timberlake v. State*, 753 N.E.2d 591, (2001). The law governing the recording of grand jury proceedings is unambiguous. The vague ramblings of the Defendants’ pleadings provide no legal rationale as to why the Dearborn Superior Court II refuses to comply with its own order to release. Any appearance of impartiality would be lost if Honorable Judge Mote would give the Defendants a benefit of the doubt as to why Defendants refuse to produce the complete record of the grand jury investigation of Daniel Brewington; especially in light of

Defendants' failure to explain why the grand jury record omits all content of the investigation occurring prior to witness testimony.

DEFENDANTS' ACTIONS VIOLATE INDIANA JUDICIAL CODE OF CONDUCT

There is nothing subtle about the Defendants' attempts to obstruct Brewington's access to the grand jury record. For evidence of such misconduct, this Court need only to review the April 20, 2016 order Defendant Hill issued while serving as special judge for the Dearborn Superior Court II:

2. It is the Court's understanding that the Grand Jury impaneled for this matter also heard evidence in four to five other Grand Jury proceedings during this time, often going back and forth between all of the cases. The audio recordings being released shall contain only the matter regarding Daniel Brewington and no other Grand Jury proceedings.

3. Daniel Brewington shall be responsible for reasonable copying fees pursuant to I.C. 5-14-3-8. Additional costs may be required due to the nature of the Grand Jury proceedings, because of efforts made to maintain the confidentiality of the other proceedings that were conducted simultaneous with the matter regarding Daniel Brewington.

Defendant Hill normally presides over the Superior Court of Rush County, Indiana, yet somehow Hill had a substantial understanding of the alleged content of the grand jury audio prior to issuing his April 20, 2016 ruling. There is no arguing that Judge Hill conducted an ex parte investigation prior to ordering the release of the grand jury audio. Prior to Hill's order, unknown person(s) communicated the following ex parte allegations to Hill:

1) The grand jury impaneled to investigate Brewington also heard evidence in "four to five" other proceedings.

- 2) The prosecutor conducted multiple grand jury investigations in a matter that often switched “back and forth between all of the cases.”
- 3) Additional costs may be required from Brewington to protect the confidentiality of other alleged grand jury proceedings.
- 4) The “four to five” other grand jury proceedings “were conducted simultaneous with the matter regarding Daniel Brewington.”

This Court should employ a commonsense review of the above claims contained in Hill’s April 20, 2016 order. At minimum, Hill’s findings are clear violations of judicial conduct because Hill conducted an ex parte investigation prior to releasing the order. One of Hill’s prior excuses against the release of the grand jury audio was that the audio was not admitted into evidence during Brewington’s criminal proceedings. As such, Hill could have no personal knowledge of the content of the grand jury audio. The adverse argument is much worse. As the special judge presiding over Brewington’s criminal trial, Hill knew the prosecution instructed Brewington to rely on a transcription of the complete grand jury investigation for specific indictment information. If Defendant Hill had prior knowledge that the record of the grand jury investigation was incomplete, Hill forced Brewington into a criminal trial knowing that the court staff withheld evidence and indictment information from Brewington to assist the prosecution.

Brewington reminds this Court that the only way simultaneous intertwining grand jury proceedings could interfere with the reproduction of the audio from the grand jury investigation of Brewington is if all the proceedings were recorded on a continuous non-stop audio track. If the court reporter stopped and started the audio recording upon switching between proceedings, each portion of the individual proceedings would be

stored on individual files; making it unnecessary to take additional measures to protect the integrity of any other alleged grand jury proceedings. This was not the case as the Defendants claimed it was necessary for an IT professional to reconstruct the record of Brewington's grand jury proceeding from the intertwining grand jury investigations. Therefore, any omitted content of the grand jury investigation required an intentional effort by the court reporter to arbitrarily stop and start the recording of the proceedings to Brewington's detriment. Of course, the most obvious explanation for all the confusion is that the Dearborn Superior Court II produced an incomplete transcription of the grand jury proceedings during Brewington's criminal proceedings. Then the Defendants fabricated the story of the intertwining grand jury investigations to rationalize altering the audio to match the incomplete transcription.

OBSTRUCTION OF JUSTICE

The relevancy of an obstruction of justice argument not only applies to the necessity of the Defendants' personal appearance at the 08/02/2019 hearing, but the argument also serves as notice to the Office of the Indiana Attorney General Curtis T. Hill that its continued representation of the Defendants may be a violation of state and federal law. Brewington's inclusion of the information also serves to protect Brewington from additional misconduct by Dearborn County Courts. For reference on the legal framework of Obstruction of Justice, Brewington includes the detailed analysis provided in Volume II, Section I (A) appearing in the "Report On The Investigation Into Russian Interference In The 2016 Presidential Election." [Pages 9-12 from Volume II of the report from the U.S. Department of Justice attached hereto as "Exhibit B"]

Exhibit B, commonly referred to as the “Mueller Report” after appointed special counsel Robert Mueller, states there are “[t]hree basic elements are common to most of the relevant obstruction statutes: (1) an obstructive act; (2) a nexus between the obstructive act and an official proceeding; and (3) a corrupt intent.” The report elaborates on the elements as followed:

Obstructive act. Obstruction-of-justice law "reaches all corrupt conduct capable of producing an effect that prevents justice from being duly administered, regardless of the means employed." *United States v. Silverman*, 745 F.2d 1386, 1393 (11th Cir. 1984) (interpreting 18 U.S.C. § 1503).

Nexus to a pending or contemplated official proceeding. Obstruction-of-justice law generally requires a nexus, or connection, to an official proceeding. In Section 1503, the nexus must be to pending "judicial or grand jury proceedings." *United States v. Aguilar*, 515 U.S. 593, 599 (1995).

Corruptly. The word "corruptly" provides the intent element for obstruction of justice and means acting "knowingly and dishonestly" or "with an improper motive." *United States v. Richardson*, 676 F.3d 491, 508 (5th Cir. 2012); *United States v. Gordon*, 710 F.3d 1124, 1151 (10th Cir. 2013) (to act corruptly means to "act[] with an improper purpose and to engage in conduct knowingly and dishonestly with the specific intent to subvert, impede or obstruct" the relevant proceeding) (some quotation marks omitted)

There are two primary scenarios that would explain why the record of Brewington’s grand jury investigation is void of an introduction; the Dearborn Superior Court II withheld records from Brewington, or the Dearborn Superior Court II made an intentional effort to omit portions of the proceedings from the audio record. If this Court wishes to believe the Defendants’ story about intertwining grand jury records, the latter must apply. With that said, a logical analysis would make such a contention unlikely. The release of grand jury transcripts is very rare, and the release of audio records of grand jury proceedings is

almost unheard of. Any rationalization to intentionally *NOT* record portions of Brewington's grand jury investigation would require a premeditated agreement to omit the prosecutor's opening statements to the grand jurors. Unless the Defendants and/or this Court wish to argue the existence of a conspiracy between former Dearborn County Prosecutor F. Aaron Negangard and the Dearborn Superior Court II to selectively record grand jury audio, this Court must assume the Dearborn Superior Court II got caught altering grand jury transcripts and then tried to alter the audio to match.

In showing a nexus to a specific proceeding, the defendants are aware their actions sought to obstruct justice in at least three official legal proceedings. The Dearborn Superior Court II, under Judge Sally McLaughlin, selectively transcribed the grand jury record with the intent of obstructing justice in Brewington's criminal trial. When an opinion by the Indiana Public Access Counselor effectively forced Hill to order the release of the grand jury audio to Brewington, Hill and McLaughlin devised a rationale that would allow the court staff to alter grand jury audio in an attempt to match the already altered transcript; effectively obstructing justice in Hill's own order to release. Both Hill and McLaughlin knew the release of the prosecution's introduction to the grand jury would warrant reversal of Brewington's convictions because it would demonstrate how the Dearborn Superior Court II took active measures to obstruct Brewington's access to evidence and indictment information. Whether the actual content of the evidence withheld from Brewington warranted reversible error is irrelevant. Brewington's right to a fair trial was eviscerated the moment Dearborn Superior Court II decided to arbitrarily withhold evidence the prosecution claimed was necessary for Brewington's defense in Brewington's criminal case before the Dearborn Superior Court II. Defendants obstructed justice in Brewington's post-

conviction action long before Brewington initially filed for post-conviction relief. Defendants knew if they released a copy of the grand jury audio that included content originally omitted by the Dearborn Superior Court II, such a finding would warrant immediate reversal via post-conviction relief.

The Defendants continue to obstruct justice in Brewington's pending post-conviction action every moment the Defendants waste in obstructing justice in this action. The Defendants continue to fight complying with the April 20, 2016 order that authorizes the release of the grand jury audio to Brewington. The Defendants' intent is consistent with the Mueller Report's description of the element of "corruptly":

The requisite showing is made when a person acted with an intent to obtain an "improper advantage for [him]self or someone else, inconsistent with official duty and the rights of others." *BALLENTINE'S LAW DICTIONARY* 276 (3d ed. 1969); see *United States v. Pasha*, 797 F.3d 1122, 1132 (D.C. Cir. 2015); *Aguilar*, 515 U.S. at 616 (Scalia, J., concurring in part and dissenting in part) (characterizing this definition as the "longstanding and well-accepted meaning" of "corruptly").

It is axiomatic that the only intent of Judge McLaughlin's staff secretly altering grand jury records was to obstruct justice in Brewington's criminal trial.

THE DEFENDANTS CANNOT BE TRUSTED WITH THE TRUTH

Any controversy regarding the content of the record of the grand jury investigation of Daniel Brewington is a product of the Defendants' own misconduct. Brewington cannot be penalized for the Defendants inability to accurately reproduce official records. Even considering *arguendo* that the court staff recorded several intertwining grand jury investigations on one uninterrupted audio recording, such a contention would have reduced the burden of a court reporter to simply hitting "record" at the beginning of the proceedings and then hitting "stop" at a break or the end of the day. This would make it

IMPOSSIBLE for the court reporter to accidentally not record any portion of any proceeding; however, Defendants have offered no explanation as to why the record of Brewington's grand jury proceeding is void of any content prior to witness testimony. Defendants have also failed to provide any explanation as to why the grand jury audio provided to Brewington contains less dialogue than the transcription of the same record.

This Court's July 3, 2019 order references the September 14, 2018 status conference where Defendants failed to comply with the agreement of the parties:

The parties agree to the Judge conducting an in camera review of the grand jury proceedings. Clerk is directed to provide the Judge with the recording of the grand jury proceeding.

In Defendant's Response to Plaintiff's Motion to Compel, filed 01/29/2019,

Defendants made the following claim:

Defendants await an order from the special judge in this matter indicating the specifics as to which audio is to be provided and the manner in which these files are to be provided. Defendants will comply with any order issued in this matter.

Defendants' claim is problematic as the agreement to produce the records was not made between former Special Judge Darrell Auxier and defense counsel, Deputy Attorneys General Marley Hancock and David Arthur. Judge Auxier sent a clerk of the Dearborn Superior Court I directly to Defendant Dearborn Superior Court II to obtain an official copy of the grand jury record in Brewington's case. Upon her return, the clerk from this court advised Judge Auxier that the Dearborn Superior Court II would produce the requested records. In another obstructive act, the Defendants refused to produce the records as allegedly agreed upon. Defendants claimed they were awaiting an order specifying what content was to be provided. At no point have the Defendants made any attempt to clarify the content of the grand jury record. At the time of the 09/14/2018 status conference,

Defense counsel claimed to have no knowledge of the actual content of the grand jury records. In the absence of the Defendants making any attempt to clarify the actual content of the grand jury record, it would have been impossible for Judge Auxier to issue an order “indicating the specifics as to which audio is to be provided and the manner in which these files are to be provided.”

Another troubling aspect of this case is an argument found in the Defendants’ 01/29/2019 Response to Plaintiff’s Motion to Compel:

As no order has been issued requiring Defendants to produce the grand jury proceedings, Defendants ask this Court to deny Plaintiffs Motion to Compel.

The Defendants are obviously lying about there being no order requiring Defendants to produce the grand jury proceedings. Exhibit A demonstrates that Defendant Hill already authorized the release of the grand jury audio to Brewington. The Defendants’ own argument only supports the need for the Defendants’ personal appearance during the 08/02/2019 hearing, as it appears defense counsel is having difficulties grasping the facts of this case. Brewington brought this action to effectively compel Defendants to comply with their own order to release. The question of whether Brewington was entitled to the grand jury audio was decided in Brewington’s favor on 04/20/2016. There was no ambiguity to Hill’s order. If anything, the grand jury audio released to Brewington should include *at least* as much dialogue as the transcription of the same record. The Defendants are not arguing the discrepancies between the two records are minor. The Defendants refuse to address the discrepancies all together. The Defendants try to pass off an altered and incomplete audio record to Brewington under the pretense it was somehow complete. If Defendants had a rational explanation for the incomplete record, they would have

provided such. This Court should not allow Defendants to continue to obstruct the release of the grand jury audio, while hiding behind the willful ignorance of the Office of the Indiana Attorney General.

CRIMINAL CONDUCT BY DEFENSE COUNSEL

Brewington again references the report by the U.S. Department of Justice (“DOC”) for guidance on how defense counsel’s representation may cross the threshold of criminal obstruction of justice. The DOC report suggests “An improper motive can render an actor's conduct criminal even when the conduct would otherwise be lawful and within the actor's authority.” Examples of conduct that would otherwise be lawful conduct can be found in *United States v. Cueto*, 151 F.3d 620, 631 (7th Cir. 1998), and *United States v. Cintolo*, 818 F.2d 980, 992 (1st Cir. 1987). This is where the Office of the Indiana Attorney General may run afoul of the law in representing the Defendants.

First, the Defendants’ fight to not comply with their own 04/20/2016 order is obstruction of justice. Defense counsel cannot assist Defendants’ efforts to use this action as a means to “appeal” their own order. Then there is the issue that if defense counsel were to assert that they are aware of the content of the grand jury audio, such a contention would come with the prerequisite of knowing the Defendants committed a crime of obstruction. As explained thoroughly throughout Brewington’s pleadings, operating under the pretext of protecting the privacy of other alleged grand jury investigations only serves to implicate the Defendants in a different form of grand jury record tampering. Regardless of whether the Defendants intentionally omitted the introduction to Brewington’s grand jury investigation from the recording process or whether the Defendants withheld all record of the proceedings occurring prior to witness testimony, both serve as overt acts to

obstruct justice in Brewington's criminal case. Feigning ignorance as to the content of the grand jury record in Brewington's case does not give Curtis Hill's office a free pass; especially as defense counsel has already made a fact-based argument regarding the content of the grand jury audio:

The simple truth is audio cannot be produced that does not exist. Brewington has received the transcripts and the audio related to his grand jury proceedings. While Brewington makes many arguments as to why he believes there must be more audio recordings of the grand jury proceeding into his criminal investigation, these arguments do not change the fact that more there are no additional audio recordings. What is contained in the recording is contained in the recording, no matter how many times Brewington claims there should be more. *-Defendants' Reply in Support of Cross-Motion for Summary Judgment filed 05/30/2019*

If the grand jury investigation of Daniel Brewington was recorded in a manner consistent with I.C. 35-34-2-3 (3)(d), then the Office of the Indiana Attorney General is lying. I.C. 35-34-2-3 (3)(d) required the Dearborn Superior Court II to "supply a means for recording the evidence presented before the grand jury and all of the other proceedings that occur before the grand jury, except for the deliberations and voting of the grand jury and other discussions when the members of the grand jury are the only persons present in the grand jury room." This would include recording the opening arguments to the grand jurors made by former Dearborn County Prosecutor F. Aaron Negangard. Negangard is the current Chief Deputy to Indiana Attorney General Curtis Hill.

JUDGE W. GREGORY COY ADDS ADDITIONAL LAYER OF LUNACY

Adding an additional layer of lunacy to this case is a recent ruling in Brewington's post-conviction action currently pending in the Dearborn Superior Court II. In Brewington's Request for Ruling, filed on 06/18/2019 in this action, Brewington included a

copy of an order from the special judge in Brewington's post-conviction action. In an order dated 06/12/2019, the special judge for the Dearborn Superior Court II, W. Gregory Coy provided the following:

4. In his request filed in this case Brewington seeks the same relief as he seeks in Cause No. 15D01-1702-PL-13.
5. Brewington offers no statutory authority for the release of said audio; his claims are of a broad conspiracy between the prosecutor and judges who previously presided over his case.
6. This matter is more properly before the court in the other cause number and as such the request here should be denied.

Judge W. Gregory Coy's ruling is deeply disturbing on many fronts. It should first be noted Judge Coy's actions violate Brewington's equal protection of rights under the Fourteenth Amendment. No provision in state or federal law precludes Brewington from simultaneously pursuing a post-conviction action and a lawsuit under the Access to Public Records Act. Coy has taken it upon himself to shut down Brewington's post-conviction action by any means. This is best demonstrated by Judge Coy's sua sponte summary dismissal of Brewington's entire post-conviction action without cause. In Coy's order dated 09/25/2017 (also attached to Brewington's 06/18/2019 Request for Ruling), Coy employed outrageous rationalizations lacking any legal basis in fabricating a basis for dismissing Brewington's entire Verified Petition for Post-Conviction Relief by granting sua sponte summary judgment in favor of the State. The Indiana Court of Appeals quickly sided with Brewington's pro se appeal and remanded the case back for an evidentiary proceeding. Brewington is perplexed at Coy's indifference in resorting to lying as a means to quash Brewington's legal proceeding. The fact that an Indiana judge would lie is far from surprising; however, Brewington is shocked by the ease of disproving Judge Coy's lies.

Judge Coy argued “Brewington offers no statutory authority for the release of said audio; his claims are of a broad conspiracy between the prosecutor and judges who previously presided over his case.” Just as Brewington provided this Court, Brewington explained to Coy that I.C. 35-34-2-3 (3)(d) required the Dearborn Superior Court II staff to maintain a record of the entire grand jury proceeding in addition to the case law regarding recording addressed in *Wurster v. State*, 715 N.E.2d 341 (Ind. 1999). As for Coy’s contention that Brewington’s claims are premised upon “a broad conspiracy between the prosecutor and judges who previously presided over his case,” Judge Coy’s contention only further supports Brewington’s claims. Brewington’s claims are anything but broad or vague. Brewington’s claims survive in the absence of conspiratorial conduct. The circumstances surrounding the grand jury record is an obvious example. The grand jury transcript inexplicably omitted any record of the grand jury proceeding occurring prior to witness testimony. The grand jury audio somehow contains less information than what is supposedly the transcription of the same audio. The filenames and file format of the audio have been altered. The Defendants in this case claim several intertwining grand jury investigations were recorded on one single uninterrupted audio track yet somehow the introduction to Brewington’s grand jury investigation is missing in action. Regardless if the altered grand jury record was a product of incompetence or a conspiracy, both are grounds for reversal of Brewington’s convictions. Brewington leans to the side of conspiracy considering the efforts of Judge Coy, the Defendants, and defense counsel in trying to detract attention away from the fact that Defendant Hill’s 04/20/2016 order already authorized the release of the grand jury audio to Brewington.

Judge W. Gregory Coy's 06/12/2019 order also includes what may be one of the most asinine legal rulings in modern history. While serving as special judge for Brewington's post-conviction action in the Dearborn Superior Court II, Judge Coy ruled that the evidentiary matter concerning grand jury audio, that was altered by the Dearborn Superior Court II, should be resolved in this APRA action to which the Dearborn Superior Court II is a party. Regardless of whether Judge Coy's decision to saddle this APRA Court with the burden of deciding evidentiary matters for Brewington's post-conviction action is a product of a conspiracy or being a tenacious jackass; the ruling has no foundation in logic or law and should be reported to the Indiana Judicial Qualifications Committee.

JUDGE COY TRIES TO COVER UP CRIMINAL CONDUCT BY DEFENDANTS

A consistent thread in Brewington's experiences with the Indiana Court System is the fact that Indiana judges hold Brewington to a much higher legal standard than what they expect from themselves. The best example of such conduct can be gleaned from Judge Coy's 06/12/2019 order where Coy addressed Brewington's claims that his convictions be vacated because the Dearborn Superior Court II altered grand jury records:

18. As to Brewington's claim that a grand jury record was altered and that his convictions should be vacated, such a claim is not set forth in the post conviction rules as a remedy and as such he has failed to plead a claim which would allow the court to issue an order vacating said convictions.

19. Again, Brewington's claims as relates to the grand jury audio point to a broad conspiracy among the court and court officers, and presents no legal authority in support thereof.

Judge Coy argued that Brewington failed to state a claim that would grant Brewington relief from the trial court staff altering grand jury transcripts to sabotage Brewington's trial and later altering grand jury audio to coverup the crime. What Judge Coy

failed to do was call Brewington a liar. Judge Coy acknowledged Brewington's claim that the grand jury record was altered. Judge Coy lacked the courage to call Brewington a liar because Coy knows Brewington is telling the truth. Brewington provided Coy with a copy of the grand jury transcript omitting the introduction to the proceedings. Coy has a copy of the grand jury audio containing less dialogue than the transcript. Brewington provided Coy a written breakdown of the discrepancies between the audio and the transcript.

Brewington's claims of conspiracy were anything but broad. If the Dearborn Superior Court II agreed to omit the introduction to Brewington's grand jury investigation from the audio record, it would be a conspiracy. If the Dearborn Superior Court II recorded the proceedings in a manner consistent with Indiana law, then the Dearborn Superior Court II conspired to selectively transcribe the grand jury investigation during Brewington's trial and then later tried to alter the grand jury audio to match. If Brewington was lying, the Defendants and Judge Coy would have accused him of such. Rather than contest Brewington's allegation of fact, Judge Coy alleged the Indiana Rules of Post-Conviction Remedies vested no authority in Judge Coy to vacate Brewington's convictions where the trial court altered grand jury records to sabotage Brewington's defense. Judge Coy saddled Brewington with the burden of making a precise legal argument as to why it is improper for a court to withhold grand jury records to sabotage a Defendant's right to a fair trial. Judge Coy then ignored Defendant Hill's 04/20/2016 order authorizing the release of grand jury audio to Brewington and denied Brewington's request for a certified copy of the grand jury audio. Coy then argued it was more appropriate for Brewington to obtain the grand jury audio from this APRA action, where the Dearborn Superior Court II and Judge Brian Hill are parties to the lawsuit.

Conclusion

Judge Coy saddled this APRA action with the burden of deciding evidentiary matters for Brewington's post-conviction action in the Dearborn Superior Court II. Brewington has difficulties wrapping his head around the ethical and jurisdictional issues related to Judge Coy allowing the Dearborn Superior Court II the opportunity to argue against the release of evidence to be used in Brewington's post-conviction action out of the Dearborn Superior Court II. Just as dumbfounding is the fact that the State of Indiana, who is the defendant in Brewington's post-conviction action, is not a party to this action. Judge Coy's decision comes on the heels of the Indiana Court of Appeals reversing Coy's sua sponte summary dismissal of Brewington's post-conviction action. Brewington questions whether it is even possible for Judge Coy to appear any more corrupt. By default, the actions of Judge W. Gregory Coy cast a shadow over the integrity of any subsequent court of review. A similar analogy would be a mobster handing money to a new police officer on the force. A mobster would not engage in such a brazen act if he was unsure whether the officer was corrupt. Coy's actions in depriving Brewington's equal protection of laws under the color of law, while granting the Defendants the ability to shelter their own criminal conduct, violate the Indiana Judicial Code of Conduct if not State and Federal law. Judge Coy's brazen indifference to contracting evidentiary matters to this Court gives the appearance that Judge Coy feels secure that Judge Mote poses no threat to report the abuses.

The ongoing lies being spewed by Judge Coy and the Defendants are a disgrace to the system of justice in the United States. Both argue Brewington is not entitled to a certified copy of the grand jury record in Brewington's case, despite there being an order stating the exact opposite. Brewington on the other hand does not lie in his pleadings

before the court. As this Court would agree, Brewington's pleadings are quite voluminous. Many of Brewington's pleadings have been accompanied by affidavits supporting his factual claims. Brewington's pleadings often include invitations begging judges to hold Brewington accountable via contempt proceedings for statements believed to be false. Brewington extends the same invitation to Judge Mote as no prior judge has taken Brewington up on Brewington's request.

Both this action and Brewington's post-conviction action out of the Dearborn Superior Court II have been pending for over 2.5 years and nothing has been resolved. Brewington understands the wheels of justice sometimes move at a snail's pace; however, the wheels of justice in Dearborn County, Indiana skidded off the road and landed in a ditch long ago. The prior judge in this action, Darrell Auxier, failed to show up to two scheduled hearings. Judge Coy's latest ruling that makes the Dearborn Superior Court II a de facto party to a pending legal action in the Dearborn Superior Court II, proves there is no legitimacy to Brewington's post-conviction action. By not requiring the Defendants to appear in person to testify to the content of the grand jury audio, only further muddles the record of the two cases. If the Defendants cannot produce a copy of grand jury audio containing, at least, all correspondence between the prosecution and jurors, then a crime has occurred. If the Defendants *DO* produce a copy of audio containing Negangard's introduction to the grand jury, then a crime has also occurred. Brewington reminds this Court that Exhibit A is an order from the Dearborn Superior Court II that authorizes the release of the grand jury audio to Brewington. There is no ambiguity to the order. Brewington is entitled to the entire content of the audio from the grand jury investigation of Brewington, including the record of the proceedings prior to witness testimony. There is

no scenario where the Defendants have not committed a crime. If Defendants wish to argue differently, Defendants need to make such a claim via personal testimony and/or affidavit, and then Honorable Judge Mote should report the conduct to the proper authorities. The same applies to allegations of intertwining grand jury investigations. Defense counsel cannot be permitted to argue that Brewington's right to records is somehow offset by vague unsupported claims of intertwining grand jury investigations that were not properly recorded by the requirements set forth in I.C. 35-34-2-3 (3)(d). If distance would prove to be too much of an inconvenience for Defendant Hill to travel to the 08/02/2019 hearing, Brewington would be in agreement to only compelling Judge McLaughlin's appearance as the head of the Dearborn Superior Court II. As Judge McLaughlin's Court is adjacent to the courtroom of the Dearborn Superior Court I, this should not be much of an inconvenience. If Judge McLaughlin's schedule makes her unavailable to attend the 08/02/2019 hearing, Brewington suggests that the hearing be rescheduled to a time more convenient for Judge McLaughlin. Giving any additional preferential treatment to the Defendants because of their official titles only serves to prejudice Brewington. Any attempt to shield the Defendants from their own actions is an overt action to shelter criminal conduct, which is inconsistent with the official duty of this Court and Indiana law.

WHEREFORE, Brewington requests this Court to compel Defendants' personal appearance at the 08/02/2019 hearing in this matter. Brewington also requests the hearing be conducted on record to protect the integrity of the proceeding, and for other proper relief.

Respectfully submitted,



Daniel Brewington
Plaintiff, pro se

CERTIFICATE OF SERVICE

I certify that on July 9, 2019, I electronically filed the foregoing document using the Indiana E-Filing System (IEFS).

I also certify that on July 9, 2019, the foregoing document was served upon counsel via IEFS:

Indiana Attorney General Curtis Hill
Marley Hancock
David Arthur
Indiana Government Center South, 5th Floor
302 West Washington Street
Indianapolis, IN 46204-2770



Daniel P. Brewington
Plaintiff, pro se

Cc: djmote@jeffersoncounty.in.gov
angelia.rogers@jeffersoncounty.in.gov

STATE OF INDIANA

DEARBORN SUPERIOR COURT II

COUNTY OF DEARBORN

CAUSE NO. 15D02-1103-FD-084

STATE OF INDIANA,
Plaintiff

FILED

vs

APR 20 2016

DANIEL BREWINGTON,
Defendant

R. M. A. J.
CLERK OF DEARBORN CIRCUIT COURT

ORDER ON REQUEST FOR RELEASING AUDIO COPIES (AS TO GRAND JURY PROCEEDINGS OF FEBRUARY 28, 2011, MARCH 1, 2011, AND MARCH 2, 2011)

Based on an Advisory Opinion issued by the Public Access Counselor, Luke H. Britt, on April 14, 2016, the Court issues the following Order regarding the audio recordings of Grand Jury proceedings conducted in this Court on February 28, 2011, March 1, 2011 and March 2, 2011, hereby amending a previous Order regarding these recordings issued on February 4, 2016.

The Court now **ORDERS** as follows:

1. The Court Reporter is hereby **ORDERED** to prepare a compact disc of audio recordings of the Grand Jury proceedings regarding this matter conducted on February 28, 2011, March 1, 2011, and March 2, 2011.
2. It is the Court's understanding that the Grand Jury impaneled for this matter also heard evidence in four to five other Grand Jury proceedings during this time, often going back and forth between all of the cases. The audio recordings being released shall contain only the matter regarding Daniel Brewington and no other Grand Jury proceedings.
3. Daniel Brewington shall be responsible for reasonable copying fees pursuant to I.C. 5-14-3-8. Additional costs may be required due to the

I. BACKGROUND LEGAL AND EVIDENTIARY PRINCIPLES

A. Legal Framework of Obstruction of Justice

The May 17, 2017 Appointment Order and the Special Counsel regulations provide this Office with jurisdiction to investigate “federal crimes committed in the course of, and with intent to interfere with, the Special Counsel’s investigation, such as perjury, obstruction of justice, destruction of evidence, and intimidation of witnesses.” 28 C.F.R. § 600.4(a). Because of that description of our jurisdiction, we sought evidence for our obstruction-of-justice investigation with the elements of obstruction offenses in mind. Our evidentiary analysis is similarly focused on the elements of such offenses, although we do not draw conclusions on the ultimate questions that govern a prosecutorial decision under the Principles of Federal Prosecution. *See* Justice Manual § 9-27.000 *et seq.* (2018).

Here, we summarize the law interpreting the elements of potentially relevant obstruction statutes in an ordinary case. This discussion does not address the unique constitutional issues that arise in an inquiry into official acts by the President. Those issues are discussed in a later section of this report addressing constitutional defenses that the President’s counsel have raised. *See* Volume II, Section III.B, *infra*.

Three basic elements are common to most of the relevant obstruction statutes: (1) an obstructive act; (2) a nexus between the obstructive act and an official proceeding; and (3) a corrupt intent. *See, e.g.*, 18 U.S.C. §§ 1503, 1505, 1512(c)(2). We describe those elements as they have been interpreted by the courts. We then discuss a more specific statute aimed at witness tampering, *see* 18 U.S.C. § 1512(b), and describe the requirements for attempted offenses and endeavors to obstruct justice, *see* 18 U.S.C. §§ 1503, 1512(c)(2).

Obstructive act. Obstruction-of-justice law “reaches all corrupt conduct capable of producing an effect that prevents justice from being duly administered, regardless of the means employed.” *United States v. Silverman*, 745 F.2d 1386, 1393 (11th Cir. 1984) (interpreting 18 U.S.C. § 1503). An “effort to influence” a proceeding can qualify as an endeavor to obstruct justice even if the effort was “subtle or circuitous” and “however cleverly or with whatever cloaking of purpose” it was made. *United States v. Roe*, 529 F.2d 629, 632 (4th Cir. 1975); *see also United States v. Quattrone*, 441 F.3d 153, 173 (2d Cir. 2006). The verbs “‘obstruct or impede’ are broad” and “can refer to anything that blocks, makes difficult, or hinders.” *Marinello v. United States*, 138 S. Ct. 1101, 1106 (2018) (internal brackets and quotation marks omitted).

An improper motive can render an actor’s conduct criminal even when the conduct would otherwise be lawful and within the actor’s authority. *See United States v. Cueto*, 151 F.3d 620, 631 (7th Cir. 1998) (affirming obstruction conviction of a criminal defense attorney for “litigation-related conduct”); *United States v. Cintolo*, 818 F.2d 980, 992 (1st Cir. 1987) (“any act by any party—whether lawful or unlawful on its face—may abridge § 1503 if performed with a corrupt motive”).

Nexus to a pending or contemplated official proceeding. Obstruction-of-justice law generally requires a nexus, or connection, to an official proceeding. In Section 1503, the nexus must be to pending “judicial or grand jury proceedings.” *United States v. Aguilar*, 515 U.S. 593,

599 (1995). In Section 1505, the nexus can include a connection to a “pending” federal agency proceeding or a congressional inquiry or investigation. Under both statutes, the government must demonstrate “a relationship in time, causation, or logic” between the obstructive act and the proceeding or inquiry to be obstructed. *Id.* at 599; *see also Arthur Andersen LLP v. United States*, 544 U.S. 696, 707-708 (2005). Section 1512(c) prohibits obstructive efforts aimed at official proceedings including judicial or grand jury proceedings. 18 U.S.C. § 1515(a)(1)(A). “For purposes of” Section 1512, “an official proceeding need not be pending or about to be instituted at the time of the offense.” 18 U.S.C. § 1512(f)(1). Although a proceeding need not already be in progress to trigger liability under Section 1512(c), a nexus to a contemplated proceeding still must be shown. *United States v. Young*, 916 F.3d 368, 386 (4th Cir. 2019); *United States v. Petruk*, 781 F.3d 438, 445 (8th Cir. 2015); *United States v. Phillips*, 583 F.3d 1261, 1264 (10th Cir. 2009); *United States v. Reich*, 479 F.3d 179, 186 (2d Cir. 2007). The nexus requirement narrows the scope of obstruction statutes to ensure that individuals have “fair warning” of what the law proscribes. *Aguilar*, 515 U.S. at 600 (internal quotation marks omitted).

The nexus showing has subjective and objective components. As an objective matter, a defendant must act “in a manner that is *likely* to obstruct justice,” such that the statute “excludes defendants who have an evil purpose but use means that would only unnaturally and improbably be successful.” *Aguilar*, 515 U.S. at 601-602 (emphasis added; internal quotation marks omitted). “[T]he endeavor must have the natural and probable effect of interfering with the due administration of justice.” *Id.* at 599 (citation and internal quotation marks omitted). As a subjective matter, the actor must have “contemplated a particular, foreseeable proceeding.” *Petruk*, 781 F.3d at 445-446. A defendant need not directly impede the proceeding. Rather, a nexus exists if “discretionary actions of a third person would be required to obstruct the judicial proceeding if it was foreseeable to the defendant that the third party would act on the [defendant’s] communication in such a way as to obstruct the judicial proceeding.” *United States v. Martinez*, 862 F.3d 223, 238 (2d Cir. 2017) (brackets, ellipses, and internal quotation marks omitted).

Corruptly. The word “corruptly” provides the intent element for obstruction of justice and means acting “knowingly and dishonestly” or “with an improper motive.” *United States v. Richardson*, 676 F.3d 491, 508 (5th Cir. 2012); *United States v. Gordon*, 710 F.3d 1124, 1151 (10th Cir. 2013) (to act corruptly means to “act[] with an improper purpose and to engage in conduct knowingly and dishonestly with the specific intent to subvert, impede or obstruct” the relevant proceeding) (some quotation marks omitted); *see* 18 U.S.C. § 1515(b) (“As used in section 1505, the term ‘corruptly’ means acting with an improper purpose, personally or by influencing another.”); *see also Arthur Andersen*, 544 U.S. at 705-706 (interpreting “corruptly” to mean “wrongful, immoral, depraved, or evil” and holding that acting “knowingly . . . corruptly” in 18 U.S.C. § 1512(b) requires “consciousness of wrongdoing”). The requisite showing is made when a person acted with an intent to obtain an “improper advantage for [him]self or someone else, inconsistent with official duty and the rights of others.” *BALLENTINE’S LAW DICTIONARY* 276 (3d ed. 1969); *see United States v. Pasha*, 797 F.3d 1122, 1132 (D.C. Cir. 2015); *Aguilar*, 515 U.S. at 616 (Scalia, J., concurring in part and dissenting in part) (characterizing this definition as the “longstanding and well-accepted meaning” of “corruptly”).

Witness tampering. A more specific provision in Section 1512 prohibits tampering with a witness. *See* 18 U.S.C. § 1512(b)(1), (3) (making it a crime to “knowingly use[] intimidation . . . or corruptly persuade[] another person,” or “engage[] in misleading conduct towards another

person,” with the intent to “influence, delay, or prevent the testimony of any person in an official proceeding” or to “hinder, delay, or prevent the communication to a law enforcement officer . . . of information relating to the commission or possible commission of a Federal offense”). To establish corrupt persuasion, it is sufficient that the defendant asked a potential witness to lie to investigators in contemplation of a likely federal investigation into his conduct. *United States v. Edlind*, 887 F.3d 166, 174 (4th Cir. 2018); *United States v. Sparks*, 791 F.3d 1188, 1191-1192 (10th Cir. 2015); *United States v. Byrne*, 435 F.3d 16, 23-26 (1st Cir. 2006); *United States v. LaShay*, 417 F.3d 715, 718-719 (7th Cir. 2005); *United States v. Burns*, 298 F.3d 523, 539-540 (6th Cir. 2002); *United States v. Pennington*, 168 F.3d 1060, 1066 (8th Cir. 1999). The “persuasion” need not be coercive, intimidating, or explicit; it is sufficient to “urge,” “induce,” “ask[],” “argu[e],” “giv[e] reasons,” *Sparks*, 791 F.3d at 1192, or “coach[] or remind[] witnesses by planting misleading facts,” *Edlind*, 887 F.3d at 174. Corrupt persuasion is shown “where a defendant tells a potential witness a false story as if the story were true, intending that the witness believe the story and testify to it.” *United States v. Rodolitz*, 786 F.2d 77, 82 (2d Cir. 1986); see *United States v. Gabriel*, 125 F.3d 89, 102 (2d Cir. 1997). It also covers urging a witness to recall a fact that the witness did not know, even if the fact was actually true. See *LaShay*, 417 F.3d at 719. Corrupt persuasion also can be shown in certain circumstances when a person, with an improper motive, urges a witness not to cooperate with law enforcement. See *United States v. Shotts*, 145 F.3d 1289, 1301 (11th Cr. 1998) (telling Secretary “not to [say] anything [to the FBI] and [she] would not be bothered”).

When the charge is acting with the intent to hinder, delay, or prevent the communication of information to law enforcement under Section 1512(b)(3), the “nexus” to a proceeding inquiry articulated in *Aguilar*—that an individual have “knowledge that his actions are likely to affect the judicial proceeding,” 515 U.S. at 599—does not apply because the obstructive act is aimed at the communication of information to investigators, not at impeding an official proceeding.

Acting “knowingly . . . corruptly” requires proof that the individual was “conscious of wrongdoing.” *Arthur Andersen*, 544 U.S. at 705-706 (declining to explore “[t]he outer limits of this element” but indicating that an instruction was infirm where it permitted conviction even if the defendant “honestly and sincerely believed that [the] conduct was lawful”). It is an affirmative defense that “the conduct consisted solely of lawful conduct and that the defendant’s sole intention was to encourage, induce, or cause the other person to testify truthfully.” 18 U.S.C. § 1512(e).

Attempts and endeavors. Section 1512(c)(2) covers both substantive obstruction offenses and attempts to obstruct justice. Under general principles of attempt law, a person is guilty of an attempt when he has the intent to commit a substantive offense and takes an overt act that constitutes a substantial step towards that goal. See *United States v. Resendiz-Ponce*, 549 U.S. 102, 106-107 (2007). “[T]he act [must be] substantial, in that it was strongly corroborative of the defendant’s criminal purpose.” *United States v. Pratt*, 351 F.3d 131, 135 (4th Cir. 2003). While “mere abstract talk” does not suffice, any “concrete and specific” acts that corroborate the defendant’s intent can constitute a “substantial step.” *United States v. Irving*, 665 F.3d 1184, 1198-1205 (10th Cir. 2011). Thus, “soliciting an innocent agent to engage in conduct constituting an element of the crime” may qualify as a substantial step. Model Penal Code § 5.01(2)(g); see *United States v. Lucas*, 499 F.3d 769, 781 (8th Cir. 2007).

The omnibus clause of 18 U.S.C. § 1503 prohibits an “endeavor” to obstruct justice, which sweeps more broadly than Section 1512’s attempt provision. *See United States v. Sampson*, 898 F.3d 287, 302 (2d Cir. 2018); *United States v. Leisure*, 844 F.2d 1347, 1366-1367 (8th Cir. 1988) (collecting cases). “It is well established that a[n] [obstruction-of-justice] offense is complete when one corruptly endeavors to obstruct or impede the due administration of justice; the prosecution need not prove that the due administration of justice was actually obstructed or impeded.” *United States v. Davis*, 854 F.3d 1276, 1292 (11th Cir. 2017) (internal quotation marks omitted).

B. Investigative and Evidentiary Considerations

After the appointment of the Special Counsel, this Office obtained evidence about the following events relating to potential issues of obstruction of justice involving the President:

- (a) The President’s January 27, 2017 dinner with former FBI Director James Comey in which the President reportedly asked for Comey’s loyalty, one day after the White House had been briefed by the Department of Justice on contacts between former National Security Advisor Michael Flynn and the Russian Ambassador;
- (b) The President’s February 14, 2017 meeting with Comey in which the President reportedly asked Comey not to pursue an investigation of Flynn;
- (c) The President’s private requests to Comey to make public the fact that the President was not the subject of an FBI investigation and to lift what the President regarded as a cloud;
- (d) The President’s outreach to the Director of National Intelligence and the Directors of the National Security Agency and the Central Intelligence Agency about the FBI’s Russia investigation;
- (e) The President’s stated rationales for terminating Comey on May 9, 2017, including statements that could reasonably be understood as acknowledging that the FBI’s Russia investigation was a factor in Comey’s termination; and
- (f) The President’s reported involvement in issuing a statement about the June 9, 2016 Trump Tower meeting between Russians and senior Trump Campaign officials that said the meeting was about adoption and omitted that the Russians had offered to provide the Trump Campaign with derogatory information about Hillary Clinton.

Taking into account that information and our analysis of applicable statutory and constitutional principles (discussed below in Volume II, Section III, *infra*), we determined that there was a sufficient factual and legal basis to further investigate potential obstruction-of-justice issues involving the President.

Many of the core issues in an obstruction-of-justice investigation turn on an individual’s actions and intent. We therefore requested that the White House provide us with documentary evidence in its possession on the relevant events. We also sought and obtained the White House’s concurrence in our conducting interviews of White House personnel who had relevant information. And we interviewed other witnesses who had pertinent knowledge, obtained documents on a