

1 based on the evidence, not based on Joe Kisor's
2 version of the evidence or the law, based on the
3 truth, based on his words, tell him, you're right; it's
4 not going to end well. It's not and it shouldn't. I
5 demand justice in this courtroom. He sat over there
6 a year or two ago and pounded on his table
7 according to the testimony and stood up according
8 to his wife and had everybody in an uproar, I
9 demand justice in this courtroom. Ladies and
10 gentlemen, not for me, not for Mr. Negangard but
11 for the people who he has harmed and for the people
12 of this county, I demand justice in this courtroom. I
13 do. Based on the evidence, the evidence that speaks
14 the truth. It's a very simple truth. He's guilty on all
15 counts – guilty beyond a reasonable doubt and I ask
16 you to return the appropriate verdicts on all six (6)
17 charges that he is guilty and I thank you again.

18 COURT: Mr. Barrett, do you wish to give a closing
19 statement?

20 MR. BARRETT: Yes your honor.

21 COURT: You may.

22 MR. BARRETT: Thank you, your honor. Good morning ladies and
23 gentlemen. This is a criminal case. This is not a
24 case about whether you approved of Dan
25 Brewington. It's not a case about whether Dan

1 Brewington was a good father. It's not a case about
2 whether he should have had or should not have had
3 joint custody. This is a case about the State of
4 Indiana charging Dan Brewington with four (4)
5 crimes because he expressed opinions. The crux of
6 this case, ladies and gentlemen is not whether you
7 agree with those opinions, even if you like them, the
8 issue is, why did Mr. Brewington express these
9 opinions. Because is you cannot find beyond a
10 reasonable doubt that the reason Mr. Brewington
11 expressed the opinions that he did about Dr. Connor
12 and Judge Humphrey that that reason was that he
13 was intending, his intent, that he was intending to
14 retaliate for a prior lawful act that those people
15 participated in. That is the issue – not whether you
16 like the word pervert, child abuser or anything else.
17 We are all adults. We live, I'm fifty-one (51) years
18 old, the word is a lot different than it was when I
19 was young. There was no internet. People express
20 opinions on the internet every day that are, in my
21 opinion, horrible, threatening maybe, abominable.
22 But the interesting thing about the internet, ladies
23 and gentlemen is you don't have to read it. These
24 threats were not made directly to these people.
25 Communicate – you have to communicate the threat

1 with the intent that that person be placed in fear.
2 The issue here, there's a couple of things that the
3 State is offering evidence on and I would submit to
4 you that that giant stack of pleadings that Mr.
5 Brewington filed, that were introduced here in his
6 custody case or his divorce case, those are for one
7 purpose. That's his, he is attempting to be a lawyer
8 and if we judged legal abilities on the volume of
9 things, then he would be a good one. If we would
10 judge it though on the content – no. The Judge told
11 you, Judge Humphrey told you, you know the
12 pleadings were confusing. He tried to file for a
13 mistrial before the trial had even taken place. Not
14 once but twice. This is a man who, whether you
15 agree with him or not, is in the middle of a custody
16 battle and he's in the middle of an issue about his
17 children. Okay, now how do we react when we're
18 protecting our children? Are we always proud of
19 our behavior? No. I submit that we are not, at least
20 most of us. Do you have to agree with it? No. Did
21 any of these people who are alleged to be victims in
22 this case, seek a protective order or file any kind of
23 civil law suit or even make a complaint to the
24 Dearborn County Sheriff's Department? No, they
25 didn't. The evidence you heard in this courtroom

1 ladies and gentlemen, was the complaint apparently
2 originated with counsel for the mother in the
3 dissolution action. Can she make a complaint?
4 Sure she can. Any of us can – even Dan
5 Brewington can make a complaint. Did his
6 complaint that he made against Dr. Connor make a
7 lot of sense? Probably not. But he apparently
8 believed, if you read his writings, in the law suit,
9 not the bloggings but the writings in the law suit, he
10 apparently believed in my opinion, wrongly, but he
11 apparently believed that things were going on in that
12 case that were wrong and that were not right and
13 were criminal. Well you say Mr. Barrett, if you
14 believe, don't agree with him then why are you
15 standing here defending him? Because if the
16 government, ladies and gentlemen, if we only
17 defend those we believe or correct about everything
18 when they want to express their opinions, we've
19 lost. We're done. I agree with much of what Mr.
20 Kisor said and I applaud his sincerity. This is a
21 great country and it's a great country because we
22 can criticize the government. What the State has
23 done here, ladies and gentlemen in our view, is melt
24 all these things together where Dan Brewington was
25 attempting to be an attorney and attempting to

1 express his frustration, his anger, his upset about a
2 decision in a court that he did not agree with.
3 That's what he was doing in his pleas. Now did he
4 pick wrong words, inappropriate words? Yes he
5 did. And if he'd really been a lawyer and said those
6 things about a Judge, he would have been held in
7 contempt probably. If you walk into a courtroom
8 depending on who the Judge is and the
9 circumstances and such and make outrageous
10 statements and jump up and down and bang on the
11 table and do things, you're going to be held in
12 contempt because it's specific to those proceedings
13 ladies and gentlemen. If a lawyer does it, they can
14 not only be held in contempt, they can be
15 disciplined. Lawyers are not allowed to criticize
16 judges but that's because we're part of the system.
17 We're not allowed to criticize judges in a personal
18 way and disparage them. It's unethical. It's not
19 unethical for the public to criticize a judge. Mr.
20 Kisor points to several of the, several different
21 things and the one that he pointed to a couple of
22 times was the game is up implying that apparently
23 Mr. Brewington thought it was a game and implying
24 apparently that there was going to be some
25 conclusion to that, I guess is the theory. You see

1 that's the problem. We don't know what he was
2 thinking. What the State's proved to you is that he
3 said some things and the State's proved to you how
4 other people reacted to those things. They haven't
5 proved his intent. Mr. Kisor says you can attempt to
6 commit crimes and it's the same level and that's
7 true unless it's murder. Well if he was attempting
8 to obstruct or intimidate he didn't do a very good
9 job of it. This case, ladies and gentlemen, is about
10 free speech and it may very well be the first one in
11 this State on this issue. Some of us think that. It's
12 based on legal research. It is a very dangerous
13 thing, I would submit to you ladies and gentlemen
14 for the government to be able to criminalize speech.
15 Now the way this process works ladies and
16 gentlemen is when I finish and all likelihood
17 someone from the State's table will respond and the
18 reason for that is the State has the burden so don't
19 feel like you're lucky when I finally shut up, you're
20 done hearing from lawyers over the last four (4)
21 days because you're going to have to hear from at
22 least one more, but you know, the State has an
23 obligation and they have that and you need to take
24 that very seriously. And that obligation is to prove
25 each element of any offense beyond a reasonable

1 doubt. What is a reasonable doubt? Well the Court
2 is going to instruct you on it but before we even get
3 to reasonable doubt, we have to remember
4 something else about the way this process works.
5 This process is not designed to be equal. All the
6 burden is over here because, as I told you earlier, the
7 government gets to decide who gets charged
8 whether they do it by Grand Jury or whether they do
9 it by information. They get to make the decision.
10 They got to decide who they were going to charge –
11 Mr. Brewington and who the people that they would
12 allege were threatened because there was evidence
13 certainly that would indicate well why didn't they
14 charge him with this or that or this person? They
15 get to decide that. Yell they get to decide that so
16 they have the burden of proving it to you, that this
17 happened and it happened in such a context that it
18 should be criminal. It happened in such a context
19 that Mr. Brewington, because of his actions, should
20 lose his liberty, but before we can even get there,
21 you have to decide that they have penetrated or
22 breached the presumption of innocence. Because as
23 he sits there no matter what you think about him as
24 a father, a blogger or anything else, he's an innocent
25 man and only once you deliberate and determine

1 that the State of Indiana has carried their burden and
2 pierced that presumption of innocence can you even
3 consider. This process is designed this way because
4 we are not talking about anything other than liberty.
5 Only the government, only the government can
6 incarcerate people for their actions – individuals
7 can't. This case is not entitled, Judge James
8 Humphrey versus Dan Brewington. This case is not
9 entitled, Dr. Connor versus Dan Brewington. This
10 case is entitled The State of Indiana because only
11 the State has the police power. I submit to you
12 ladies and gentlemen no matter what you think of
13 his opinions, he has the right to express them. Now
14 we have a constitution and the Court will instruct
15 you that the first, excuse me, that the first
16 amendment to the United States Constitution reads
17 and follows and this will be one of the Court's
18 instructions: Congress shall make no law respecting
19 an establishment of religion or prohibiting the free
20 exercise there of or abridging the freedom of speech
21 or of the press or the right of the people to
22 peaceably assemble and to petition the government
23 for a redress of their grievances. Think about
24 what's contained in that three sentences. How do
25 we look at speech in this country? We look at it in

1 the same way as we look at religion. It's
2 acquainted, acquitted with that in this amendment
3 and you know the part of this thing, this
4 amendment, is right that people don't talk about but
5 it's probably the most important – is to petition the
6 government for redress. It can be argued ladies and
7 gentlemen that many, many, many, all of Mr.
8 Brewington's blogs were petitions to the
9 government, petitions to the people and saying, the
10 name of it – Dan's adventures in taking on family
11 courts, taking on family court. Now you can say
12 that was all designed as a personal grind of his or
13 you can say this is a person who has an opinion to
14 express. I may not agree with his opinion but his
15 opinion is apparently that the family court system
16 stinks. Now I would submit to you there are an
17 awful lot of people that think that – many of whom
18 have participated. Now does that mean that you
19 have a right to obstruct it? Of course it doesn't.
20 Does that mean you have a right to intimidate a
21 judge? Of course it doesn't. But what is a judge?
22 You know a judge in the courtroom, certainly you
23 show respect but why do you show respect? You
24 show respect because of the process of what that
25 person he or she represents. And what do they

1 represent? They represent us. They are the
2 government. They are the ultimate say. They are
3 placed there by us to decide disputes. So should we
4 threaten them? Of course we shouldn't. But is
5 posting things on the internet, you know, here's the
6 thing, Judge Humphrey, and I don't know if he read
7 it. I really don't. We don't know if it was ever,
8 how it was communicated to him. Apparently he
9 came in here and he testified and he testified about
10 things that he deemed to be threats so apparently it
11 was at some point communicated to him. But
12 you've got to remember the charges that Dan
13 Brewington communicated those threats to Judge
14 Humphrey, to Dr. Connor, and to Heidi Humphrey,
15 well if he did it in most cases and certainly there
16 were some letters and things to Dr. Connor's office
17 anyway that were directed to him by Mr.
18 Brewington but if you want to express those things
19 and make someone certain that you're wanting to
20 retaliate against them for something that they've
21 done, you're going to tell it to them. Now, but if
22 you want as many people to know it and change
23 opinions hopefully, I guess that's the reason people
24 blog, then you're going to disseminate out in the
25 internet. This is a case where Mr. Brewington has

1 strong political views and those political views are
2 the family court system stinks. He doesn't agree
3 with them. He doesn't like the way it works. Now
4 think of the awesome power. We always think
5 about the government and I shouldn't say we, I
6 think, you know you think about the government, is
7 the government has the power to put you in jail.
8 The government has the power to tax you but you
9 know the government has a really, really big power
10 that most of us probably don't ever have to deal
11 with and that is to decide who gets your children if
12 you go through a divorce if you can't agree. And
13 there's not very many things in this world and many
14 would submit not anything as important as children
15 or liberty. It is criticism of the government.
16 Appropriate? Nice? No. We're all adults. We've
17 watched or maybe you don't, maybe you can't take
18 it any more, the level of political discourse in this
19 country by our elected representatives. In many,
20 many cases, is as bad as you've heard here? What
21 do they call the president? Whether you like him or
22 not, what has he been called? What did they call
23 the last Republican vice-presidential nominee,
24 Sarah Palin - the things that were said? This is the
25 society that we live in whether we like it or not and

1 criminalizing it is not going to do anything but
2 make all us less free. You'll also be instructed
3 ladies and gentlemen that the Indiana Constitution
4 says no law shall be passed restraining the free
5 interchange of thought and opinion or restricting the
6 right to speak, write or print freely on any subject
7 whatever but for those that abuse, but for the abuse
8 of that right, every person shall be responsible. So
9 it's not absolute. But if you are criticizing the
10 government, it is pretty absolute and that's why
11 these intimidation statutes ladies and gentlemen are
12 written the way they are, that Mr. Brewington with
13 the intent to retaliate. That's what makes it a crime.
14 That's what they've got to prove. Not that what he
15 said was awful, not that what he said you didn't
16 like, nothing else – just that. That is the crux of
17 those three (3) counts and in reality, Count IV,
18 obstruction. They have to prove his intent was to
19 retaliate. That's what they have to prove. They
20 didn't do it. He was never spotted anywhere near
21 anybody's house. Did he threaten? Were they
22 threats? What was his intent? How can we know
23 that? In 2003, the United States Supreme Court
24 decided a case called Virginia versus Black and in
25 that case the Court held that under the first

1 amendment the State can punish threatening
2 expression but only, but only if the speaker means
3 to communicate a serious expression of an intent to
4 commit an act of unlawful violence to a particular
5 individual or a group of individuals. They have to
6 prove beyond a reasonable doubt that that was his
7 intention – not that his intention was to express to
8 his friends, neighbors and anybody else that would
9 listen or that was reading the blog, that he didn't
10 like the court system, that he didn't like Judge
11 Humphrey. You see its okay to say that he didn't
12 like Judge Humphrey. Is it okay to say he's a child
13 abuser? Well you get to decide that. You know we
14 all use terms and I did say words have meaning but
15 those meanings are different to other, from one
16 person to the next. Some people would say
17 removing children and I'm not vouching for this
18 view, but some people would say restricting and not
19 allowing parents to see their children is child abuse.
20 Now is that an unreasonable position? It depends
21 on the circumstances I would guess. Is it a criminal
22 position? I don't think so. And I think if you think
23 about it and if you can separate your distaste for the
24 words you will realize that they haven't proven
25 what his intent was. They flooded you with

1 documents, yell, he blogs a lot. He's got a lot of
2 opinions. They kept pointing out to you things
3 saying the thing about the pyromaniac business and
4 the thing about the game, you know people express
5 themselves in different ways and use metaphors and
6 use analogies and that's okay. It makes our writing
7 interesting or we hope it does. I'm not here to
8 defend the content of the speech. I'm here to defend
9 his right to say and express it and that's what we all
10 need to be concerned about. It is a very scary thing
11 I submit to you ladies and gentlemen when the
12 government starts trying to prosecute people
13 criminally for words and speech. Is it possible, is it
14 sometimes appropriate? Yes. I submit to you, this
15 is not the case. Now, this is a criminal case and
16 under the Constitution of the State of Indiana, you
17 have the right to decide both the law and the facts.
18 The instructions of the Court are your best source
19 but you are the ultimate judges. Once we all, all the
20 lawyers sit down and quit arguing and once the
21 judge has instructed you, you are the judges of the
22 law and the facts. You get to decide. The charge
23 which is filed is the formal method of bringing the
24 Defendant to trial. The judge will instruct you. The
25 fact that he has been charged and arrested and

1 brought to trial is not to be considered by you as any
2 evidence of guilt - none whatsoever. Under the
3 laws of the State of Indiana and I've already talked
4 about this to some extent but I'm going to talk about
5 it again because it's very important. Under the law
6 of the State, of this State, a person charged with a
7 crime is presumed innocent. To overcome the
8 presumption of innocence, the State must prove the
9 Defendant guilty of each essential element of a
10 crime charged beyond a reasonable doubt. The
11 Defendant is not required to present any evidence to
12 you. I'm sorry, not required to present any evidence
13 to prove his innocence or to prove or explain
14 anything. Why not? Because he's presumed
15 innocent. They have to prove his intent, not that is
16 was, and here it is, here's, maybe this makes it more
17 simple, maybe it makes it more confusing but I
18 submit to you, if you deliberate and you're talking
19 about the intimidation charges and you decide, each
20 and everyone of you unanimously decide that he
21 probably intended to intimidate somebody, that he
22 probably intended to retaliate for someone's prior
23 lawful act, you are duty bound to find him not guilty
24 because probably ain't good enough. It's got to be
25 beyond a reasonable doubt. A reasonable doubt

1 ladies and gentlemen is a situation that a person
2 finds themselves in where they are under no
3 compulsion to act. There is no requirement that
4 they act, that they are comfortable doing so. If you
5 would act, if you believe to that extent that Mr.
6 Brewington's intent was to retaliate, then you can
7 find him guilty. But any other reasonable
8 explanation, any other reasonable possibility, he is
9 not guilty. You're not saying you like him. You're
10 not saying you like his parenting methods. You're
11 not saying anything, other than he's not guilty. We
12 do not find people innocent in criminal courts, in
13 this State. We find them not guilty and not guilty
14 means the government hasn't carried their burden.
15 That's what it means. I'm not going to go through
16 the reasonable doubt instruction again with you.
17 Your verdict has to be based on the law and the
18 facts as you find them. It should not be based on
19 sympathy or bias. Any sympathy you might feel for
20 any of the people that have testified here, you're not
21 to consider. That is the law. As Mr. Kisor said, we
22 are a nation of laws, not men. Sympathy doesn't
23 matter. It is a cold fact, bias, against the Defendant
24 if you have any, does not matter. You have sworn
25 that you will not consider, that you will follow the

1 law and the Court will instruct you that is the law.
2 The reasonable doubt, okay, I can't resist. I'm a
3 criminal defense lawyer. Beyond a reasonable
4 doubt is like my favorite thing in the world. Well
5 not my favorite but it's up there. The burden is
6 upon the State to prove beyond a reasonable doubt
7 that the Defendant is guilty of the crimes charged.
8 It is a strict and heavy burden. The evidence must
9 overcome any reasonable doubt concerning the
10 Defendant's guilt. It does not mean the Defendant's
11 guilt must be proved beyond all possible doubt. A
12 reasonable doubt is a fair, actual and logical doubt
13 based upon reason and common sense. A
14 reasonable doubt may arise from either the evidence
15 or the lack of it. Reasonable doubt exists when you
16 are not firmly convinced of the Defendant's guilt,
17 you have weighed and considered all the, after you
18 have weighed and considered all of the evidence.
19 The Defendant must not be convicted, let me read
20 that again. A Defendant must not be convicted on
21 suspicion or speculation. A Defendant must not be
22 convicted on suspicion or speculation. Remember,
23 sympathy doesn't matter, bias doesn't matter,
24 speculation doesn't matter. It is not enough for the
25 State to show that the Defendant is probably guilty.

1 On the other hand there are very few things in this
2 world that we know with absolute certainty. The
3 State does not have to overcome every doubt. The
4 State must prove each element of the crimes by
5 evidence that firmly convinces you and leaves no
6 reasonable doubt. The proof must be so convincing
7 that you can rely and act upon it in this matter of the
8 highest importance. And that's what I was trying to,
9 not very heartfully earlier, this instruction, I've been
10 doing this a long time as you might guess on both
11 sides and this instruction used to be different and it
12 talked about a matter of the highest importance to
13 you and the Supreme Court changed that rule later
14 and I didn't like that. I liked the old instruction
15 better but this is what we have to work with. If you
16 find there is a reasonable doubt that the Defendant
17 is guilty of the crimes, you must give the Defendant
18 the benefit of the doubt and find the Defendant not
19 guilty of the crime under consideration. That's the
20 law ladies and gentlemen. You don't have to like it
21 but it is the law. This case comes down to Mr.
22 Brewington's intent and whether that intent was to
23 retaliate with regards to Counts I through IV; it's
24 that simple I would submit to you - not whether you
25 like him. Count V is perjury alleging that Mr.

1 Brewington who voluntarily testified before the
2 Grand Jury perjured himself, lied, under oath and as
3 near as I can tell what they're referring to is the
4 address issue with the Humphrey's. And I had the
5 Sheriff yesterday, yell yesterday, read a portion of
6 that um transcript from that Grand Jury and I
7 believe the portion I had him read was Mr.
8 Negangard's question and it said James Humphrey
9 who happens to be the name of your Judge and
10 you're under oath and you're actually expecting the
11 Grand Jurors to believe that you didn't know that
12 that was his wife. And the exchanges about
13 whether the Defendant knew Ms. Humphrey was
14 Judge Humphrey's wife and Dan's response is, oh,
15 it very well could be a possibility. I'm not from
16 Dearborn County. I don't know but the and then he
17 was cut off. But apparently their contention is that
18 he lied about how whether he knew that Mrs.
19 Humphrey, Heidi Humphrey, was Judge
20 Humphrey's wife as near as I can tell. That's the
21 contention. Now Mr. Brewington, the evidence was
22 from the Sheriff, I believe again, to his knowledge
23 anyway and during the course of his investigation,
24 did not live in Dearborn County and his only
25 connection to Dearborn County was that in fact his

1 divorce was moved here when a different judge was
2 assigned to his case. It had been originally filed in
3 Ripley County. Beyond a reasonable doubt – they
4 didn't prove it. They told you they don't know how
5 he found the address. They speculated that he may
6 have found it on the internet with the Dearborn
7 County Assessor's records and how long did that
8 take in this courtroom yesterday? Two (2) minutes?
9 I don't know. But apparently it's not very hard.
10 Now I don't want you to think I'm cold-hearted and
11 don't understand why a Judge might not want his
12 address out but the bottom line is this, ladies and
13 gentlemen, he is a public official and it is already
14 out there as the State of Indiana demonstrated very
15 happily for you yesterday. It is already out there.
16 That is a public record that anybody can go access.
17 Now the issue of revealing Grand Jury testimony –
18 again we are a nation of laws – not facts. They
19 introduced State's Exhibit 10 as their evidence of
20 that is my belief and this is argument. The Grand
21 Jury statute requires to violate it, it says to convict
22 the State of unlawful disclosure of Grand Jury
23 proceedings, I'm sorry to convict the Defendant of
24 unlawful disclosure of Grand Jury proceedings, the
25 State must prove the following beyond a reasonable

1 doubt; the Defendant; knowingly or intentionally;
2 disclosed evidence or testimony given or produced
3 at a Grand Jury proceeding to any person except a
4 person who was also present or entitled to be
5 present at the proceeding. I don't think there's
6 evidence of that ladies and gentlemen. No evidence
7 of any testimony or anything that was said. The
8 blog speaks for itself. It's clearly poking fun at the
9 prosecutor. No question about that and maybe fun's
10 not the, he's making fun of the prosecutor, I think is
11 what he's doing to be perfectly honest with you. I
12 don't know. I don't know his intent and they didn't
13 prove it to you. Much as they did not prove his
14 intent to you with regard to intimidation. Don't get
15 caught up ladies and gentlemen in the volumes of
16 evidence, volumes of pleadings, things that were
17 filed in the divorce. Don't get caught up in the
18 printed out blogs. The volume, the number doesn't
19 matter and the Court will instruct you that the
20 amount of evidence on an issue doesn't, is not
21 sufficient. It's the quality of that evidence and I
22 submit to you ladies and gentlemen, the issue is did
23 they prove his intent to retaliate. They did not.
24 Therefore, you must find him not guilty of those
25 counts. He is not guilty of perjury because they

1 didn't prove it, that he knowingly lied to a Grand
2 Jury. That's what they're saying he did and he did
3 not unlawfully disclose Grand Jury materials. The
4 evidence is not there. It is your duty to find him not
5 guilty. Mr. Negangard is going to be able to speak
6 now and then the Court will instruct you. On behalf
7 of my client, Mr. Brewington, and myself, I want to
8 thank you for your time, your patience. I know this
9 has been a difficult case, simply because of the
10 length as well as the volume of documents that
11 you've been exposed to. Your attention has been
12 admirable and again on behalf of myself and Mr.
13 Brewington, I thank you and I ask you to carefully
14 consider the evidence as you paid attention to it and
15 I believe after you've done that and you deliberate
16 amongst yourselves that you will find him not guilty
17 of these offenses. Not because you agree with him,
18 not because you like him but because the State did
19 not prove their case. Thank you very much ladies
20 and gentlemen. Thank you, your honor.

21 MR. NEGANGARD: At the beginning of this case, I told you this case
22 was about accountability and responsibility. Again I
23 direct you to the stain glass window that quotes one
24 of our great founding fathers, John Adams. We are
25 a government of laws and not of men. No person,