IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

STATE OF GEORGIA	
	CASE NO.
v.	
	23SC188947
DONALD JOHN TRUMP,	
RUDOLPH WILLIAM LOUIS GIULIANI,	
JOHN CHARLES EASTMAN,	
MARK RANDALL MEADOWS,	
KENNETH JOHN CHESEBRO,	
JEFFREY BOSSERT CLARK,	
JENNA LYNN ELLIS,	
RAY STALLINGS SMITH III,	
ROBERT DAVID CHEELEY,	
MICHAEL A. ROMAN,	
DAVID JAMES SHAFER,	
SHAWN MICAH TRESHER STILL,	
STEPHEN CLIFFGARD LEE,	
HARRISON WILLIAM PRESCOTT FLOYD,	
TREVIAN C. KUTTI,	
SIDNEY KATHERINE POWELL,	
CATHLEEN ALSTON LATHAM,	
SCOTT GRAHAM HALL,	
MISTY HAMPTON a/k/a EMILY MISTY HAYES	
Defendants.	

STATE'S SUPPLEMENTAL BRIEF FOLLOWING HEARING ON DECEMBER 1, 2023

Defendants Cheeley, Shafer, Smith, and the codefendants who have adopted their motions ask the Court to take the extraordinary step of dismissing all or part of the indictment issued against them by a Fulton County grand jury. The Defendants complain, among other arguments, that the criminal solicitation counts should be demurred for failing to allege the oath of office or the portion of the oath they solicited Georgia officials to violate. They also complain that the prosecution violates their First Amendment rights and that the statutes charged are unconstitutional as applied. For the reasons set forth below, the Court should reject these arguments.

I. The criminal solicitation counts are sufficient to withstand special demurrer.

The Defendants ask the Court to create new law by imposing novel pleading requirements on the criminal solicitation counts that are inconsistent with the statutory elements of that offense and with the great weight of authority on special demurrers. While the Defendants demand that the Court take the extraordinary step of dismissing those counts, the few cases they provide in support of their position are either premised on bad law or are inapplicable to special demurrers. Meanwhile, years of common law precedent provide the Court with all that it needs to determine that the counts are legally sufficient: (1) the counts contain the elements of the offense charged; (2) they sufficiently apprise the Defendants of what they must be prepared to meet at trial; and (3) they are sufficient to protect against double jeopardy. Several federal courts, applying the same test applied under Georgia law, have upheld indictments charging solicitation crimes that contained fewer factual allegations than the indictment in this case. For the reasons set forth below, the Defendants' special demurrer to the criminal solicitation counts should be overruled.

A. The Defendants ask the Court to impose novel pleading requirements on the criminal solicitation counts based on bad or inapplicable law.

The Defendants ask the Court to impose novel pleading requirements on the criminal solicitation counts and to dismiss those counts, primarily relying on a trial court order sustaining a special demurrer to four counts of an indictment charging a former Glynn County police officer with violation of oath by public officer. *State v. Haney*, Case No. CR-2000168 (Glynn Sup. Ct., Sept. 23, 2020). As the Court well knows, only decisions of the Georgia Court of Appeals and the Georgia Supreme Court are binding upon superior courts. GA. CONST. art. VI, § V, para. III; art. VI, § VI, para. VI. Trial court orders are persuasive *at best*. But in *Haney*, the portion of the trial court's order sustaining a special demurrer to the violation of oath by public officer counts relies on *State v. Jones*, 246 Ga. App. 482 (2000), which was ***vacated and remanded by the Georgia***

Supreme Court nearly 20 years prior to the Glynn County court's reliance on it. *See State v. Jones*, No. S01C0290, 2001 Ga. LEXIS 290 (Ga. 2001) ("[T]he judgment of the Court of Appeals is vacated, and the case is remanded to the Court of Appeals for consideration in light of the decision in *Davis v. State*, 272 Ga. 818 (537 S.E.2d 327) (2000)."). For that reason alone, this Court should disregard the *Haney* trial court order. Moreover, the very case that prompted the Georgia Supreme Court to vacate *Jones* undercuts the Defendants' argument here. That case, *Davis*, reiterated that it is *a defendant's own actions* that a charging instrument must allege with particularly to provide him with sufficient information to mount his defense. 272 Ga. at 820 ("[T]he accusation provided Davis with sufficient information to mount his defense; there was no question *as to what actions of Davis's* were at issue.").

The remaining cases relied upon by the Defendants—*Pierson v. State*, 348 Ga. App. 765 (2019), *Bradley v. State*, 292 Ga. App. 737 (2008), and *Jowers v. State*, 225 Ga. App. 809 (1997)—are similarly inapposite, and the Defendants concede that the cases say nothing about pleading requirements in a charging instrument but instead speak to what the "State must show" at trial to "prove criminal liability." Def. Smith's Mot. at 15. These cases concern sufficiency of the evidence to sustain a conviction—not what must be alleged in an indictment. The standards concerning the two are not the same, and the cases relied on by the Defendants are inapplicable here. *Compare, e.g., Kinlaw v. State*, 317 Ga. 414, 416 (2023) (sufficiency challenge attacks the evidence and testimony presented at trial), *with Kimbrough v. State*, 300 Ga. 878, 880-881 (2017) (demurrer attacks the sufficiency of the substance or form of the indictment). Indeed, none of the three cases cited by the Defendants even contain the words "demurrer" or "dismiss." The Court cannot rely on them to justify dismissing the criminal solicitation counts prior to trial.

Furthermore, the cases cited by the Defendants all concern violations of O.C.G.A. § 16-10-1 (violation of oath by public officer), which is not charged in this indictment. Georgia's inchoate crimes—including criminal solicitation (O.C.G.A. § 16-4-7), criminal attempt (O.C.G.A. § 16-4-1), and conspiracy to commit a crime (O.C.G.A. § 16-4-8)—are separate and distinct offenses from their "underlying" or "target" crimes. They have different essential elements and therefore different pleading requirements. *Adams v. State*, 229 Ga. App. 381, 384 (1997) (criminal solicitation not a lesser included offense of trafficking cocaine because essential elements of criminal solicitation are intent that another person engage in conduct constituting a felony and solicitation of the other person to engage in such conduct); *Dennard v. State*, 243 Ga. App. 868, 871-872 (2000) (indictment charging criminal attempt not required to allege elements of underlying child molestation but instead must simply allege intent to commit a crime and a substantial step toward the commission of that crime); *Sanders v. State*, 313 Ga. 191, 196-197 (2022) (indictment charging conspiracy to commit aggravated assault sufficient where count alleges a conspiracy and at least one overt act; indictment not required to plead elements of aggravated assault). Even if any of the cases relied on by the Defendants had anything at all to say about pleading requirements—and they do not—pleading requirements for one crime do not govern pleading requirements for another crime with different essential elements.

Here, the Defendants ask the Court to rewrite Georgia's criminal solicitation statute by adding elements to that offense that do not exist and by creating novel pleading requirements that do not match statutory language passed by the legislature and signed into law by the governor. "[U]nder our 'system of separation of powers this Court does not have the authority to rewrite statutes.' Indeed, the doctrine of separation of powers is 'an immutable constitutional principle which must be strictly enforced … .'" *Mays v. State,* 345 Ga. App. 562, 567 (2018) (quoting *Allen*

v. Wright, 282 Ga. 9, 12 (2007)). The Defendants provide no real support for their argument and point to no case where a criminal solicitation count was dismissed for failure to allege every detail of the crime solicited. Were this Court to accept the Defendants' position, it would be the first court in this state to do so. Instead, the Court should rely on the great weight of authority, as further set forth below, and overrule the Defendants' special demurrer.

B. The criminal solicitation counts are not subject to special demurrer because they allege the elements of criminal solicitation, sufficiently apprise the Defendants of what they must be prepared to meet, and protect against double jeopardy.

Years of both Georgia and federal precedent provide the Court with all that it needs to determine that the criminal solicitation counts are legally sufficient to survive special demurrer. While a defendant is entitled to an indictment "perfect in form, … an indictment does not have to contain every detail of the crime to withstand a special demurrer." *Kimbrough*, 300 Ga. at 881 (cleaned up). A special demurrer is "without merit" where the allegations in the indictment sufficiently inform a defendant "what actions of [his are] at issue." *Davis*, 272 Ga. at 820. "[T]he purpose of an indictment is to allow [the] defendant to prepare his defense intelligently and to protect him from double jeopardy." *Sanders*, 313 Ga. at 195 (citation omitted). An indictment satisfies due process where it alleges the underlying facts with enough detail to put "the defendant on notice of the crimes with which he is charged and against which he must defend." *Dunn v. State*, 263 Ga. 343, 345 (1993).

While each count of an indictment must within itself allege the essential elements of the crime charged, when considering a special demurrer, "the indictment is read as a whole," and factual details alleged in one count of the indictment can "provide[] the information [a defendant] complains is missing from" another count. *Sanders*, 131 Ga. at 196-197. Moreover, while a defendant "may desire greater detail about [a charge] … [i]t is not required that the indictment

give every detail of the crime," and additional detail desired "may be supplemented … by the pretrial discovery [he] receives and any investigation [his] counsel conducts." *Id.* at 196. "[I]t is not necessary for the [S]tate to spell out in the indictment the evidence on which it relies for a conviction." *Stapleton v. State*, 362 Ga. App. 740, 747 (2021).

Boiled down, the Georgia Supreme Court adopted the same fundamental test first set forth nearly 130 years ago by the United States Supreme Court to determine whether an indictment is constitutionally sufficient to withstand a special demurrer[1]:

> [The test] is not whether [the indictment] could have been made more definite and certain, but whether it contains the elements of the offense intended to be charged, and sufficiently apprises the defendant of what he must be prepared to meet, and, in case any other proceedings are taken against him for a similar offense, whether the record shows with accuracy to what extent he may plead a former acquittal or conviction.

Sanders, 313 Ga. at 195; *Compare Sanders*, *State v. Wyatt*, 295 Ga. 257, 260 (2014), and *State v. English*, 276 Ga. 343, 346 (2003), *with Cochran v. United States*, 157 U.S. 286, 290 (1895). Where the bedrock principles underpinning challenges to an indictment are nearly identical under both Georgia and federal law, the Court should view federal authority as instructive. As the former Fifth Circuit sagely counseled:

> [Courts should] "examine into, and determine, the validity of attacks upon indictments, especially of this kind, from an enlightened standpoint of common sense and right reason rather than from the narrow standpoint of petty preciosity, pettifogging, technicality or hair splitting fault finding." Although indictments must be specific and precise as to the acts and crime charged, *the law does not compel a ritual of words*.

United States v. Purvis, 580 F.2d 853, 857 (5th Cir. 1978) (emphasis added) (quoting *Parsons v. United States*, 189 F.2d 252, 253 (5th Cir. 1951)).

[1] Unlike Georgia's extraordinary remedy of dismissal of a count for failing to meet this test, the analogous federal remedy is the filing of a bill of particulars by the government pursuant to Federal Rule of Criminal Procedure 7(f).

Here, the criminal solicitation counts are sufficient to withstand special demurrer. Each count sets forth the essential elements of criminal solicitation; each count sufficiently apprises the Defendants of what of their own conduct is at issue and what they must be prepared to meet; and each count is sufficiently pled to protect against double jeopardy. *Sanders*, 313 Ga. at 195. In pertinent part, the indictment sets forth the following facts, giving the Defendants notice of what of their own conduct they must be prepared to defend at trial:

1) Defendant Donald John Trump lost the United States presidential election held on November 3, 2020, in Georgia, Indictment at 14;
2) Defendants Trump, Giuliani, Eastman, Ellis, Smith, Cheeley, and Meadows solicited Georgia officials, including members of the General Assembly, "to violate their oaths to the Georgia Constitution and to the United States Constitution by unlawfully changing the outcome of the November 3, 2020, presidential election in Georgia in favor of" Defendant Trump, *Id.* at 16;
3) Defendants Giuliani, Eastman, Ellis, and Smith appeared at a Georgia Senate Judiciary Subcommittee meeting on December 3, 2020, *Id.* at 16, 25, 72;
4) Defendants Giuliani and Smith appeared at a Georgia House of Representatives Governmental Affairs Committee meeting on December 10, 2020, *Id.* at 16, 33, 74;
5) Defendants Giuliani, Smith, and Cheeley appeared at a Georgia Senate Judiciary Subcommittee meeting on December 30, 2020, *Id.* at 16, 46, 84;
6) There was only one meeting at issue on each of those dates, and the dates of the offenses are averred as material elements in the indictment, *Id.* at 72, 74, 84;
7) At those meetings, the Defendants solicited, requested, and importuned members of the General Assembly to reject lawful electoral votes cast by the duly elected and

qualified presidential electors from the State of Georgia and instead "to unlawfully appoint their own presidential electors for the purpose of casting electoral votes" for Defendant Trump, *Id.* at 16, 25, 33, 46, 72, 74, 84;

8) Those members of the General Assembly were public officers at the time of the offense, and their names are listed in the indictment, *Id.* at 16, 25, 33, 46, 72, 74, 84;

9) Part of the scheme to solicit, request, and importune included making false statements concerning fraud in the November 3, 2020, presidential election to those members of the General Assembly, *Id.* at 16;

10) Specific false statements were made by the Defendants to those members of the General Assembly, and those false statements are set forth in the indictment nearly word for word, *Id.* at 25-26, 47-48, 56, 72-73, 75, 84-85;

11) The Defendants intended that those members of the General Assembly engage in the solicited conduct, *Id.* at 25, 33, 46, 72, 74, 84; and

12) That conduct, if completed by those members of the General Assembly, would have constituted a violation of their oaths of office as prescribed by law, *Id.* at 25, 33, 46, 72, 74, 84.

Based on these specific, factual allegations, all appearing on the face of the indictment, the Defendants know the State intends to prove at trial that on three specific dates in December 2020, the Defendants appeared before specific members of the General Assembly, presented specific false information to them about the November 3, 2020, presidential election, and made a specific solicitation to them: to reject Georgia's lawful presidential electors and to instead unlawfully appoint their own presidential electors in violation of their oaths to the Georgia Constitution and to the United States Constitution. The Defendants also know that the State intends to prove that

this was part of a larger conspiracy and that the Defendants had intent that the members of the General Assembly perform the solicited conduct. That is sufficient notice for the Defendants to prepare a defense to the charge of criminal solicitation of violation of oath by public officer, "notice that may be supplemented, of course, by the pretrial discovery he receives and any investigation his counsel conducts." *See Wyatt*, 295 Ga. at 263. Adding the additional information the Defendants complain is missing from the indictment no better allows them to prepare a defense[2] and no better protects them against double jeopardy.

With these allegations in mind, the criminal solicitation counts clearly pass the three-part test reiterated in case after case concerning special demurrers in Georgia: (1) the counts contain the elements of the offense charged; (2) they sufficiently apprise the Defendants of what of their own conduct they must be prepared to defend at trial; and (3) they are sufficient to protect against double jeopardy. *Sanders*, 313 Ga. at 195; *Wyatt*, 295 Ga. at 260; *State v. Grube*, 293 Ga. 257, 258 (2013); *English*, 276 Ga. at 346. For these reasons, the Court should overrule the Defendants' special demurrer to these counts.

C. Even if the indictment were required to allege the oath or the portion that would have been violated—and it is not—the Defendants conceded at the December 1, 2023, hearing that "there was only one oath that legislators take" and cannot simultaneously complain they lack notice of what oath would have been violated.

The State maintains that the Defendants have pointed to no authority suggesting that the indictment must allege the oath or portion of the oath that would have been violated had the legislators agreed to commit the crimes solicited by the Defendants. The indictment is sufficiently pled to allow the Defendants to mount a defense to and protect against double jeopardy for the

[2] Indeed, the Defendants have already raised multiple defenses to these counts as currently alleged, including a First Amendment defense, Speech and Debate immunity, legal and factual impossibility, that there is no nexus between appointing presidential electors and senator's official duties, and a smattering of constitutional defenses.

offense they are charged with—criminal solicitation. In any case, even if there were such a pleading requirement, the Defendants conceded at the December 1, 2023, hearing that they have actual notice of which oath would have been violated and that they have actual notice of the terms of that oath. At the hearing, counsel for the Defendants stated as follow:

> I looked in the Code. I started at O.C.G.A. § 1-1-1 to make sure I didn't miss a certain oath that perhaps a legislator took. … ***And I found that there was only one oath that legislators take.*** And if I'm wrong, it shows even more why we're entitled to the special demurrer. I'm assuming that the prosecution doesn't disagree that this is the oath that was taken, but I'm just guessing that this is the oath that they're referring to, because I don't know of any other oath they took. We should have been told, but I found an oath in the Code, in Title 28—never looked at that before—Title 28-1-4. And it says, it begins, in addition to any other oath you took—I have no idea if they took another oath, because they didn't tell us—in addition to any other oath prescribed by law, each senator and representative, before taking the seat to which elected, shall take the following oath. ***I do solemnly swear or affirm that I will support the Constitution of the state and of the United States. That's it.*** Then there's a reference to I'll conduct myself—ya know—in accordance with that oath.

Judgescottmcafee, *Scott McAfee's Zoom Hearings*, YouTube (Dec. 1, 2023), https://www.youtube.com/watch?v=fRmyWkxIsxA at 03:56:15.

As the Defendants conceded, there is only one oath prescribed by law for senators and representatives in Georgia, provided at O.C.G.A. § 28-1-4(a):

> I do hereby solemnly swear or affirm that I will support the Constitution of this state and of the United States and, on all questions and measures which may come before me, I will so conduct myself, as will, in my judgment, be most conducive to the interests and prosperity of this state.

Because there is only one oath *prescribed by law*, the Defendants are presumed to have notice of that. As O.C.G.A. § 1-3-6 provides, "after they take effect, the laws of this state are obligatory upon all the inhabitants thereof. *Ignorance of the law excuses no one*." *See, e.g., Ga. State Lic. Bd. for Residential & Gen. Contrs. v. Allen*, 286 Ga. 811, 817 (2010) (contractors presumed to know licensing requirements as prescribed by law); *City of Atlanta v. Black*, 265 Ga. 425, 426 (1995) (parties presumed to know scope of authority of assistant city attorneys as prescribed by law);

Serna v. State, 308 Ga. App. 518, 521 (2011) (criminal defendant's ignorance of the fact that he was violating the law does not relieve him of criminal intent); *Hale v. State*, 188 Ga. App. 524, 525 (1988) (criminal defendant presumed to have notice of his driver's license suspension by operation of law). Here, because—as the Defendants conceded—there is only one oath prescribed by law for legislators in Georgia, the law provides the Defendants with constructive notice of that fact. "Constructive notice is information or knowledge of a fact imputed by law because the fact could have been discovered by proper diligence and the situation was such as to cast upon a person the duty to inquire into it." *Hamilton v. Edwards*, 245 Ga. 810, 811-812 (1980).

The State maintains that the indictment as written sufficiently puts the Defendants on notice of what of their own conduct they must be prepared to defend at trial, without alleging what oath or portion of that oath would have been violated if members of the General Assembly had done what the Defendants solicited. In any case, even if notice of that fact were required, the Defendants concede that they have actual notice of the oath, and the law provides them with constructive notice. The Defendants are presumed to know the law, which prescribes only one oath of office for Georgia legislators. The Court should overrule their special demurrer.

D. While few Georgia cases address special demurrers to criminal solicitation indictments, the legal sufficiency of the indictment here is supported by multiple federal cases where indictments alleging fewer details were held sufficient.

While it appears that Georgia's appellate courts have only considered one case involving a special demurrer to an indictment charging criminal solicitation, *Sanders*, 313 Ga. at 201, multiple federal cases provide persuasive guidance to this Court and demonstrate that the indictment here is legally sufficient. Significantly, the indictments in the cases set forth below allege facts concerning the *conduct of the defendants* with particularity, because that is what is required to put a defendant on notice of what of his own conduct he must be prepared to defend at trial. *Davis*,

272 Ga. at 820. The indictments in these cases allege few, if any, details concerning how the person or persons solicited would have committed the crime solicited, either legally or factually.

1) *United States v. William White*, Seventh Circuit Court of Appeals

United States v. William White concerns the sufficiency of an indictment charging a white supremacist with soliciting attacks against a jury foreperson who served on a jury that convicted a white supremacist leader of soliciting the murder of a federal judge. 610 F.3d 956 (7th Cir. 2010). The indictment alleges a single count of solicitation of 18 U.S.C. § 1503. The indictment alleges that White created and maintained the public website "Overthrow.com" as part of his involvement with the American National Socialist Workers Party. *See* "**Exhibit A**," William White Indictment at 1. The indictment then alleges:

> From on or about September 11, 2008, through at least on or about October 11, 2008, in the Northern District of Illinois, Eastern Division, and elsewhere, WILLIAM WHITE, defendant herein, with intent that another person engage in conduct constituting a felony that has an element the use, attempted use, or threatened use of force against the person of Juror A, in violation of the laws of the United States, and under circumstances strongly corroborative of that intent, solicited and otherwise endeavored to persuade such other person to engage in such conduct; in that the defendant solicited and otherwise endeavored to persuade another person to injure Juror A on account of a verdict assented to by Juror A, in violation of Title 18, United States Code Section 1503.

Id. at 2. The indictment further alleges that White "caused to be displayed on the front page of 'Overthrow.com' a posting entitled, 'The Juror Who Convicted Matt Hale,'" that listed the juror's name, date of birth, address, phone number, cell phone number, and office phone number. *Id.* The indictment then alleges several other examples of White's posting "other personal identifying information of individuals who were targets of criticism on Overthrow.com." *Id.* at 3-12. "Certain of these postings expressed WHITE's desire that acts of violence be committed against the individuals at the posted addresses." *Id.* at 4.

Significantly, the indictment in *William White* (1) does NOT allege any specific person who White intended to solicit; (2) does NOT specifically allege what provision of 18 U.S.C. § 1503 White solicited anyone to violate, i.e., whether White solicited anyone to injure Juror A or to "in his person" or his property; and (3) does NOT allege how White intended that anyone go about violating 18 U.S.C. § 1503, i.e., whether White solicited anyone to use a weapon against Juror A or to use threatening communications against Juror A or simply to show up at Juror A's residence. Still, the indictment was held legally sufficient on appeal.

The Seventh Circuit held that the indictment sufficiently stated "all the elements of the crime charged," adequately informed "the defendant of the nature of the charges so that he" could prepare a defense, and allowed "the defendant to plead the judgment as a bar to any future prosecutions." *White*, 610 F.3d at 958. The court noted that "the presence or absence of any particular fact [in the indictment] is not dispositive," and the indictment made the defendant "aware of the specific conduct against which he will have to defend himself at trial." *Id.* at 959.

2) *United States v. Lancy White*, Eleventh Circuit Court of Appeals

United States v. Lancy White concerns the sufficiency of an indictment charging a defendant with using the internet to solicit undercover federal agents, whom he believed were minors, to engage in criminal sexual activity. 660 Fed. Appx. 779 (11th Cir. 2016). The indictment alleges two counts of soliciting violations of the Code of Alabama, sections 13A-6-62, 13A-6-63, 13A-6-64, and 13A-6-67. *See* "**Exhibit B**," Lancy White Indictment at 1-2. Count 1 of the indictment alleges:

> the defendant, LANCY WHITE, JR. used any facility and means of interstate and foreign commerce to knowingly attempt to persuade, induce, entice, and coerce any individual who had not attained the age of 18 years to engage in prostitution and any sexual activity for which any person can be charged with a criminal offense.

> Specifically, LANCY WHITE, JR. knowingly used the Internet to attempt to persuade, induce, entice and coerce an individual who WHITE believed was a minor, to-wit: a nine year old girl, to engage in criminal sexual activity, and had such sexual activity occurred, WHITE could have been charged with a criminal offense under the Code of Alabama, section 13A-6-63; 13A-6-64; and 13A-6-67.

Id. at 1. Count 2 of the indictment is substantially similar. *Id.* at 2.

Significantly, while the indictment against White alleges four possible Alabama crimes solicited by him, several of those crimes can be committed in multiple ways. The indictment does NOT allege whether any violation of Section 13A-6-63 would have been "sodomy with another person by forcible compulsion" or "sodomy with another person who is incapable of consent by reason of being incapacitated" or "sodomy with a person who is less than 12 years old." The indictment does NOT allege whether any violation of Section 13A-6-67 would have been by subjecting "another person to sexual contact who is incapable of consent by reason of some factor other than being less than 16 years old" or by subjecting "another person to sexual contact who is less than 16 years old, but more than 12 years old." Moreover, the indictment does NOT allege any facts about how any of the solicited crimes would have occurred. Still, the indictment was held legally sufficient on appeal.

The Eleventh Circuit noted that the indictment set forth the essential elements of the crimes charged, and, in the context of the record as a whole, the "only subsections of the Alabama statutes charged in Counts 1 and 2 that could have applied to White's conduct were those based on the ages of the minor victims … ." *White*, 660 Fed. Appx. at 782. Moreover, "each count of the indictment charged the victim's age and the applicable Alabama sex offense statutes." *Id.* Accordingly, the court held that the indictment was sufficiently pled to provide "proper notice of the charges" and to protect against double jeopardy. *Id.*

3) *United States v. Hill*, Northern District of Georgia

United States v. Hill concerns the sufficiency of an indictment charging a Fulton County Deputy Sheriff with, among other things, soliciting subordinate officers to use excessive force against inmates at the Fulton County Jail. No. 1:09-CR-199, 2009 U.S. Dist. LEXIS 123059 (N.D. Ga., Dec. 11, 2009) (Hagy, Mag. J.) (adopted by *United States v. Hill*, No. 1:09-CR-199, 2010 U.S. Dist. LEXIS 2512 (N.D. Ga., Jan. 13, 2010) (Thrash, J.)). The indictment alleges that Hill solicited other employees of the Fulton County Sheriff's Office to violate 18 U.S.C. § 242. *See* "**Exhibit C**," Hill Indictment at 1-2. The indictment alleges, in pertinent part:

> On or about August 9, 2008, in the Northern District of Georgia, the defendant, Lieutenant ROBERT W. HILL, JR., then a Fulton County Deputy Sheriff at the Fulton County Jail, with the intent for one or more persons to engage in conduct constituting a felony that has an element the use of excessive physical force against one or more inmates of the Fulton County Jail, in violation of Title 18, United States Code, Section 242, and under circumstances strongly corroborative of that intent, did solicit, command, induce and otherwise endeavor to persuade such person or persons to engage in such conduct, to wit: during a shift roll call, the defendant urged subordinate officers to use excessive force against one or more inmates, all in violation of Title 18, United States Code, Section 373.

Id. The indictment (1) does NOT allege any specific persons Hill intended to solicit; (2) does NOT allege any specific provision of Section 242 Hill solicited anyone to violate, i.e., subjecting a person to "deprivation of any rights, privileges, or immunities" protected by law or subjecting any person "to different punishments, pains, or penalties" on account of status as an alien, or by reason of color or race; (3) does not allege any specific right, privilege, or immunity provided by law that Hill solicited anyone to deprive an inmate of; and (4) does NOT allege how Hill intended that his subordinates go about violating Section 242, i.e. by excessively restraining an inmate, by striking them, by tasing them, or something else. Still, the indictment was held legally sufficient.

The district court noted that 18 U.S.C. § 373 "requires only that Defendant have endeavored to induce or persuade another person to commit a felony involving physical force

against either property or a person … .” *Hill*, 2009 U.S. Dist. LEXIS 123059 at *22. The court held that the indictment was not required to allege more than it did; as alleged, it was “sufficient to inform Defendant of the offense charged against him and to allow him to mount a defense to the charge.” *Id.* at *23. The indictment also sufficiently provided “protection to Defendant against any future prosecution for the same offense … .” *Id.* at *24.

For the reasons set forth above, the Defendants’ special demurrer to the criminal solicitation counts of the indictment should be overruled. The Defendants ask the Court to take the extraordinary step of dismissing those counts but provide no case that supports their position. Conversely, the indictment here passes the test set forth in nearly every Georgia Supreme Court case on special demurrers: (1) the counts allege the essential elements of the offense; (2) they apprise the Defendants of what they must be prepared to meet and what of their own conduct they must defend at trial; and (3) they are sufficient to protect against double jeopardy. That is all that is required under Georgia law, and the indictment survives special demurrer.

II. The Defendants’ constitutional challenges to the indictment are not yet ripe, but even if ripe, the Defendants have not made a showing that the prosecution violates any of their constitutional rights.

The State maintains that the Defendants’ as-applied constitutional challenges to the indictment are not yet ripe because no factual record has been developed in this case for the Court to consider. *See Harris v. Mexican Specialty Foods, Inc.*, 564 F.3d 1301, 1308 (11th Cir. 2009) (“Because [an as-applied] challenge asserts that a statute cannot be constitutionally applied in particular circumstances, it necessarily requires the development of a factual record for the court to consider.”) (citing *Siegel v. LePore*, 234 F.3d 1163, 1171 (11th Cir. 2000)). The Court has not yet received any evidence or heard any testimony concerning any of the allegations in the indictment, and as the Court itself has pointed out, the facts are vigorously disputed by the parties.

The Defendants turn to *Hall v. State* in rebuttal, but in that case, unlike here, the defendant did "not substantively contest the State's factual allegations." 268 Ga. 89, 90 (1997). The Defendants also turn to *State v. Davis*, 246 Ga. 761 (1980), but that case concerns facial attacks and has no bearing on the ripeness of an as-applied attack. Still, even if the issues are ripe, the Defendants have made no showing that the prosecution violates any of their constitutional rights, and the Court should deny all of their as-applied constitutional challenges.

A. The prosecution does not violate the First Amendment because fraud, perjury, threats, solicitation, harmful lies to the government, and speech integral to criminal conduct are not protected by the Georgia or United States Constitution.

The indictment charges the Defendants with participating in a criminal enterprise and committing multiple crimes involving fraud, lies, and attempts to corruptly influence the lawful outcome of a presidential election. Despite the Defendants' attempt to use the First Amendment as an absolute shield against prosecution, speech integral to—or even incidental to—their crimes enjoys no constitutional protection. "It is fundamental First Amendment jurisprudence that prohibiting and punishing speech 'integral to criminal conduct' does not 'raise any Constitutional problem.'" *United States v. Trump*, No. 23-257, 2023 U.S. Dist. LEXIS 215162 at *48 (D.D.C., Dec. 1, 2023) (Chutkan, J.) (quoting *United States v. Stevens*, 559 U.S. 460, 468 (2010)). Nor is there any constitutional protection for speech involving fraud, perjury, threats, criminal solicitation, or lies that threaten to deceive or harm the government. *See, e.g., Stevens*, 559 U.S. at 468-469 (fraud); *United States v. Williams*, 553 U.S. 285, 298 (2008) (solicitation); *Rice v. Paladin Enters., Inc.*, 128 F.3d 233, 244 (4th Cir. 1997) (threats, perjury); *Haley v. State*, 289 Ga. 515, 528 (2011) (harmful lies to the government). "Prosecutions for conspiring, directing, and aiding and abetting do not run afoul of the Constitution when those offenses are 'carried out through speech.'" *Trump*, 2023 U.S. Dist. LEXIS 215216 at *48 (citing *Nat'l Org. for Women v. Operation Rescue*,

37 F.3d 646, 655-56, 308 (D.C. Cir. 1994) (directing and aiding and abetting) and *Williams*, 553 U.S. at 298 (conspiring)).

Here, to the extent that the indictment seeks to punish speech, all of that speech constitutes speech integral to criminal conduct, fraud, perjury, threats, criminal solicitation, or lies that threaten to deceive or harm the government. If the allegations in the indictment are taken as true, then the prosecution only concerns speech integral to a conspiracy to violate the Georgia RICO Act, speech soliciting government officials to commit crimes, speech constituting false statements made to government departments and agencies, speech consisting of fraud, speech intended to influence witnesses, and speech constituting false statements made in judicial proceedings. The "prevention and punishment" of these categories of speech "have never been thought to raise any Constitutional problem." *Stevens*, 559 U.S. at 468. The Defendants have made no showing to the contrary, and their First Amendment as-applied challenge should be denied.

B. The Defendants' remaining constitutional challenges are not pled with particularity, and the Defendants have failed to show that the prosecution is otherwise unconstitutional.

The Defendants' remaining constitutional challenges—including fair notice, vagueness, selective prosecution, violation of separation of powers, and the rule of lenity—fail to specify which counts of the indictment amount to unconstitutional applications of specific statutes and in what specific way. The State can in no way meaningfully respond. In any case, the Defendants have failed to show that the prosecution is unconstitutional for any reason, and all of their constitutional as-applied challenges should be denied.

For the reasons set forth above, the Defendants' motions should be denied.

Respectfully submitted this 18th day of December 2023,

FANI T. WILLIS
District Attorney

Atlanta Judicial Circuit

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Georgia Bar No. 414898
Chief Senior Assistant District Attorney
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fmcdonald.wakeford@fultoncountyga.gov

/s/ John W. "Will" Wooten
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Exhibit A

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA	)	No. 08 CR 851
	)	
v.	)	Violation: Title 18, United States Code, Section 373
	)	
WILLIAM WHITE	)	
	)	**SUPERSEDING INDICTMENT**
	)	

COUNT ONE

The SPECIAL FEBRUARY 2008-1 GRAND JURY charges:

1. At times material to this indictment:

a. In or about January 2003, Matthew Hale, the leader of a white supremacist organization known as the World Church of the Creator, was charged in a federal criminal case in the Northern District of Illinois with multiple counts of solicitation of the murder of United States District Judge Joan Humphrey Lefkow and obstruction of justice. Hale was tried before a jury in the Northern District of Illinois, convicted of one count of solicitation and two counts of obstruction, and sentenced to 480 months' imprisonment. Juror A was the foreperson of the jury that convicted Hale.

b. The website "Overthrow.com," which was accessible to the general public on the Internet, was a site created and maintained by defendant WILLIAM WHITE. "Overthrow.com" purported to be affiliated with the "American National Socialist Workers Party" ("ANSWP"). The ANSWP was an organization that, according to the Overthrow.com web site, claimed it was comprised of a "convergence of former [white supremacy]

'movement' activists who grew disgusted with the general garbage that 'the movement' has attracted and who formed the ANSWP under the Command of Bill White." Members of the ANSWP were described as "National Socialists... who fight for white working people."

2. From on or about September 11, 2008, through at least on or about October 11, 2008, in the Northern District of Illinois, Eastern Division, and elsewhere,

WILLIAM WHITE,

defendant herein, with intent that another person engage in conduct constituting a felony that has as an element the use, attempted use, or threatened use of force against the person of Juror A, in violation of the laws of the United States, and under circumstances strongly corroborative of that intent, solicited and otherwise endeavored to persuade such other person to engage in such conduct; in that defendant solicited and otherwise endeavored to persuade another person to injure Juror A on account of a verdict assented to by Juror A, in violation of Title 18, United States Code Section 1503.

3. It was part of the solicitation, inducement, and endeavor to persuade that on or about September 11, 2008, defendant WILLIAM WHITE caused to be displayed on the front page of "Overthrow.com" a posting entitled, "The Juror Who Convicted Matt Hale." The posting read: "Gay anti-racist [Juror A] was a juror who played a key role in convicting Matt Hale. Born [date], [he/she] lives at [address] with [his/her] gay black lover and [his/her] cat [name]." [His/Her] phone number is [phone number], cell phone [phone number], and [his/her] office is [phone number]."

4. It was further part of the solicitation, inducement, and endeavor to persuade that on or about September 12, 2008, defendant WILLIAM WHITE caused to be displayed on the front page of "Overthrow.com" a posting entitled, "[Juror A] Update - Since They Blocked the first photo." The posting read: "Gay anti-racist [Juror A] was a juror who played a key role in convicting Matt Hale. Born [date], [he/she] lives at [address] with [his/her] gay black lover and [his/her] cat [name]." [His/Her] phone number is [phone number], cell phone [phone number], and [his/her] office is [phone number]. Note that [University A] blocked much of [Juror A's] information after we linked to [his/her] photograph."

5. The above-described solicitation, inducement, and endeavor to persuade occurred under the following circumstances, among others, strongly corroborative of defendant WILLIAM WHITE's intent that another person engage in conduct constituting a felony that has as an element the use, attempted use, or threatened use of force against the person of Juror A:

a. Prior to the solicitation, inducement, and endeavor to persuade, defendant WILLIAM WHITE was aware that individuals associated with the white supremacist movement, who were the target audience of "Overthrow.com," at times engaged in acts of violence directed at non-whites, Jews, homosexuals, and persons perceived by white supremacists as acting contrary to the interests of the white race.

b. Prior to the solicitation, inducement, and endeavor to persuade, defendant WILLIAM WHITE on multiple occasions caused postings to be made to and maintained on "Overthrow.com" that displayed what purported to be the home address and/or

other personal identifying information of individuals who were targets of criticism on Overthrow.com. Certain of these postings expressed WHITE's desire that acts of violence be committed against the individuals at the posted addresses. Several of these postings were accessible to persons visiting "Overthrow.com" between approximately September 11, 2008, and approximately October 11, 2008.

c. For example, Individual B is a Canadian civil rights lawyer who has authored publications regarding the use of the Internet in hate crimes. From at least on or about September 11, 2008, until on or about October 11, 2008, the following posting, originally posted on or about March 26, 2008, appeared on the website "Overthrow.com":

> Kill [Individual B] Man Behind Human Rights Tribunal's Abuses Should Be Executed.
> Commentary -- [Individual B], the sometimes Jewish, sometimes not, attorney behind the abuses of Canada's Human Rights Tribunal should be drug out into the street and shot, after appropriate trial by a revolutionary tribunal of Canada's white activists. It won't be hard to do, he can be found, easily, at his home, at [Address]...
>
> We may no longer have the social cohesion and sense of purpose necessary to fight as a country, but those of us who have the social cohesion and sense of purpose necessary to unify as a race must take notice of an irreconcilable fact: [Individual B] is an enemy, not just of the white race, but of all humanity, and he must be killed. Find him at home and let him know you agree:[Address]
> ---
> Emailed to you by:
> Overthrow.com
> ATTN: Bill White, Editor
> Post Office Box 8601
> Roanoke, VA 24014
> http://12.107.40.66
> nationalsocialistworkers@yahoo.com
> answp@nazi.org

d. Elie Wiesel is an internationally known Holocaust survivor who has authored publications about the Holocaust. On or about February 1, 2007, Wiesel was attacked by Eric Hunt. Following a jury trial, Hunt was convicted of false imprisonment with a hate crime allegation, battery, and elder abuse. During Hunt's trial, the jury heard evidence regarding Hunt's view that the Holocaust did not happen and that Wiesel's books on that subject were fictitious.

On or about February 13, 2007, defendant WILLIAM WHITE caused a posting to be made to "Overthrow.com" entitled "Where Elie Wiesel Lives - In Case Anyone Was Looking For Him." This posting listed three addresses purporting to be Wiesel's residences.

On or about February 21, 2008, WHITE caused another posting to be made to "Overthrow.com," which read in part:

> "Commentary -- I received a call today from the Associated Press regarding Eric Hunt and the assault on Elie Wiesel. In response, I make the following statement:
>
> Elie Wiesel should be afraid to walk out his front door but for the rightful vengeance of the white working people he and his holocaust lies have exploited....
>
> For decades, the Jews and the liars have used physical force, violent attacks on peaceful demonstrators and peaceful meetings, and the violent physical force of unjust and tyrannical laws to silence those who question the holocaust lie. If white people are going to undo this system, we have to be ready to adapt and use the tactics of our exploiters.
>
> Insofar as my views may have played a role in motivating Mr. Hunt, I can only say that I hope to inspire a hundred more young white people to sacrifice themselves for our collective racial whole. The only thing more noble than sacrifice is victory.
>
> Heil Hitler

Emailed to you by:
Overthrow.com / White Politics, LLC
ATTN: Bill White, Editor

Post Office Box 8601
Roanoke, VA 24014
http://www.overthrow.com
nsmroanoke@yahoo.com"

On or about September 25, 2008, WHITE caused a posting to be made to the website "Overthrow.com" entitled "Jews Arrested After Attacking Police At Wiesel Speech - Dozen ANSWP Activists Picket Holocaust Lies." In this post WHITE made reference to Eric Hunt, stating, "Last year, a fan of this website kidnapped Wiesel and tried to force him to confess his books on the "Holocaust" were knowing lies."

e. In or about September 2007, defendant WILLIAM WHITE caused to be posted to "Overthrow.com" an article entitled, "Addresses Of Jena 6 Niggers - In Case Anyone Wants To Deliver Justice." The posting then listed the names and addresses of six individuals involved in a matter in Jena, Louisiana that had received substantial media attention. Shortly after this article was posted to "Overthrow.com, an article was published in a Roanoke, Virginia-based newspaper, which was critical of the defendant WHITE for posting the home addresses of these six individuals. In response to this newspaper article, defendant WHITE posted a second article to "Overthrow.com," which read in part: "When the courts start enforcing laws against Internet threats and actual violence against anti-racists and the mainstream, Jewish owned media which finances and encourages them, I will stop broadcasting people's names and address with the opinion they should be lynched. However, as long as we live in a society in which laws are not enforced against Jews, Marxists and

other privileged members of the bourgeoisie, I will take advantage of that and use the lawless chaos they've created to push my view, which is that all Jews and Marxists (including their fellow traveling neo-cons, neo-liberals, Zionists and Judaized-Christians in both the Republican and Democratic Parties) should be shot, rather than debated -- along with their fellow travelers and chosen pets in the Negro 'rights' movement."

f. On or about February 28, 2005, certain family members of United States District Court Judge Joan Humphrey Lefkow were found murdered in their home. Before the results of the law enforcement investigation were made public, from on or about February 28, 2005 until in or about March 2005, defendant WILLIAM WHITE caused to be posted to "Overthrow.com" a series of articles related to the murders, including articles which claimed that the murders were carried out by white supremacists. On or about February 28, 2005 defendant WHITE caused an article to be posted to Overthrow.com entitled, "Hale Judge's Mother, Husband Murdered - White Nationalist Start String Of Assassinations At Feds Who Framed Creator Leader." This article made reference to the murders and stated in part:

> "The husband and mother of the judge who shut down the World Church of the Creator have been assassinated by white nationalists who are promising to kill every federal agent and Jewish official associated with the case. According to a statement released tonight to white nationalist news service, individuals identifying themselves as members of the World Church of the Creator took responsibility for the killings and promised that other bodies would follow...
>
> The killing is not the first linked to the Creator group. Benjamin Smith, the most prominent, killed nine people and wounded two others in a 1999 shooting rampage...

According to a statement released to the white-oriented press, other individuals associated with the case, most likely federal informer Tony Evola, the TE-TA-MA foundation, the Anti-Defamation League of B'nai B'rith, the federal prosecutors and investigators, and other minor anti-racist activists who taunted and encouraged the frame-up of Hale, may be future targets.

After the Hale trial, this website published personal information on Tony Evola, the federal informer who originally set Hale up, leading FBI officials to say that they would do 'whatever was in their power' to shut this website down -- something they have still not succeeded in doing...
--
Emailed to you by:
Libertarian Socialist News
ATTN: Bill White, Editor

Post Office Box 12244
Silver Springs, MD 20908

http://66.101.143.208
bwhite@mail.overthrow.com"

g. On or about March 1, 2005, defendant WILLIAM WHITE caused an article to be posted to Overthrow.com entitled "I Don't Feel Bad About The Hit On Judge Lefkow - And I Don't Think Others Should, Either." This article again made reference to the murders of Judge Lefkow's family and stated in part:

"Commentary -- I don't feel bad that Judge Lefkow's family was murdered today. In fact, when I heard the story I laughed. 'Good for them!' was my first thought.

Everyone associated with the Matt Hale trial has deserved assassination for a long time. At the time, I believe I said that if I were Hale and I was railroaded like this I would kill -- not the judge -- but the ADL officers involved and their witnesses. In general, I would not kill a judge's family -- it strikes me as overly harsh -- but in this case the family members were Jews (well, in one case a converso), and really I can't mourn over dead Jews. Their people are vicious and bloodthirsty, they murdered at least 100 million non-Jews during the 20th Century; they've started the 21st Century by advocating the murder of more than one billion adherents of Islam; they are the persecutors of the white

race, and have been responsible for the exploitation, oppression, and murders of hundreds of millions of our people; they bear the collective guilt, and the world is a better place the less Jews that are in it.

But the abstract question of the ethics of killing Jews in general must be set aside here, because the meat of this question is whether it was just or unjust in this specific case for people who have been persecuted and denied their religion by the dictates of Judge Lefkow and the system she promotes to retaliate and wreck vengeance against her. In my view, it was clearly just, and I look forward to seeing who else this new white nationalist group of assassins kills next.

Judge Lefkow was the instrument by which the Jewish system of government in this country took from thousands of people in the religious creed which they held to be the truth. The ADL, through their lackeys in the TE-TA-MA foundation, were the specific group of Jews that directed and stage managed this persecution. What these people did to Matt Hale and the Creativity Movement was evil, and they deserved to experience the consequences of the evil they had done...

Yesterday, when the ADL officials and FBI agents and federal prosecutors and federal judges who are responsible for the persecution of the white race went to bed, they had no fear that they would ever be held accountable for any unreasonable or immoral ruling against a white activist. White activists were ridiculed. They were mocked. They were the kind of silly Jewish-television-show bad guy that anyone could kick around and know they could get away with it. For all of the propaganda alleging white activists are 'violent' 'terrorist' or 'dangerous,' to the Jewish system white nationalists were nothing more than a bunch fringe losers, not to be taken seriously.

Tonight, as these same ADL officials and FBI agents and federal prosecutors and federal judges go to bed, they have to think that tomorrow they may wake up and find their families murdered. Just as anti-racists routinely terrorize the families of white activists, threatening rape and murder against people who have nothing but have a relative who is a dissident, and the same ADL officials and FBI agents and federal prosecutors and federal judges protected those anti-racists in their terror and their terrorism, tonight those same ADL officials and FBI agents and federal prosecutors and federal judges can go to bed with the same vague feeling of unease and fear that they have inflicted and perpetuated through their miscarriage of justice, their subservience to evil, and their refusal to enforce the law.

> I do not mourn the assassination of Judge Lefkow's family, and I hope the killer wrecks more havoc among the enemies of humanity, and the killer is never found. I do not say that because I have personal animosity for Judge Lefkow, or because I sick have a love of violence or death. What I love is justice, and this act of violence, publicized as it is to millions of those who passively engage in evil in the name of the Jew, sends a message of justice to those who thought they could be protected in the performance of evil.
>
> Killing people -- killing people's families -- is not good. It is not a right thing to do. In a world that was right there would be no murder. But an eye for an eye is justice, and such acts of justice make me think, sometimes, that maybe there are some things still right with the world.
> --
> Emailed to you by:
> Libertarian Socialist News
> ATTN: Bill White, Editor
>
> Post Office Box 12244
> Silver Springs, MD 20908
>
> http://66.101.143.208
> bwhite@mail.overthrow.com"

h. On or about March 1, 2005, defendant WILLIAM WHITE caused an article to be posted to Overthrow.com entitled "[Individual C], [Federal Prosecutor D], [Federal Agent E], [Federal Prosecutor F], And [Federal Prosecutor G] May Be Next On Hit List - Addresses Of Future Targets Posted To Internet Discussion Groups." This article again made reference to the murders of Judge Lefkow's family and stated in part:

> "Chicago, Illinois -- An email with the home addresses of and detailed personal information of a slew of federal and Jewish officials involved in the Matt Hale case has circulated on white nationalist discussion groups, with a notation that any of them may be the next targets of the unknown nationalist assassin who killed the family of Chicago judge Joan Lefkow.
>
> [Individual C], Chicago Regional Director of the Anti-Defamation League of B'nai B'rith, a man who claimed in press releases to have spent 'five years' advocating the arrest and trial of Matt Hale, and who coordinated the TE-TA-

MA foundation, had his name heading the list of purported victims, along with his address and personal information on his family and daily activities...

While Overthrow would usually not hesitant to republish the personal information of these scumbags in full, at this time we feel there is so great a potential for action linked to such posting that we are not going to post email and its details at this time.

Also named on the email are [Federal Prosecutor D], who oversaw the prosecution conducted by [Federal Prosecutor F] and [Federal Prosecutor G], who are also named in the email, as well as personal information on [Federal Agent E], who was responsible for overseeing the investigation into Hale's activities, and who managed former federal informer Tony Evola.

Whether the email represents a legitimate threat, or just some angry activists blowing off steam, remains to be seen. After the unexpected assassination of Judge Lefkow's family, it seems that anything may be possible.
--
Emailed to you by:
Libertarian Socialist News
ATTN: Bill White, Editor

Post Office Box 12244
Silver Springs, MD 20908

http://66.101.143.208
bwhite@mail.overthrow.com"

i. On or about May 22, 2008, defendant WILLIAM WHITE caused an article to be posted to Overthrow.com entitled "Feeling Better." This article made reference to certain events in WHITE's life that had caused him stress and described the thoughts and feelings WHITE experienced during such events:

"Things have become progressively worse, day by day, and I have woke up more and more often feeling the need to kill, kill, kill, and I have tried to get through my day while ignoring the need to destroy the wicked. Its not been easy.
I realized the other day that I have, almost without realizing it -- though that may seem a bit strange -- developed a very intricate plot for the murder of

about a score of Roanoke City's negro nuisances and their annoying counterparts at the Roanoke Times. I know everything about these assholes, where they live, who they live with, what they look like, where they go, when they go there. I estimate I could probably in the course of a few hours kill 15, 19 out of the 20 easy if I pick the right day and time, and still lived long enough to travel the country and begin picking off the ridiculous 'independent journalists' that staff the Southern Poverty Law Center's Intelligence Report. I have a list of those as well."

All in violation of Title 18, United States Code, Section 373.

A TRUE BILL:

_____

FOREPERSON

_____

UNITED STATES ATTORNEY

Exhibit B

14

MEM

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

UNITED STATES OF AMERICA	*	
	*	**CRIMINAL NO.** 14-116-WS
v.	*	**USAO NO: 14R00080**
	*	
LANCY WHITE, JR.	*	**VIOLATION:**
	*	**18 USC § 2422(b)**

INDICTMENT

THE GRAND JURY CHARGES:

COUNT ONE

From on or about April 1, 2013 to on or about April 2, 2013, in the Southern District of Alabama, Southern Division, and elsewhere, the defendant,

LANCY WHITE, JR.

used any facility and means of interstate and foreign commerce to knowingly attempt to persuade, induce, entice, and coerce any individual who had not attained the age of 18 years to engage in prostitution and any sexual activity for which any person can be charged with a criminal offense.

Specifically, **LANCY WHITE, JR.** knowingly used the Internet to attempt to persuade, induce, entice and coerce an individual who **WHITE** believed was a minor, to-wit: a nine year old girl, to engage in criminal sexual activity, and had such sexual activity occurred, **WHITE** could have been charged with a criminal offense under the Code of Alabama, section 13A-6-63; 13A-6-64; and 13A-6-67.

In violation of Title 18, United States Code, Section 2422(b).

COUNT TWO

From on or about April 1, 2013 to on or about April 2, 2013, in the Southern District of Alabama, Southern Division, and elsewhere, the defendant,

LANCY WHITE, JR.

used any facility and means of interstate and foreign commerce to knowingly attempt to persuade, induce, entice, and coerce any individual who had not attained the age of 18 years to engage in prostitution and any sexual activity for which any person can be charged with a criminal offense.

Specifically, **LANCY WHITE, JR.** knowingly used the Internet to attempt to persuade, induce, entice and coerce an individual who **WHITE** believed was a minor, to-wit: a twelve year old girl, to engage in criminal sexual activity, and had such sexual activity occurred, **WHITE** could have been charged with a criminal offense under the Code of Alabama, section 13A-6-62; 13A-6-64; and 13A-6-67.

In violation of Title 18, United States Code, Section 2422(b).

A TRUE BILL

FOREMAN, UNITED STATES GRAND JURY
SOUTHERN DISTRICT OF ALABAMA

KENYEN R. BROWN
UNITED STATES ATTORNEY
by:

Maria E. Murphy
Assistant U.S. Attorney

John G. Cherry
Assistant U.S. Attorney
Chief, Criminal Division

MAY , 2014

14

PENALTY PAGE

CASE STYLE:	**UNITED STATES v. LANCY WHITE, JR.**
DEFENDANT:	**LANCY WHITE, JR. (Count One- Two)**
USAO NUMBER:	**14R00080**
AUSA:	**MARIA E. MURPHY**

CODE VIOLATION:

COUNT 1-2:	**18 U.S.C. § 2422(b) – Coercion and Enticement of a Minor**

PENALTY:

COUNT 1-2:	**Minimum 10 yrs to Life/ $250,000.00/ 5 yrs to Life SRT/ $100.00 SA**

Exhibit C

ORIGINAL

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF GEORGIA

ATLANTA DIVISION

UNITED STATES OF AMERICA	:	
	:	CRIMINAL INDICTMENT
v.	:	
	:	NO. 1:09-CR-199
ROBERT W. HILL, JR.	:	
	:	~~(UNDER SEAL)~~

THE GRAND JURY CHARGES THAT:

COUNT ONE

On or about August 9, 2008, in the Northern District of Georgia, the defendant, Lieutenant ROBERT W. HILL, JR., then a Fulton County Deputy Sheriff at the Fulton County Jail, while acting under the color of law, did strike an inmate, resulting in bodily injury to the inmate, and thereby willfully depriving the inmate of a right secured and protected by the Constitution of the United States; that is, not to be deprived of liberty without due process, which includes the right to be free from the use of excessive force by one acting under color of law, all in violation of Title 18, United States Code, Section 242.

COUNT TWO

On or about August 9, 2008, in the Northern District of Georgia, the defendant, Lieutenant ROBERT W. HILL, JR., then a Fulton County Deputy Sheriff at the Fulton County Jail, with the

intent for one or more persons to engage in conduct constituting a felony that has as an element the use of excessive physical force against one or more inmates of the Fulton County Jail, in violation of Title 18, United States Code, Section 242, and under circumstances strongly corroborative of that intent, did solicit, command, induce and otherwise endeavor to persuade such person or persons to engage in such conduct, to wit: during a shift roll call, the defendant urged subordinate officers to use excessive force against one or more inmates, all in violation of Title 18, United States Code, Section 373.

COUNT THREE

On or about August 9, 2008, in the Northern District of Georgia, the defendant, Lieutenant ROBERT W. HILL, JR., then a Fulton County Deputy Sheriff at the Fulton County Jail, acting in relation to or in contemplation of a matter within the jurisdiction of an agency of the United States, knowingly falsified and made a false entry in a record and document, to wit: an incident report reflecting his actions and the actions of subordinate officers, in relation to the use of physical force against an inmate on August 9, 2008, with the intent to impede, obstruct, and influence the investigation of a matter within the jurisdiction of a department and agency of the United States, all in violation of Title 18, United States Code, Section 1519.

COUNT FOUR

Between, on or about August 9, 2008, and the date of this indictment, in the Northern District of Georgia, the defendant, Lieutenant ROBERT W. HILL, JR., then a Fulton County Deputy Sheriff at the Fulton County Jail, corruptly persuaded and misled another person or persons with the intent to hinder, delay and prevent the communication of information to a law enforcement officer of the United States relating to the commission of a federal offense, to wit: the defendant concealed information regarding the assault of an inmate on August 9, 2008, and urged subordinate officers to provide false accounts of the assault of the inmate, all in violation of Title 18, United States Code, Section 1512(b)(3).

COUNT FIVE

On or about February 6, 2009, in the Northern District of Georgia, the defendant, Lieutenant ROBERT W. HILL, JR., then a Fulton County Deputy Sheriff at the Fulton County Jail, in a matter within the executive branch of the government of the United States, that is the Federal Bureau of Investigation, did knowingly and willfully make a materially false, fictitious and fraudulent statement to an FBI Special Agent as to the circumstances

surrounding the assault of an inmate on August 9, 2008, all in violation of Title 18, United States Code, Section 1001.

A True BILL

FOREPERSON

DAVID E. NAHMIAS
UNITED STATES ATTORNEY

ANGELA M. JORDAN
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600 U.S. Courthouse
75 Spring Street, S.W.
Atlanta, GA 30303
404/581-6358
404/581-6181 FAX
Bar Number 204720

BRENT ALAN GRAY
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75 Spring Street, S.W.
Atlanta, GA 30303
404/581-6077
404/581-6181 FAX
Provisionally Admitted Pursuant
to Local Rule 83.1

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

STATE OF GEORGIA	
	CASE NO.
v.	
	23SC188947
DONALD JOHN TRUMP,	
RUDOLPH WILLIAM LOUIS GIULIANI,	
JOHN CHARLES EASTMAN,	
MARK RANDALL MEADOWS,	
KENNETH JOHN CHESEBRO,	
JEFFREY BOSSERT CLARK,	
JENNA LYNN ELLIS,	
RAY STALLINGS SMITH III,	
ROBERT DAVID CHEELEY,	
MICHAEL A. ROMAN,	
DAVID JAMES SHAFER,	
SHAWN MICAH TRESHER STILL,	
STEPHEN CLIFFGARD LEE,	
HARRISON WILLIAM PRESCOTT FLOYD,	
TREVIAN C. KUTTI,	
SIDNEY KATHERINE POWELL,	
CATHLEEN ALSTON LATHAM,	
SCOTT GRAHAM HALL,	
MISTY HAMPTON a/k/a EMILY MISTY HAYES	
Defendants.	

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of this STATE'S SUPPLEMENTAL BRIEF FOLLOWING HEARING ON DECEMBER 1, 2023, upon all counsel who have entered appearances as counsel of record in this matter via the Fulton County e-filing system.

This 18th day of December 2023,

FANI T. WILLIS
District Attorney
Atlanta Judicial Circuit

/s/ John W. "Will" Wooten
John W. "Will" Wooten
Georgia Bar No. 410684

Deputy District Attorney
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