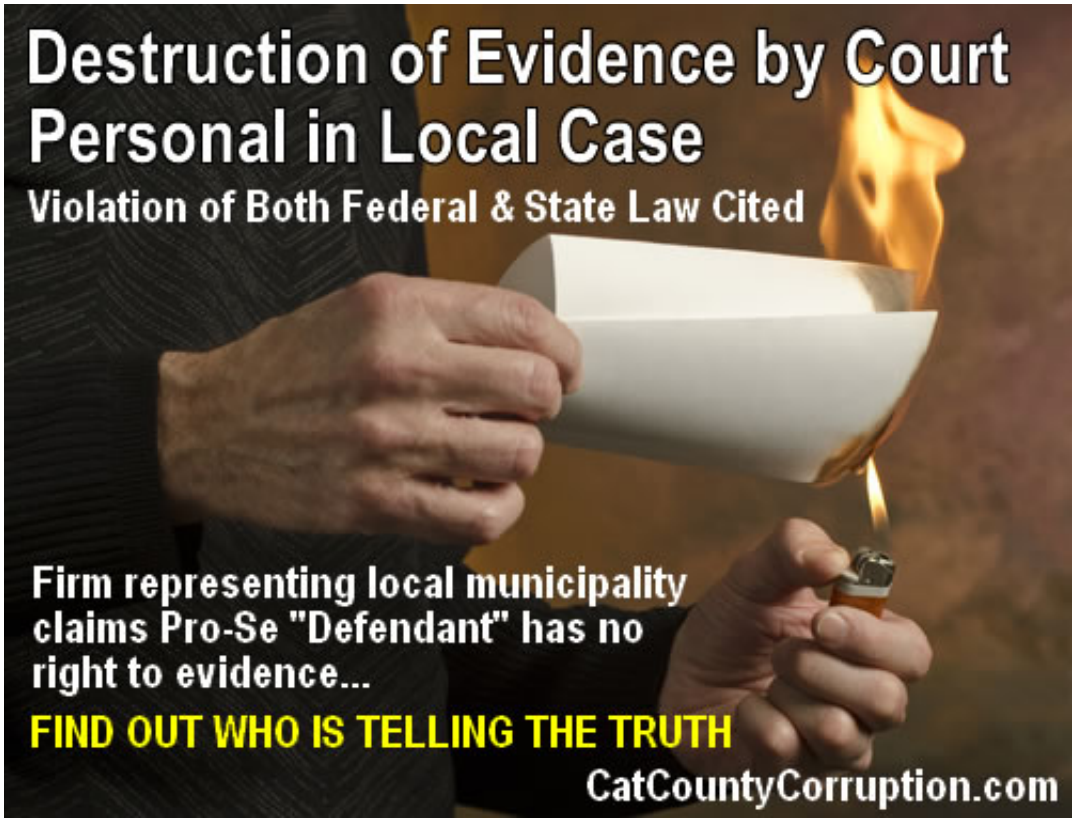
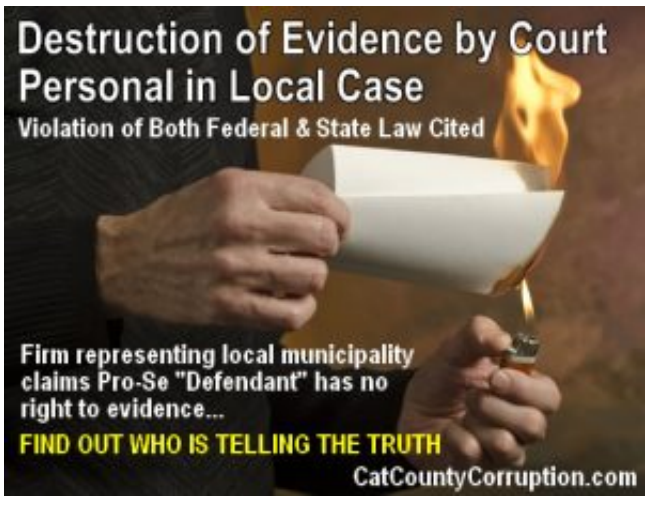
Brady & Swenson PC Finally Respond to Destruction of Evidence and Violation of State & Federal Law



The Law firm of Brady & Swenson, the firm representing the Town of Little Valley finally responded to the Pro-Se's request for an answer on whether or not a video tape of an alleged hearing that took place in the Town of Little Valley Court on April 8th, 2015 was made and destroyed, or never made. Do you think the Brady & Swenson law firm would answer the question?



Nope...

...and their response was very alarming to say the least.

A recap of the events that led up to the request for a copy of the first video tape is in order.

A local Pro-Se litigant went to court one day, on April 8th, 2015 to be exact. When he was there he noticed signs, four of them to be exact, that warned the room was under electronic surveillance. He also saw the

location of the video camera directly behind the court desk in the right side corner.

The Pro-Se then attempted to get copies of a video, of the action that Pro-Se was forced to go to on 08APR15.

When the Pro-Se asked for a copy of the video within 30 days of the it being made the personal in charge of the video equipment promptly destroyed it. Susan Koch, the town clerk, stated that the matter of the video tape issue was handed over to the town law firm of Brady & Swenson.

Koch stated to the Pro Se that they had reviewed the tape and they could not identify the Pro Se. The Pro Se countered with the statement that it would be easy to identify him, he would have been the only one surrounded by law enforcement at the hearing, which is an act of intimidation, which has occurred in every court action, to date, against the pro-se. Koch said she would get back to him.

She never did, so the Pro-Se called Koch. Her response? **Ohhh... it was deleted and she said it in a very nonchalant manner, like it was no big deal that they allowed for the evidence to be destroyed, which carries up to a 20 year prison sentence.**

Here are excerpts of an audio of Susan Koch admitting to the existence of the video tape;

Not soon after the destruction of the video the Pro-Se received a letter from the Brady & Swenson Law firm. Notice how the letter stated *"there is no existing video recording regarding the requested date and time",* Which the Pro Se responded Brady & Swenson asking them to define "*no existing video recording"* as to what that meant;

1. **That the video was never made, or;**
2. **that the video was made and destroyed.**

It is very clear a individual is allowed copies of videos that they have an interest in;

- *"There is no question that the video recording of the hearing is discoverable (see People v. Marr, 177 AD2d 964 [4 Dept 1991];*
- *People v. Karns, 130 Misc 2d 247 [1985]; see also CPL 240.20 [1] [d], [g] and [h]). It is well- settled that,* ***"where the People are in possession of discoverable material, they are duty bound to preserve such evidence and, in the event such evidence is lost or destroyed, sanctions will be imposed"*** *(People v. Torres, 190 AD2d 52, 54 [3 Dept 1993], citing People v. Kelly, 62 NY2d 516 [1984]; see People v. Okehoffurum, 201 AD2d 508, 509 [2 Dept 1994]).*
- ***"[t]he People have a duty to prevent the destruction of evidence until all appeals have been exhausted"*** (*People v Watkins*, 189 AD2d 623, 624 [1st Dept 1993];
- *As the Court of Appeals has noted,* ***"[a] necessary corollary of the duty to disclose is the obligation to preserve evidence until a request for disclosure is made [as] [a]ny other rule would facilitate evasion of the disclosure requirements"*** *(People v. Kelly, supra at 520, citing United States v. Bryant, 439 F.2d 642 [DC Cir.1971], revd on other grounds, 488 U.S. 51 [1988]). Therefore, "where discoverable evidence gathered by the prosecution or its agent is lost, the People have a heavy burden of establishing that diligent, good-faith efforts were made to prevent the loss" (People v. Kelly, supra at 520)."*

The answer to the question is very important. It will provide evidence of criminal activity by the court

personal if it did indeed exist. The warning signs are plastered all over the court room proves it exists, or existed. So if it was destroyed it would be in violation of CPL § 175.25, which is a state felony, and 18 U.S.C. § 1519, which is a Federal crime, a 20 year sentence.

BRADY & SWENSON, P.C.

The Pro-Se finally received a response from the law firm in mid June, after he had called the firm four times asking about the status of the letter. Brady & Swenson alleged that the Pro-Se called them stating that he was 'threatening" that those they were representing were committing criminal acts.

The evidence bares that out...

But it is interesting to note that the letter was sent after an article appeared on this site.

The response? Matthew Swenson DID NOT answer the question whether or not the tape was made and destroyed or never made.

What is that telling you?

The other interesting thing is it was sent certified return receipt, unlike the first one which was just sent via regular mail. Now why would he do that? Simple it provides proof that the Pro-Se received it for legal purposes. What are the legal purposes, simple:

MUNICIPAL LIABILITY

Swenson would also claim the video is exempt from disclosure because of the FOIL law.

It is very apparent video's are not exempt. Further you will note how Swenson fails and/or refuses to provide the actual law that he claims makes the video-tape exempt...

Now why would he do that?

He alleged that the courts are exempt from the *"Freedom of Information Law",* which he appears to be correct in that specific allegation. The cite he should have provided the Pro Se with is found in Public

Officers Law §§ 84-90 and the Open Meetings Law Public Officers Law §§ 100-111, specifically at §87(2)(e).

(e) are compiled for law enforcement purposes and which, if disclosed, would:

i. interfere with law enforcement investigations or judicial proceedings;
ii. deprive a person of a right to a fair trial or impartial adjudication;

But wait a minute, what about all of those court cites that show a person is entitled to a video if it was made, what is going on?

Why are the courts saying one thing and Swenson saying the exact opposite?

Who is right and who is wrong?

For Swenson to claim the video is exempt is a joke. FOIL only appears apply when it is *"Interfering with law enforcement investigations or judicial proceedings".* It is so preposterous to think that the Pro-Se is interfering with an "investigation" it defies rational belief. The video would show what occurred and the Pro Se could use it in his case to ensure a "*fair trial and impartial adjudication."*

In other words, the FOIL law is there to protect your rights, not deprive you of them. So what does the law have to say as to Swenson's claims that it does not apply to the Judiciary?

From the New York State Government Official website (http://www.dos.ny.gov/coog/right_to_know.html);

"Although the courts are not subject to the Freedom of Information Law, section 255 of the Judiciary Law has long required the clerk of a court to "diligently search the files, papers, records and dockets in his office" and upon payment of a fee make copies of such items*. Agencies charged with the responsibility of administering the judicial branch are not courts and therefore are treated as agencies subject to the Freedom of Information Law."*

What it appears Swenson is actually doing is attempting to cover up the conduct of the individuals responsible for maintaining the video and obstructing the ability of the Pro-Se to seek justice. It has deprived him of his ability to present the video at the alleged trial to prove specific allegations to the jury.

It's obvious Swenson is wrong, case after case after case proves it. Further there is a section in the Judiciary law that mandates court personnel (this would include court personal agents or servants, like the Town Clerk (you will see the terms agents/servants used a lot in lawsuits) to provide copies to individuals involved in legal matters, its § 255;

A clerk of a court must, upon request, and upon payment of, or offer to pay, the fees allowed by law, or, if no fees are expressly allowed by law, fees at the rate allowed to a county clerk for a similar service, diligently search the files, papers, records, and dockets in his office; and either make one or more transcripts or certificates of change therefrom, and certify to the correctness thereof, and to the search, or certify that a document or paper, of which the custody legally belongs to him, can not be found.

This proves Swenson is trying to stop the the Pro-Se from obtaining a copy. Further, the Pro-Se requested a list of all the papers in his file from the court clerk because it had appeared to have been tampered with also. Now, with constant push " *I didn't do anything wrong, so I have nothing to hide"* BS we are always getting shoved down our throats why wouldn't the Court Clerk have any problem with providing the Pro-Se

with a list of what was in the file? **Reason and logic dictate that if a court clerk is unwilling to verify the accuracy of their own records, then their own records are not accurate and a forensic audit would be in order.**

Further the first visit the Pro Se made to the Town Court to review the file in the matter he ended up creating and provided the Town Court Clerk with a list of what was in the file to make it easier for her to sign. She originally stated she would review the list and the file and provide the Pro Se with the letter. She never did. Upon the second visit the Pro Se discovered over 20 new documents, some of which he recognized, and many he did not. One can understand missing maybe 1 to 2 documents while reviewing the file, but to aspect any reasonable person to believe he would miss over 20 other papers in the previous visit defies logic and reason.

Matthew would also go on to make the preposterous claim the Pro Se was calling and making threats as to the potential criminal conduct that had occurred. The Pro Se was simply stating what laws had been broken, but Swenson claims they are threats. Don't you love how they twist the truth around? However the main purpose of the calls was to find out the status of the response from Swenson , which was nothing for over almost two months.

Further Swenson would claim that all of the statements of the Pro-Se were “baseless allegations", *i.e. not based on law and fact,* yet Swenson would not back anything up with anything. No laws, no facts, etc... nothing, and the Pro-Se backed everything up with law and facts, PERIOD. So who's allegations are baseless?

The Pro-Se sent his response to Swenson's latest letter certified mail, restricted delivery, return receipt requested. One has to wonder how or if there will be a response. [You can track it here.]

HERE IS THE Pro-Se's Response to the law firms letter;

CAT COUNTY NEW YORK, WHERE THE RULE OF LAW AND REASON ARE ON PERMANENT VACATION