

Request for copies of public records from Grand Jury

January 29, 2016

Dearborn County, Indiana Superior Court II
Judge Sally A. McLaughlin (Formerly Blankenship)
215 W High St
2nd Floor
Lawrenceburg, IN 47025
812.537.8800

Dear Judge Sally A. McLaughlin (Blankenship):

Pursuant to the Access to Public Records Act (Ind. Code 5-14-3), Requester would like copies of the following public records pertaining to the case of State of Indiana vs Daniel Brewington, Cause No: 15D02-1103-FD-00084:

Please provide copies of the audio discs from the Grand Jury proceedings occurring on the following dates:

February 28, 2011

March 1, 2011

March 2, 2011

To ensure specificity in an effort to assist employees of the Dearborn County Superior Court II in complying with this request, this Requester references material downloaded from the following blog post published by a "Sue Brewington" <http://danbrewington.blogspot.com/2012/03/missing-records-from-brewington-case.html>. Special Judge Brian D. Hill, from Rush County, Indiana Superior Court, authorized the release of the audio from the above Grand Jury proceedings in an ORDER RELEASING AUDIO COPIES file stamped January 12, 2012. [Order and unsigned letter from Dearborn Superior Court II, dated January 13, 2012, [attached hereto as "A"](#).] However, Special Judge Brian D. Hill issued an AMENDED ORDER RELEASING AUDIO COPIES file stamped February 02, 2012 [[Attached hereto as "B"](#)] stating that "no audio recordings of the Grand Jury Proceedings for February 28, 2011, March 1, 2011, and March 2, 2011 were admitted into evidence in this cause, therefore, these audio recordings are not a record in these proceedings." Though it is unclear why Judge Hill rendered the prior request moot three weeks after granting the release of the audio from the Grand Jury proceedings, it remains certain that Judge Hill did not deny nor prohibit the release of the Grand Jury audio. A review of the Chronological Case Summary ("CCS") of the Criminal Docket in the above case shows that Judge Hill issued the order to release Grand Jury Exhibits on August 23, 2011, roughly a week after the original trial date was scheduled for August 16, 2011. **[Please note that this timeframe is not a mistake on the part of the Requester. See CCS, [attached hereto as "C"](#). Judge Hill scheduled the above matter for trial prior to authorizing the release of the grand jury transcripts outlining the nature of the indictments.]**

Judge Hill's AMENDED ORDER RELEASING AUDIO COPIES resorts to splitting hairs on the technicality that an actual audio record from the Grand Jury proceedings was not physically admitted during trial, unlike the written record of the proceedings in the form of transcripts, that Hill authorized to be released. Rule 5 of the Indiana Rules of Criminal Procedure allows the record of cases and hearings to be maintained in the form of shorthand notes, stenographic reporting, and audio recordings and Rule 7 of the Indiana Administrative Rules sets forth the parameters of record archival in Judicial Retention Schedules. In *Wurster v. State*, 715 N.E.2d 341 (Ind. 1999) at 346, the Indiana Supreme Court wrote, "The manner of recording evidence in trial courts is governed by Criminal Rule 5" and applied the rule to maintaining a record of grand jury proceedings with the exclusion of "the deliberations and voting of the grand jury and other discussions when the members of the grand jury are the only persons present in the grand jury room." In opinions such as *Runyon v. State*, 923 N.E.2d 440 (Ind. App. 2010), the higher courts in Indiana often use terminology such as "What we have gleaned from the record is..." Transcripts are currently the most prominent form of maintaining the record of court cases and proceedings due to their convenience to attorneys and the courts but even transcripts are going through a progression. Computer software has replaced the manual process of transcribing records from stenograph notes and audio recordings with typewriter. The advent of iPads and other electronic media viewing devices is slowly eliminating the paper transcript. With the advance of technology, it is not inconceivable that the near future will see justices on the United States Supreme Court with ear pieces reviewing audible court records just as many people "read" audible editions of books through Amazon or iTunes, which is more conducive to those who are visually impaired and individuals with learning disabilities. Whatever technology brings, one thing remains constant; the court record remains the same regardless of the medium in which it is stored. Requester provides the above explanation to preemptively defuse any potential claim that the release of the Grand Jury audio is still bound by I.C. § 35-34-2-10(a) regarding unauthorized disclosure of grand jury information, a Class B misdemeanor. The record of grand jury proceedings became a reviewable public record when Judge Hill allowed the State to admit a digital copy of the Grand Jury Exhibits into evidence, which includes a digital copy of the transcripts from the proceedings. Other than transcribed records being more expensive as well as presenting more of a challenge to those with visual and/or learning impairments, the transcribed record is the same legal record as the electronic audio medium from which it was transcribed, which means the audio record from the aforementioned Grand Jury proceedings is already a releasable public record. Any argument that the audio record from the grand jury proceedings differ or are less reliable than the electronic record of the transcription of the audio is a direct blow to the reliability of the function of the court reporter.

"Okay we're on record." This is the opening statement of Dearborn County Prosecutor F. Aaron Negangard at the beginning of the final day of Grand Jury proceedings on March 2, 2011. This represents the beginning of the audio record for the day as the Official Court Reporter of the Dearborn County Superior Court II, Barbara Ruwe, certified that "the foregoing transcript, as prepared, is full, true, correct and complete." The March 2, 2011 proceeding did not hear any witness testimony, rather the proceeding focused on

procedural instructions from Negangard that the grand jurors could indict Brewington for making “over the top, um unsubstantiated statements” about Dearborn County Court Officials. The transcript of the audible record also establishes that Negangard cued the court reporter during the proceedings when to properly start and stop the recording of the official record. Release of the audio record of the Grand Jury proceedings will demonstrate this. If the release of the audio record of the Grand Jury proceedings demonstrates additional comments, arguments, or other audible content not available in the transcribed audio record, then public accountability is necessary. Any contention that the Official Court Reporter of the Dearborn County Superior Court II transcribed only portions of the audio record that the prosecution claimed to be part of a “official record” is an assertion that the Official Court Reporter of the Dearborn County Superior Court II selectively transcribed an official audio record in a manner to assist the prosecution in depriving a defendant of charging information. This would be particularly troubling in light of the Dearborn County Superior Court II temporary “losing” audio records from, at least, the July 18, 2011 pretrial hearing in the above cause. Transparency in the matter is essential to ensure public trust in otherwise secretive grand jury proceedings.

Requester is aware Honorable Judge Sally A. McLaughlin (Blankenship), a current interviewee for the position of Indiana Supreme Court Justice, recused herself from Requester’s original criminal proceeding seven (7) days after the arraignment hearing of the above cause, where she set Requester’s bond at \$500,000 surety and \$100,000 cash in the absence of any evidence of potential danger or flight. Honorable McLaughlin (Blankenship) cited a conflict of interest due to the professional/personal relationship with an alleged victim in the case, Dearborn County, Indiana Circuit Court Judge James D. Humphrey. Requester asks that Honorable Judge McLaughlin (Blankenship) play an administrative role in processing this request to stave off potential problems associated with employee(s) operating under Dearborn Superior Court Judge Sally A. McLaughlin (Blankenship). Even in light of Judge Hill’s finding that the actual audio record of the Grand Jury proceedings were not part of the above listed cause, the Dearborn County Superior Court II still retains jurisdiction over the release of the audible record of the Grand Jury information and said release is simply an administrative function at this point as Hill has long since authorized the release of the transcription of the audible record of the Grand Jury Information. If another entity retains authority over the release of said audio record, please provide the name and contact information of that entity/agency. Requester requests that all documents emanating from the Dearborn County, Indiana Superior Court II regarding this matter have the appropriate Dearborn County, Indiana Superior Court II letter head as well as the signature of the party responsible for the correspondence. If Requester’s written request is denied, Requester assumes Honorable Judge McLaughlin (Blankenship) will oversee her staff in ensuring the refusal is in writing and include a statement of the specific exemption authorizing the withholding of all or part of the public record and the name and the title or position of the person responsible for the denial. Indiana Code § 5-14-3-9(c).

I understand by seeking a copies of these records, there may be a copying fee. Please inform me of the costs prior to making the copies. I can be reached at [REDACTED] or by email, contactdanbrewington@gmail.com.

According to the statute, you have seven (7) days to respond to this request. If you choose to deny the request, please remember you are required to respond in writing and state the statutory exception authorizing the withholding of all or part of the public record and the name and title or position of the person responsible for the denial; so Requester has the ability to name the party issuing the denial in an action in an appropriate court per Indiana Code § 5-14-3-9(e).

A copy of this request can be found on www.danbrewington.blogspot.com for your convenience. Thank you for your assistance on this matter.

Respectfully,



Daniel P. Brewington, Requester

[REDACTED]
[REDACTED]
[REDACTED]

contactdanbrewington@gmail.com