

DANIEL BREWINGTON,)	IN THE SUPERIOR COURT II
Plaintiff,)	DEARBORN COUNTY, INDIANA
v.)	GENERAL TERM 2019
DEARBORN SUPERIOR COURT II/ JUDGE)SS:)	
SALLY MCLAUGHLIN,)	CAUSE NO 15D02-1702-PL-00013
JUDGE BRIAN HILL,)	
COURT REPORTER BARBARA RUWE)	
Defendants.)	
)	

REQUEST FOR RULING ON MOTION TO COMPEL RELEASE OF GRAND JURY AUDIO

Plaintiff, Daniel Brewington, files this Request for Ruling on Motion to Compel Release of Grand Jury Audio, filed January 14, 2019, and in support provides as follows:

DEFENDANTS FAILED TO PRODUCE RECORDS

The public has a vested interest in an expeditious resolution to this APRA lawsuit that has been pending for over two years. Dearborn County Courts and the Office of the Dearborn County Prosecutor have enabled and covered up the tampering of grand jury records. This type of action is the public's only defense against such criminal conduct. The evidence pleaded to this Court already demonstrates that Dearborn County Court officials withheld, altered, destroyed, and/or selectively recorded grand jury investigations conducted by former Dearborn County Prosecutor, F. Aaron Negangard. Negangard is the current Chief Deputy to Indiana Attorney General Curtis T. Hill. There is no scenario where the release of the grand jury audio will not implicate Dearborn County officials in some form of criminal conduct. The record of the grand jury investigation of Daniel Brewington

begins at witness testimony. The audio of the investigation released to Brewington contains *less* information than the transcription of the same proceedings; therefore, more audio must exist. Given the fact the file names and file format of the grand jury audio have been changed, it suggests the Dearborn Superior Court II altered grand jury transcripts to assist Negangard secure convictions against Brewington's negative speech about Dearborn Circuit Judge James D. Humphrey. When Brewington challenged the accuracy of the transcript by requesting a copy of the grand jury audio, the Dearborn Superior Court II cut and pasted the audio from the investigation in a crude attempt to match the original transcription. It is important to note that at no point have the Defendants argued Brewington is not entitled to the entire audio from the grand jury investigation of Daniel Brewington.

Defendants are trapped in a legal purgatory where they have offered no rational explanation for their actions. The Defendants are guilty of misconduct regardless of which Dearborn County entity(s) withheld grand jury indictment information and evidence in Brewington's criminal case. Defendants allowed Brewington to endure an unconstitutional criminal prosecution, regardless of whom altered the grand jury records. As of the Defendants' January 29, 2019 filing, Defendants continue their efforts to coverup the conspiracy. In previous filings, the Defendants claimed to have released all audio pertaining to the grand jury investigation of Daniel Brewington, but Defendants and defense counsel failed to offer any affidavits or testimony to support their claims. The State instructed Brewington to rely on the complete grand jury record for indictment information and evidence for his 2011 criminal trial. Brewington was forced to obtain the records via Access to Public Records Act after Defendant Judge Hill stonewalled Brewington's pleas for

basic constitutional protections during Brewington’s criminal trial.¹ At no point have the Defendants argued that the audio record prior to witness testimony does not exist. The Defendants simply assert they have no more audio records to release. During the September 14, 2018 off-record status conference, Judge Auxier informed Brewington and defense counsel that portions of the grand jury record were stored by another Dearborn County Court. There are three separate courts in Dearborn County; Dearborn Circuit Court (under Judge James D. Humphrey), Dearborn Superior Court I (under Judge Jonathan Cleary), and Defendant Dearborn Superior Court II (under Sally McLaughlin). This current APRA action is pending in the Dearborn Superior Court I. By default, any grand jury records not maintained by the Defendants would have to be controlled by the Judge of the Dearborn County Circuit Court; Judge James D. Humphrey, an alleged victim in Brewington’s criminal case. If the Defendants claim they did not omit the opening of the record of Brewington’s grand jury proceedings, then it could only be Judge Humphrey who withheld indictment information and evidence in a criminal trial where Humphrey was an alleged victim. A claim that Humphrey maintains the record from a portion of Brewington’s grand jury investigation does not wash the Defendants’ hands from culpability. A majority of the witness testimony from the grand jury investigation of Daniel Brewington was

¹ Defendant Judge Brian Hill served as Special Judge in Brewington’s criminal trial in the Dearborn Superior Court II. Transcripts of Brewington’s criminal proceedings (which have been admitted to the record of this case) demonstrate Brewington stated he had no understanding of the direction of Brewington’s defense because Brewington’s public defender refused to meet with or speak to Brewington outside of the courtroom. The public defender prohibited Brewington from playing any role in Brewington’s own defense. Brewington also communicated to Hill that Brewington still had not received all the State’s evidence against him. Judge Hill forced Brewington to trial without inquiring into any of Brewington’s claims.

recorded in a courtroom falling under the jurisdiction of Judge Humphrey. Defendants had access to the audio maintained by Judge Humphrey's court because Defendants included all witness testimony in both the original transcription and in the audio released to Brewington. Defendants opted not to provide Brewington with the audio from the entire proceedings. If the introduction to the grand jury investigation was never recorded, Judge McLaughlin and/or Judge Humphrey allowed their court reporters to selectively record grand jury investigations. This gave former Dearborn County Prosecutor F. Aaron Negangard the freedom to conduct portions of grand jury investigations under the cover of darkness.

OFF-RECORD STATUS CONFERENCE HEARING WITH PRO SE LITIGANT

On September 14, 2018, Honorable Judge Auxier requested that the parties participate in an off-record status conference on the matter. Defendants did not appear in person. Appearing on behalf of the Defendants were Deputy David Arthur and Deputy Marley Hancock from the Office of Indiana Attorney General Curtis Hill. Brewington appeared pro se. The docket entry regarding the conference states as followed:

Status conference held: Plaintiff appeared pro se. Defendants appeared by counsel. The parties agree to the Judge conducting an in camera review of the grand jury proceedings. Clerk is directed to provide the Judge with the recording of the grand jury proceeding.

Brewington is not an attorney and had no prior experience with off-record conferences. Brewington assumed the events of the September 14, 2018 status conference were a matter of standard procedural function. During the conference, Honorable Judge Auxier sent a staff member of the Superior Court I to obtain a copy of the grand jury record

from the Dearborn Superior Court II. Defense counsel made no objections even though the Dearborn Superior Court II, under Judge Sally McLaughlin, is a defendant in this public records lawsuit. The court employee returned from the Dearborn Superior Court II roughly twenty minutes later and requested Judge Auxier's presence outside of the courtroom. It was upon Judge Auxier's return that Judge Auxier stated some of the grand jury records were maintained by another court, which would cause a delay in the production of the audio. The records were never produced. Assuming arguendo that a staff member of the Dearborn Superior Court II improperly authorized the release of a court record, neither Superior Court II Judge Sally McLaughlin nor defense counsel made any attempt to notify this Court of the error. If, on September 14, 2018, it was Judge McLaughlin that claimed the Dearborn Superior Court II would produce the grand jury audio for Judge Auxier's review, then McLaughlin's failure to produce the grand jury audio would be an overt effort to obstruct justice in at least the present legal action.

DEFENDANTS' MOTION IMPLICATES MISCONDUCT BY DEFENDANTS AND COUNSEL

In a motion dated January 29, 2019, Defendants stated the following:

2. No order has been issued regarding the production of the grand jury proceedings.
3. Defendants are still in agreement that an in camera review is appropriate in this matter. Defendants await an order from the special judge in this matter indicating the specifics as to which audio is to be provided and the manner in which these files are to be provided. Defendants will comply with any order issued in this matter.

Brewington and defense counsel walked out of the September 14, 2018 status conference with the understanding that Judge Auxier would conduct an in-camera review

of the official grand jury audio. All parties attending the September 14, 2018 conference were under the impression that the Dearborn Superior Court II would provide the record to the clerk of the Dearborn Superior Court I. The clerk of the Dearborn Superior Court I would then forward the audio to Judge Auxier, as indicated by the docket entry dated September 14, 2018. Any claim that Defendants were waiting for an order to release would be akin to a claim that Defendants were waiting to see a flying elephant. Just like a flying elephant, the Defendants and defense counsel all knew they would never see an order to release the audio for in-camera review because the Dearborn Superior Court II already agreed to provide a copy of the official grand jury audio to Judge Auxier.

This Court should also take notice of the Defendants' claim to be waiting for an order "indicating the specifics as to which audio is to be provided and the manner in which these files are to be provided." The Defendants cannot justify withholding production of the official audio record on a claim that Defendants were waiting for an answer to a question that this Court would not know to ask. The only content-specific evidence in this case indicating the content of the grand jury record is the audio that Defendants released to Brewington, and the original transcription produced in Brewington's criminal trial. As the transcription contains more information than the audio record of the same proceeding, by default, the Defendants' request for specificity could only mean "*Does the Court want a copy of the official grand jury audio that matches the transcription, or a copy of the official grand jury audio that matches the audio previously provided to Brewington?*" As Defendants have produced no testimony or evidence establishing the content of the official record, any specificity other than what was just mentioned above could only be obtained by ex parte means.

DEFENDANTS' MOTION SUPPORTS BREWINGTON'S MOTION TO COMPEL

Defendants' January 29, 2019 motion states:

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

As documented above, the Defendants and defense counsel never believed this Court would issue an order to produce the audio, let alone an order that was content-specific. The Defendants' entire argument in Defendants' request to deny Brewington's motion to compel is built upon an entirely bogus premise. Per Honorable Judge Auxier, the Dearborn Superior Court II agreed to produce the grand jury audio to the clerk of the Dearborn Superior Court I. Upon receipt of the record, the Superior Court I clerk would forward the copy of the official grand jury audio to Judge Auxier. If any part of the off-record conference was improper, all parties except Brewington would have immediately been aware of the impropriety, which casts greater doubt on the integrity of this APRA action. Sending a courier to another court to obtain a record could be be conceived as being an administrative function. If this Court or its staff engaged in private negotiations with the Dearborn Superior Court II over whether an order was necessary to produce records, such communication would be ex parte in nature. Since the Defendants' sole argument is predicated upon the receipt of a fictional order that the Defendants knew would never be issued, the Defendants' argument becomes moot and this Court should grant Brewington's Motion to Compel.

CONCLUSION

As Brewington had never participated in an off-record courtroom conference, Brewington sought additional perspective on the matter from friend and noted New York matrimonial Attorney Douglas Kepanis, LL.M. Kepanis, who has appeared on both Fox and CNBC as a guest legal analyst, also participated in the movie *DivorceCorp*; a documentary that focused on Brewington's unconstitutional treatment by the courts of Dearborn County, Indiana. When discussing the conduct in Brewington's public record case, Kepanis stated the Defendants were "embarrassing themselves" by the way Defendants continue to avoid taking responsibility for their actions. Kepanis also noted it would be a "red flag" in New York if a judge held an off the record hearing in a public record lawsuit brought by a pro se litigant. The Defendants' actions in exploiting the off-record status conference validates how an off-record hearing can be hazardous to a self-represented individual.

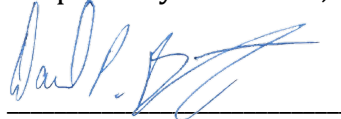
The issue of *whether* Brewington is entitled to the complete audio from the grand jury investigation of Daniel Brewington has been firmly decided. In an opinion dated April 14, 2016, the Indiana Public Access Counselor deemed the grand jury audio to be a releasable record. In an order dated April 20, 2016, Defendant Brian Hill issued an order to release all the audio from Brewington's grand jury investigation. The audio the Dearborn Superior Court II provided Brewington failed to include any content of the investigation occurring prior to witness testimony, yet the Defendants refuse to provide any explanation for withholding the records. The Defendants have had several years to explain or correct the incomplete grand jury records but have yet to do so. By Judge Auxier's own account, Judge Humphrey maintains part of the audio record from a grand jury investigation where

Humphrey testified as an alleged victim. The audio and transcription of the grand jury investigation of Daniel Brewington omits all record of the investigation occurring prior to witness testimony. The docket entry from the September 14, 2018 status conference states the Clerk of the Dearborn Superior Court I, under Judge Jonathan Cleary, was to provide Special Judge Auxier with the recording of the grand jury proceeding. To date, no records have been delivered. The question isn't whether there is a conspiracy to cover up grand jury record tampering, but rather *how many Dearborn County judges are involved*. This Court has a responsibility to protect the public, not Dearborn County judges. Additional delays only further prejudice Brewington. Since the Defendants have been uncooperative in resolving this matter while actively obstructing the flow of justice in these proceedings, this Court need only to issue an order compelling the Defendants to produce a certified copy of all audio pertaining to the grand jury record of Daniel Brewington. If the Defendants cannot produce a certified copy of the complete record, this Court should issue an order compelling the Defendants to show cause for failure to do so. This Court should also consider disciplinary action against defense counsel for filing motions seeking to stall these proceedings on behalf of the Defendants. Defendants are judges. By default, a person's capacity as a judge enjoys an extra presumption of honesty and understanding of the law in legal proceedings. As such, the Defendants should not be permitted to feign ignorance of the law or of the most fundamental aspects of administrative procedure. If there was a rational explanation for the disappearance of grand jury records, Defendants would have provided it long ago.

WHEREFORE, Brewington requests this Court to issue a ruling granting Brewington's Motion to Compel Release, and to contact the FBI and proper State

authorities to make them aware of the conspiracy by Dearborn County Court officials to coverup grand jury record tampering, and for other proper relief.

Respectfully submitted,



Daniel Brewington
Plaintiff, pro se

CERTIFICATE OF SERVICE

I certify that on March 18, 2019, I electronically filed the foregoing document using the Indiana E-Filing System (IEFS).

I also certify that on March 18, 2019, the foregoing document was served upon counsel via IEFS:

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Daniel P. Brewington
Plaintiff, pro s