



STATE OF INDIANA
OFFICE OF THE ATTORNEY GENERAL

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CURTIS T. HILL, JR.
INDIANA ATTORNEY GENERAL

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May 1, 2017

CERTIFIED MAIL – RETURN RECEIPT

9214 8901 0661 5400 0106 5449 23

Honorable Rick Probst
Dearborn (15) County Clerk's office
215 W. High St.
Lawrenceburg, IN 47025

Re: *Daniel Brewington v. Dearborn Superior Court II, et al.*
Cause No.: 15D01-1702-PL-00013

Dear Clerk Probst:

Enclosed please find the original and one (1) copy of a *Defendants' Cross-Motion for Summary Judgment; Memorandum of Law In Support of Cross-Motion for Summary Judgment and Response in Opposition to Plaintiff's Motion for Summary Judgment* to be filed with the Court in the above-referenced matter.

Please file stamp with today's date, **May 1, 2017**, pursuant to Ind. Trial Rule 5(F), and return a file-marked copy of each in the enclosed self-addressed, postage prepaid envelope.

Thank you for your assistance in this matter.

Respectfully,

Lana M. Henricks
Paralegal for Joshua R. Lowry
Deputy Attorney General

/lmh

Enclosures

cc: Daniel P. Brewington (w/encls.)

STATE OF INDIANA) IN THE DEARBORN SUPERIOR COURT

) SS:

COUNTY OF DEARBORN) CAUSE NO. 15D01-1702-PL-00013

DANIEL BREWINGTON,)

Plaintiff,)

v.)

DEARBORN SUPERIOR COURT II,)

JUDGE SALLY MCLAUGHLIN,)

JUDGE BRIAN HILL, COURT)

REPORTER BARBARA RUWE)

Defendants.

DEFENDANTS' CROSS-MOTION FOR SUMMARY JUDGMENT

Defendants, Defendants, Dearborn Superior Court II, Judge Sally McLaughlin, and Judge Brian Hill (collectively "Defendants"), by counsel, respectfully move the Court to grant summary judgment in their favor on the basis that there is no genuine issue of material fact pursuant to Indiana Rule of Trial Procedure 56, and they are entitled to judgment in his favor as a matter of law. In support, Defendants state as follows:

1. Plaintiff brought this complaint requesting the audio recordings of his Grand Jury proceeding under the Indiana Access to Public Records Act.
2. Plaintiff has already received the records he requested and is not entitled to the records he now further requests.
3. There is no genuine issue of material fact and Defendants are entitled to judgment as a matter of law on Plaintiff's claim.
4. In support of their motion, Defendants designate the following exhibits:

- A) Brewington's Jan. 29, 2016 APRA Request.
- B) Court's Feb. 4, 2016 Order.
- C) Brewington's Feb. 8, 2016 Amended Request.
- D) Brewington's March 4, 2016 – Formal Complaint.
- E) Judge Hill's Mar. 8, 2016 Letter to Public Access Counselor.
- F) Brewington's March 8, 2016 - New request to listen to Grand Jury Audio.
- G) Brewington's March 8, 2016 Letter to Judge McLaughlin.
- H) Judge McLaughlin's Mar. 17, 2016 Letter to Public Access Counselor.
- I) Public Access Counselor Opinion.
- J) Court's - Apr. 20, 2016 Order on Request for Releasing Audio Copies.
- K) Brewington's May 2, 2016 Amended request for All Audio from Grand Jury.
- L) Judge Hill's May 6, 2016 Response to Amended Request for all Audio from Grand Jury.

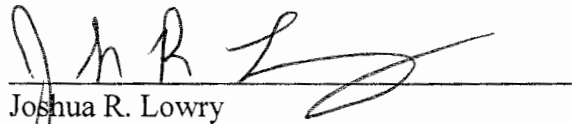
5. A brief in support of this motion is submitted contemporaneously.

WHEREFORE, Defendants respectfully request that the Court grant summary judgment in their favor and that the Court deny Plaintiff's request for summary judgment, and all other relief deemed just and proper by the Court.

Respectfully submitted,

CURTIS T. HILL, JR.
Attorney General of Indiana
Attorney No. 32676-29

By:

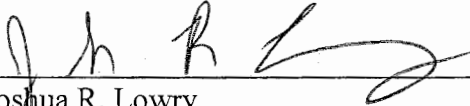
A handwritten signature in black ink, appearing to read 'J R L', is written over a horizontal line.

Joshua R. Lowry
Deputy Attorney General
Attorney No. 32676-29

CERTIFICATE OF SERVICE

I do hereby certify that a copy of the foregoing has been duly served upon parties and counsel of record listed below, by United States mail, first-class postage prepaid, on May 1, 2017:

Daniel P. Brewington
[REDACTED]



Joshua R. Lowry
Deputy Attorney General

OFFICE OF ATTORNEY GENERAL
Indiana Government Center South, 5th Floor
302 West Washington Street
Indianapolis, IN 46204-2770
Telephone: (317) 233-6215
Facsimile: (317) 232-7979
E-mail: Joshua.Lowry@atg.in.gov

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:

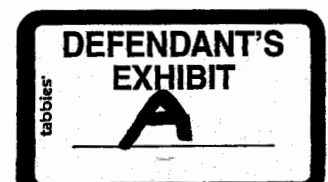
Please provide copies of the audio discs from the Grand Jury proceedings occurring on the following dates:

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 an 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

STATE OF INDIANA
COUNTY OF DEARBORN

IN THE DEARBORN SUPERIOR COURT II
CAUSE NO. 15D02-1103-FD-084

FILED

STATE OF INDIANA

FEB 04 2016

VS

R. M. J.
CLERK OF DEARBORN CIRCUIT COURT

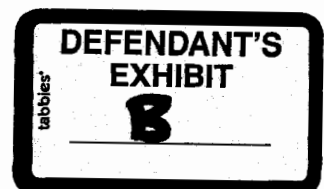
DANIEL BREWINGTON

ORDER ON REQUEST FOR RELEASING AUDIO RECORDINGS

COMES NOW Daniel Brewington having made two (2) separate written requests for copies of audio discs from various proceedings regarding the above referenced cause.

And the Court having reviewed said requests now **FINDS** and **ORDERS** as follows:

1. The Court declines to grant the request for audio recordings from the Grand Jury proceedings occurring on February 28, 2011, March 1, 2011, and March 2, 2011. Mr. Brewington has alleged that these audio recordings were admitted into evidence at his criminal trial, however, the Court finds that they were not, and there's been no sufficient reason set forth which would necessitate the release of said audio recordings.
2. As to Mr. Brewington's second request, the court reporter is hereby ordered to prepare compact disc audio recordings of the following hearings:
 - a. Initial hearing of March 11, 2011
 - b. Pretrial hearing of June 17, 2011
 - c. Pretrial hearing of July 18, 2011
 - d. Bond reduction hearing of August 17, 2011
 - e. Final pretrial hearing of September 19, 2011
 - f. Jury trial of October 3, 4, 5, and 6, 2011
 - g. Sentencing hearing of October 24, 2011



3. Daniel Brewington shall be responsible for a reasonable copying fee pursuant to I.C.

5-14-3-8.

4. The release of these audio recordings are hereby specifically limited to the personal review by Daniel Brewington. The recipient, Daniel Brewington, is barred from broadcasting or in any other way publishing these records in any manner. Violation of this order may result in contempt proceedings.

ALL OF WHICH IS ORDERED this 4th day of February, 2016.


BRIAN D. HILL, Judge
Rush Superior Court

Distribution

Honorable Brian D. Hill
Prosecuting Attorney
Daniel Brewington

STATE OF INDIANA) IN THE DEARBORN SUPERIOR COURT

) SS:

COUNTY OF DEARBORN) CAUSE NO. 15D01-1702-PL-00013

DANIEL BREWINGTON,)

Plaintiff,)

v.)

DEARBORN SUPERIOR COURT II,)

JUDGE SALLY MCLAUGHLIN,)

JUDGE BRIAN HILL, COURT)

REPORTER BARBARA RUWE)

Defendants.

**MEMORANDUM OF LAW IN SUPPORT OF CROSS-MOTION
FOR SUMMARY JUDGMENT AND RESPONSE IN OPPOSITION
TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**

Defendants, Dearborn Superior Court II, Judge Sally McLaughlin, and Judge Brian Hill, by counsel, respectfully submit this response in opposition to Plaintiffs' Motion for Summary Judgment and move for summary judgment against Plaintiffs via cross motion pursuant to Indiana Rule of Trial Procedure 56. Defendants respectfully request the Court deny the Plaintiff's Motion for Summary Judgment, grant Defendants' Motion for Summary Judgment, and enter judgment in favor of Defendants because Brewington has already received the requested records and the records he now seeks are confidential.

I. INTRODUCTION

In 2011, a grand jury indicted Daniel Brewington on six charges. *Brewington v. State*, 7 N.E.3d 946, 955-56 (Ind. 2014). As part of the criminal trial, Brewington received the transcripts of witness testimony from the related Grand Jury proceedings. On January 29, 2016, through an

APRA request, Brewington requested the audio recordings of these Grand Jury proceedings from the Dearborn Superior Court II. The court initially denied Brewington's request. The Public Access Counselor disagreed, recommending that the Court release the recordings. In the Order releasing the recordings, the Court made clear that there were other criminal investigations that were ongoing during the same Grand Jury proceedings. Brewington only received the audio recordings related to the criminal investigation into his activities. Brewington, however, claims that the Court did not provide the full audio recordings.

From the start, Brewington's request must be clarified. Brewington admits that he received audio recordings in response to his APRA request. Brewington, however, does not believe that he received all of the audio recordings he requested. This is simply incorrect. Brewington's claims are based on a simple misunderstanding of the procedure of Grand Jury proceedings. Brewington has, in fact, received the transcripts and audio recordings of the Grand Jury proceedings related to his investigation. Brewington appears to believe that a Grand Jury begins a single criminal investigation, and that investigation continues uninterrupted until it is complete, and only then can another criminal investigation occur. That is not always how Grand Jury proceedings proceed. Sometimes, such as in this instance, a Grand Jury may address different criminal investigations in the same day. This is a common occurrence in Grand Jury proceedings. Brewington only requested audio records of the Grand Jury proceedings "pertaining to the case of State of Indiana vs Daniel Brewington, Cause No: 15D02-1103-FD-00084." Thus, Brewington only received the portions of the Grand Jury proceedings that pertained to his criminal investigation.

Brewington, however, does not believe the Dearborn Superior Court, and wants the Court to prove that its Order is true. He is now attempting to receive the audio recordings of Grand Jury proceedings related to other criminal investigations. An order of a court is undisputed evidence in

any case. Brewington cannot simply dispute a court order because he does not believe it. Further, this Court may take judicial notice of the Grand Jury proceedings that occurred on February 28, 2011, March 1, 2011, and March 2, 2011, to confirm that the Court's Order is correct.

Regardless of what Brewington believes he did or did not receive, audio recordings of any grand jury proceeding are confidential and shall not be disclosed under APRA. Indiana Code § 5-14-3-3 provides public access to public records of public agencies. If the undisclosed records fall within a mandatory exception listed under Indiana Code Section 5-14-3-4(a), as a matter of law the records shall not be disclosed. This includes records "declared confidential by state statute." Ind. Code § 5-14-3-4 (a)(1). Indiana Code § 35-34-2-1 *et seq.* clearly states that grand jury proceedings are not public and are confidential. In *Pigman v. Evansville Press*, 537 N.E.2d 547 (Ind. Ct. App. 1989), the Court of Appeals determined that members of the general public have no right under APRA to inspect and copy subpoenas issued by the grand jury. This same reasoning applies to audio recordings.

Additionally, Indiana Code § 35-34-2-10(b) could never apply to an APRA request. This is evident from the competing requirements. "Consideration of a request under our Public Records Act entails only an examination of whether the document falls within one of the exceptions to the general rule of disclosure." *Pigman*, 537 N.E.2d at 552. Yet Indiana Code § 35-34-2-10(b) specifically requires someone to show "a particularized need." "A party seeking a determination of particularized need does so by a written motion identifying the desired transcripts and including an explanation of the purpose for which the transcripts are to be used." *Hinojosa v. State*, 781 N.E.2d 677, 681 (Ind. 2003). This requirement shows that this "particularized need" exception could not possibly apply to an APRA request. Further, even if Indiana Code § 35-34-2-10(b) did

apply, it clearly states that someone may only receive *the transcript* “after a showing of particularized need for the transcript,” and would not apply to audio recordings.

Lastly, even if Indiana Code § 35-34-2-10(b) could apply to an APRA request, as a matter of law, it could never apply to the request for Grand Jury proceedings which are unrelated to the requester. The Supreme Court of Indiana has clearly interpreted Indiana Code § 35-34-2-10(b): the grand jury transcripts can only be available *to an accused*, if available at all. Brewington was not the “accused” in the grand jury proceedings of other criminal investigations. Therefore, it is not even possible for him to show a “particularized need” for the transcripts or audio recordings of the other criminal investigations.

II. STATEMENT OF MATERIAL FACTS NOT IN DISPUTE

1. In 2011, a grand jury indicted Daniel Brewington on six charges. *Brewington v. State*, 7 N.E.3d 946, 955-56 (Ind. 2014). This included: a D-felony count of intimidating the trial judge, two A-misdemeanor counts of intimidation involving the judge's wife and a psychologist who was an expert witness in the divorce, and one D-felony count of attempted obstruction of justice relating to the psychologist. He was also indicted on a D-felony count of perjury relating to his grand-jury testimony, and a B-misdemeanor count of unlawful disclosure of grand jury proceedings. *Id.* A jury acquitted Brewington of the unlawful disclosure charge but convicted on all other counts. *Id.*
2. On January 29, 2016, Brewington submitted his APRA request for copies of the audio records of the Grand Jury proceedings “pertaining to the case of State of Indiana vs Daniel Brewington, Cause No: 15D02-1103-FD-00084.” (Ex. A - Jan. 29, 2016 Request.)

3. On February 4, 2016, Judge Hill issued an Order which ordered the Court reporter to prepare the audio recordings for several of the requested hearings, but not for Grand Jury proceedings. (Ex. B - Feb. 4, 2016 Order.)
4. On February 8, 2016, Brewington submitted an amended request, again requesting audio recordings of the Grand Jury proceedings “pertaining to the case of State of Indiana vs Daniel Brewington, Cause No: 15D02-1103-FD-00084.” (Ex. C - Feb. 8, 2016 Amended Request.)
5. On March 4, 2016, Brewington filed a formal complaint with the Office of the Public Access Counselor. (Ex. D - March 4, 2016 - Formal Complaint.)
6. On March 8, 2016, Judge Hill sent a letter to the Office of the Public Access Counselor in response to Brewington’s complaint. Judge Hill explained his reasoning for denying Brewington’s request, and stated that “[i]f you come to a different conclusion, I would be happy to comply.” (Ex. E - Mar. 8, 2016 Letter to Public Access Counselor.)
7. Brewington filed his “New request to listen to Grand Jury Audio,” dated March 8, 2016, requesting to listen to the audio recordings of the Grand Jury proceedings “pertaining to the case of State of Indiana vs Daniel Brewington, Cause No: 15D02-1103-FD-00084.” (Ex. F - March 8, 2016 - New request to listen to Grand Jury Audio.)
8. Brewington sent Judge McLaughlin a letter, also dated March 8, 2016, explaining why he believed that the transcripts were incomplete and that he was entitled to the audio recordings of the grand jury. (Ex. G - March 8, 2016 Letter to Judge McLaughlin.)
9. On March 17, 2016, Judge McLaughlin submitted a letter in response to the Public Access Counselor. (Ex. H - Mar. 17, 2016 Letter to Public Access Counselor.)

10. On April 14, 2016, Public Access Counselor Luke H. Britt issued his opinion on Brewington's request. (Ex. I - Public Access Counselor Opinion.)
11. On April 20, 2016, under Cause No. 15D02-1103-FD-084, Judge Hill issued an order which ordered the Court Reporter to "prepare a compact disc of the audio recordings of the Grand Jury proceedings regarding this matter conducted on February 28, 2011, March 1, 2011, and March 2, 2011." (Ex. J - Apr. 20, 2016 Order on Request for Releasing Audio Copies.)
12. On May 2, 2016, Brewington sent an amended request, which stated "Brewington now requests complete unedited copies of the grand jury audio pertaining to Cause No. 15D02-1103-FD-084." (Ex. K - May 2, 2016 Amended request for All Audio from Grand Jury.)
13. On May 6, 2016, Judge Hill issued a response to Brewington's Amended Request, stating:

I have just received your Amended Request for all Audio from Grand Jury. Pursuant to the Court's Order following the opinion of the Public Access Counselor, you are entitled to receive all audio recordings regarding your proceedings. You are not, however, entitled to receive any audio recordings from other Grand Jury proceedings that may have been conducted on those same days with the same Grand Jurors.

(Ex. L - May 6, 2016 Response to Amended Request for all Audio from Grand Jury.)

III. LEGAL STANDARD

Summary judgment is appropriate when there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. Ind. Trial Rule 56(C). Once the moving party has sustained its initial burden of showing the absence of a genuine issue and the appropriateness of judgment as a matter of law, the party opposing summary judgment must respond by designating specific facts showing a genuine issue for trial. *Wank v. Saint Francis College*, 740 N.E.2d 908, 910 (Ind. Ct. App. 2000), *trans. denied*. Pleadings, affidavits, and designated evidence are construed in the light most favorable to the non-moving party. *Fiederlein*

v. Bouselis, 952 N.E.2d 847 (Ind. Ct. App. 2011). Once the movant has carried the burden of going forward under Trial Rule 56(C), the nonmovant must come forward with sufficient evidence demonstrating the existence of genuine factual issues. *Mahan v. American Standard Ins. Co.*, 862 N.E.2d 669, 675-76 (Ind. Ct. App. 2007), *trans. denied*. “If the nonmovant fails to meet his burden, and the law is with the movant, summary judgment should be granted.” *Id.* at 676.

IV. ARGUMENT

The Indiana Access to Public Records Act (“APRA”) is codified at Indiana Code § 5-14-3-1 *et seq.* These statutes offer a means for citizens to inspect and/or copy public records held by a public agency. The definition of “public agency” is found in Indiana Code § 5-14-3-2(q) and is quite expansive. Additionally, Section 1 of APRA states that the Act is to be “liberally construed” and the burden of proof for nondisclosure falls “on the public agency that would deny access to the record and not on the person seeking to inspect and copy the record.” Section 9(f) of APRA notes that the public agency bears the burden of proof.

As the burden of proof falls on the public agency in cases where disclosure is denied, APRA grants citizens judicial review of said denial. As found in Section 9(e) of APRA, “A person who has been denied the right to inspect or copy a public record by a public agency may file an action in the circuit or superior court of the county in which the denial occurred to compel the public agency to permit the person to inspect and copy the public record.”

“But the public's right of access to public records is also subject to well-recognized exceptions under APRA.” *Groth v. Pence*, 67 N.E.3d 1104, 1108 (Ind. Ct. App. 2017). “If the undisclosed records fall within a mandatory exception listed under Indiana Code Section 5-14-3-4(a), as a matter of law the records shall not be disclosed.” *Id.* at 1112. If the issue under review is

whether a public agency properly denied access to a public record because the record is exempted under Indiana Code § 5-14-3-4(a), the public agency meets its burden of proof under this subsection by establishing the content of the record with adequate specificity and not by relying on a conclusory statement or affidavit. Ind. Code § 5-14-3-9(f).

A. Neither Judge McLaughlin nor Judge Hill are a “public agency.”

Brewington’s claim may continue only against the Dearborn Superior Court II, but not against Judge McLaughlin or Judge Hill. The Indiana Court of Appeals Court has recently held that the public agency, not an individual within the agency, is the proper party in a suit under the APRA. *See Lane-El v. Spears*, 13 N.E.3d 859, 867 (Ind. Ct. App. 2014) (“[T]he APRA establishes the statutory procedure for challenging a denial of a request to produce public records, and it does not authorize an action to compel records against an individual.”), *trans. denied*. Thus, Judge McLaughlin and Judge Hill are not proper parties to this APRA claim. As such, they are entitled to judgment as a matter of law.

B. Brewington has already received the requested records.

Brewington admits that he received audio recordings in response to his APRA request. (Compl. ¶ 18.) But, he does not believe that he received all of the audio recordings he requested. (Compl. ¶¶ 18-22.) He did, and his claims are based on a misunderstanding of the procedure of Grand Jury proceedings. Brewington has, in fact, received the transcripts and audio recordings of the Grand Jury proceedings related to his investigation. He is now attempting to receive the audio recordings of Grand Jury proceedings related to other criminal investigations, that is, investigations that do not involve him in any way. In addition to never requesting these audio recordings, as explained below, an individual could never receive the transcripts or audio

recordings of the Grand Jury's proceedings of an unrelated criminal investigation into another person.

Brewington requests "an injunction commanding the Defendants to disclose without alteration or redaction the records requested in Brewington's APRA request dated January 29, 2016." (Complaint, pp. 1-2.) Brewington's January 29, 2016 APRA request was for copies of the audio records of the Grand Jury proceedings "pertaining to the case of State of Indiana vs Daniel Brewington, Cause No: 15D02-1103-FD-00084." (Ex. A - Jan. 29, 2016 Request.)¹ On April 20, 2016, Judge Hill issued an order to "prepare a compact disc of audio recordings of the Grand Jury proceedings regarding this matter conducted on February 28, 2011, March 1, 2011, and March 2, 2011." (Pl. Ex. H, ¶ 1.) Brewington only requested, and thus only received, the audio recordings of the Grand Jury proceedings into the criminal investigation of Brewington.

Brewington, however, claims that Defendants "failed to produce in full, certain public records; specifically, the entire audio record from the grand jury proceedings pertaining to Cause No. 15D02-1103-FD-00084, which occurred on February 28, 2011, March 1, 2011, and March 2, 2011." (Compl. p. 1.) It is not until the eighth page of his Complaint that it become clear why Brewington believes he has not received the full audio recordings. Judge Hill's April 20, 2016 Order stated:

It is the Court's understanding that the Grand Jury impaneled for this matter also heard evidence in four to five other Grand Jury proceedings during this time, often going back and forth between all of the cases. The audio recordings being released shall contain only the matter regarding Daniel Brewington and no other Grand Jury proceedings.

¹ Brewington spends much of his Complaint discussing his criminal case in 2012. (Complaint pp. 7-8.) Although relevant background for his APRA request, it is unnecessary for the decision of this APRA request. The only issue in this lawsuit is Brewington's January 29, 2016 APRA request for audio records.

(Pl. Ex. H, ¶ 2.). Plaintiff claims that this is an explanation for “denying full access to the Grand Jury Audio.” (Compl. p. 8.) And this is where the misunderstanding arises. Brewington appears to believe that a Grand Jury begins a single criminal investigation, and that investigation continues uninterrupted until it is complete, and only then can another criminal investigation occur.² That is not always how Grand Jury proceedings proceed. Sometimes, such as in this instance, a Grand Jury may address different criminal investigations in the same day. This is a common occurrence in Grand Jury proceedings.

Brewington only requested audio records of the Grand Jury proceedings “pertaining to the case of State of Indiana vs Daniel Brewington, Cause No: 15D02-1103-FD-00084.” (Ex. A - Jan. 29, 2016 Request.) Brewington only received the portions of the Grand Jury proceedings that pertained to his criminal investigation. (Ex. J, Ex. L.)

Not surprisingly, Brewington does not believe that other Grand Jury investigations existed. “Any contention that other grand jury investigations intertwined with the audio record of the investigation of Brewington would require redactions in the transcription of the Grand Jury Audio.” (Compl. p. 9.) However, this is completely disproven by the Court’s April 20, 2016 Order. First, an order of a court is undisputed evidence in any case. Brewington cannot simply dispute a court order because he does not believe it. Second, the transcripts and audio recordings would not need to be redacted. When the Grand Jury proceedings would move to another criminal investigation, it was no longer “pertaining to the case of State of Indiana vs Daniel Brewington, Cause No: 15D02-1103-FD-00084.” (Ex. A - Jan. 29, 2016 Request.) It would be nonsensical to

² Brewington’s claim also becomes clearer in his May 2, 2016 amended request. (Ex. K) Brewington believes that the suggestion that a prosecutor would conduct different investigations during the same Grand Jury proceeding to either be “laughable or horrifically frightening.” (Ex. K, p. 2.)

include other criminal investigations, and then redact them. Those criminal investigations were not part of the audio recordings pertaining to Brewington's case. Thus, they would not be included at all.

The evidence to support Defendants is an Order of the Court. Brewington cannot create a dispute of fact simply by claiming that he does not believe that other Grand Jury investigations occurred.³ However, further proof of the Grand Jury proceedings cannot be provided because, as explained more fully below, any information or documents related to those proceedings are confidential and thus cannot be used as evidence in this matter. Thus, Defendants request the Court to take judicial notice of its own its own records to see that other criminal investigations did indeed occur on February 28, 2011, March 1, 2011, and March 2, 2011.

Further, should the Court find that Brewington's unsupported and conclusory claims have created a dispute of fact, it would be appropriate for the Court, by in-camera review, to listen to the audio recordings of February 28, 2011, March 1, 2011, and March 2, 2011, and confirm that the other investigation involved investigations that did not involve Brewington. Ind. Code § 5-14-3-9(h). Defendants would also suggest that the Court could compare it to the audio recordings Brewington received. However, Brewington appears not to have provided the Court with the piece of evidence that this entire case revolves around.⁴

³ Brewington also claims that other grand jury proceedings did not occur because "[t]he transcripts would have also reflected former Dearborn County Prosecutor F. Aaron Negangard notifying the grand jury which investigation was currently before the grand jury." (Compl. p. 9.) Brewington cites to no authority to support his claim of what he believes should occur during a Grand Jury investigation. Regardless, an APRA request cannot be used to litigate what Brewington believes should have occurred in the past.

⁴ This also makes it difficult for Brewington to support his claims that the "copy of the Grand Jury Audio provided by the Dearborn Superior Court II contains less content than the transcription of the same audio," (Complaint p. 6, ¶ 20.), and that "the file format of the audio and the audio itself, it is clear that the Dearborn Superior Court II altered the grand jury record." (Complaint p. 6, ¶

Brewington was given the recordings, and the transcripts of the recordings, that were involved in the investigation of Brewington. He has not created a dispute of fact otherwise. Brewington did not request, and he is not entitled to, the Grand Jury investigation into another person.

C. Grand Jury proceedings are confidential.

Audio recordings of any grand jury proceeding are confidential and shall not be disclosed under APRA. Indiana Code § 5-14-3-3 provides public access to public records of public agencies. “However, Indiana Code section 5-14-3-4 creates an exception for certain document types and declares that the public agency ‘may not’ disclose such documents.” *Indianapolis Newspapers v. Indiana State Lottery Comm’n*, 739 N.E.2d 144, 150 (Ind. Ct. App. 2000), *trans. denied*. “If the undisclosed records fall within a mandatory exception listed under Indiana Code Section 5-14-3-4(a), as a matter of law the records shall not be disclosed.” *Groth*, 67 N.E.3d at 1112.

This includes records “declared confidential by state statute.” Ind. Code § 5-14-3-4 (a)(1). Indiana Code § 35-34-2-1 *et seq.* clearly states that grand jury proceedings are not public and are confidential. In *Pigman v. Evansville Press*, 537 N.E.2d 547 (Ind. Ct. App. 1989), the Court of Appeals determined that members of the general public have no right under APRA to inspect and copy subpoenas issued by the grand jury. This same reasoning applies to audio recordings. “Thus, the importance of, and preference for, disclosure that is inherent in, ‘Public Records’ enactments has given way to the preservation of the grand jury system and the concomitant necessity for secrecy attending the proceedings.” *Id.* at 551. “Moreover, the interest in secrecy is not eliminated when an investigation has ended, because disclosure may affect the functioning of future grand

19.) Regardless, these claims are all based on Brewington’s misbelief regarding Grand Jury proceedings.

juries, since witnesses may be reluctant to testify knowing that their identities may be disclosed at some future date.” *Id.* The *Pigman* Court did not leave its conclusion ambiguous: “In sum, I.C. 35-34-2-4 is a state statute declaring grand jury proceedings confidential, and includes grand jury subpoenas.” *Id.* The audio recordings, or any type of record, of any grand jury proceedings are confidential and not disclosable through an APRA request.

The audio recordings did not need to be disclosed pursuant Indiana Code § 35-34-2-10(b). Indiana Code § 35-34-2-10(b) could never apply to an APRA request. This is evident from the competing requirements. Counselor Britt stated that a “requestor of public access should not have to justify the purpose of the request to any public agency, regardless of your intentions or reservations of the agency.” (Ex. I, p. 3.) “Consideration of a request under our Public Records Act entails only an examination of whether the document falls within one of the exceptions to the general rule of disclosure.” *Pigman*, 537 N.E.2d at 552. Yet Indiana Code § 35-34-2-10(b) specifically requires someone to show “a particularized need.” “A party seeking a determination of particularized need does so by a written motion identifying the desired transcripts and including an explanation of the purpose for which the transcripts are to be used.” *Hinojosa v. State*, 781 N.E.2d 677, 681 (Ind. 2003). This requirement shows that this “particularized need” exception could not possibly apply to an APRA request.

Indiana Code § 35-34-2-10(b) allows the disclosure of transcript of testimony of a witness before a grand jury but “only after a showing of particularized need for the transcript.” Even if Indiana Code § 35-34-2-10(b) did apply, it clearly states that someone may only receive *the transcript* “after a showing of particularized need for the transcript.”

The audio recordings of Grand Jury proceedings should never be disclosed, and should not have been disclosed. Just because the records were incorrectly disclosed before, that does not give

a reason to allow the disclosure of further Grand Jury proceedings of unrelated criminal investigations into other people.

D. Limited “particularized need” exception does not apply to Brewington’s request for the audio recordings of other grand jury proceedings.

Even if Indiana Code § 35-34-2-10(b) could apply to an APRA request, as a matter of law, it could never apply to the request for Grand Jury proceedings which are unrelated to the requester.

The Supreme Court of Indiana has provided extensive guidance as to the application of Ind. Code § 35-34-2-10(b). “At the outset, we note that the general rule regarding grand jury transcripts is that they be kept secret.” *Hinojosa*, 781 N.E.2d at 680. “Indiana does not even recognize an absolute right of the accused to the pre-trial examination of grand jury minutes.” *Id.* “However, the Legislature has created an exception to the general rule of secrecy by granting trial judges the discretion to release evidence in certain circumstances where a ‘particularized need’ can be shown.” *Id.* (citing Ind. Code § 35-34-2-10(b) (1998)).

The requirement of particularized need was added in 1985. Pub.L. No. 312-1985, § 4, 1985 Ind. Acts 2348. “The history of Ind. Code § 35-34-2-10 indicates that the Legislature intended this provision to limit the acceptable use of grand jury transcripts from a previously more lenient standard.” *Hinojosa*, 781 N.E.2d at 680. “Each of the Legislature’s changes to the law governing the use of grand jury transcripts has narrowed their availability *to an accused* while simultaneously affirming the import of grand jury secrecy.” *Id.* at 681 (emphasis added). The Supreme Court of Indiana could not have used clearer language: the grand jury transcripts can be available only *to an accused*, if available at all. Brewington was not the “accused” in the grand jury proceedings of other criminal investigations. Therefore, it is not even possible for him to show a “particularized need” for the transcripts or audio recordings of the other criminal investigations.

Further, and although this is not a determination to be made by a court reviewing an APRA decision, the evidence shows that Brewington would not have been able to show a particularized needs for the requested parts of the grand jury proceedings. “Rather, the particularized need exception provides only a limited opportunity for non-prosecutorial use of grand jury transcripts in those instances where the inability to do so would result in injustice.” *Hinojosa*, 781 N.E.2d at 681. The Supreme Court of Indiana held that in order to take advantage of the provision, the requester “must show, with particularity, a need *to prevent* injustice by providing the requested grand jury transcripts that outweighs the reasons for our long-established policy of grand jury secrecy.” *Id.* Brewington’s case has progressed beyond the issues of indictments by grand jury. Brewington was convicted in a jury trial. *Brewington v. State*, 7 N.E.3d 946 (Ind. 2014). Brewington appealed the matter to the Indiana Court of Appeals and the Indiana Supreme Court. *Id.* Brewington has not, and cannot, show that the audio recordings of the Grand Jury proceedings of other criminal investigations will prevent an injustice to him at this point.

Further, the audio recordings of the grand jury proceedings of unrelated criminal investigations would be prohibited from release for a separate reason. The unrelated criminal investigation and grand jury testimony may contain personal information relating to a victim of a crime including identifying information, medical information, and other information considered confidential and not public. Indiana Code § 5-14-3-3(23) provides that personal information relating to the victim of a crime is also an exception to Indiana Code § 5-14-3-3. *See also Pigman*, 537 N.E.2d at 552 (“Moreover, the interest in secrecy is not eliminated when an investigation has ended, because disclosure may affect the functioning of future grand juries, since witnesses may be reluctant to testify knowing that their identities may be disclosed at some future date.”).

E. Request barring representation

Brewington also requests an order barring the Office of the Indiana Attorney General from providing representation. Brewington claims there is a conflict of interest “given that the release of the Grand Jury Audio will demonstrate how Indiana Chief Deputy Attorney General F. Aaron Negangard abused the grand jury process...”. (Compl. p. 10.) Brewington’s claim is based on a complete and utter misunderstanding of a conflict of interest. First, even if Brewington’s hypothetical conspiracy theory were true, the interest would not be materially adverse, Indiana Professional Conduct Rules 1.7 - 1.11, but would actually be the same in both cases. Regardless, even if there was some type of conflict of interest, a conflict of interest of a single government attorney would not disqualify the whole office. *Page v. West*, 689 N.E.2d 707, 709 (Ind. 1997); *Johnson v. State*, 675 N.E.2d 678, 681 n. 2 (Ind. 1996).

**V. DEFENDANTS’ RESPONSE IN OPPOSITION TO PLAINTIFF’S
MOTION FOR SUMMARY JUDGMENT**

Brewington has filed his Motion for Summary Judgment with regard to his APRA claim, along with a brief in support. Defendants’ Response in Opposition to Plaintiff’s Motion for Summary Judgment incorporates all facts and arguments as set forth above in Defendants’ Memorandum of Law in Support of Defendants’ Cross-Motion for Summary Judgment. Defendants note that, with regard to Plaintiff’s Second Motion for Summary Judgment, all facts must be viewed in the light most favorable to the Defendants as the non-moving party.

A. Brewington has created a dispute of his own material facts.

Brewington appears to misunderstand the purpose of summary judgment. “The judgment sought shall be rendered forthwith if the designated evidentiary matter shows that *there is no genuine issue as to any material fact* and that the moving party is entitled to a judgment as a matter of law.” T.R. 56(C)(emphasis added). Brewington, however, disputes every exhibit he designated. For every exhibit Brewington cites, he explains that the exhibit is incorrect or false. To show how

the exhibits are incorrect or false, Brewington relies on inferences from other exhibits, or on his unsupported (and incorrect) belief about how Grand Jury proceedings occur. Thus, as to Brewington's motion for summary judgment, he has created a dispute of fact as to every evidentiary designated matter.

For example, the crux of this case is Brewington's belief that the April 20, 2016 Order releasing audio copies of the grand juries is false. To prove this, Brewington cites to the Order, and then spends several pages explaining why he believes the Order is incorrect. He literally disputes his own evidence. Brewington is not entitled to summary judgment, as his own evidence is in conflict with his claims. *Boylard v. Hedge*, 58 N.E.3d 928, 932 (Ind. Ct. App. 2016).

Further, Brewington's entire claim revolves around his claims regarding a transcript and an audio recording. Brewington, however, submits neither in support of his motion or his Complaint. Thus, Brewington's motion for summary judgment must fail because he has failed to designate the necessary evidence in compliance with Trial Rule 56(C). Brewington does include a link to the transcript. (Complaint p. 4, n. 3.) First, this does not meet the requirements of Trial Rule 56. Brewington is required to designate evidence, not simply tell the Court where to find it. Second, Brewington has committed a Class B misdemeanor by publishing these transcripts. Ind. Code § 35-34-2-10(a). Brewington also committed a Class B misdemeanor when he published portions of the audio on his website. Further, he is in direct violation of the Court's Order. (Ex. J - Apr. 20, 2016 Order.)

Brewington does not bother to include a separate section alleging his material facts. Instead, random claims are sprinkled in with his hypothetical alternatives. For the Court's convenience, Defendants have attempted to address the allegations that in an organized manner.

2) In Defendants' Answer Defendant do not dispute the following... (Pl. Br. pp. 2-3,

¶ 2)

For apparent evidentiary support to this portion of his motion, Brewington refers to Defendants' Answer. But, Brewington does not cite to Defendants' Answer, or which part, provides evidence. "The moving party bears the burden of *specifically designating materials* that make a prima facie showing that there are no genuine issues of material fact and that the moving party is entitled to a judgment as a matter of law." *Allen v. Hinchman*, 20 N.E.3d 863, 869 (Ind. Ct. App. 2014) (emphasis added). Regardless, he mostly recites exhibits included in his Complaint. Defendants do, however, dispute "a) The grand jury audio in question is a releasable public record under the APRA."

This is absolutely in dispute. Brewington appears to misunderstand pleadings practice. An answer only requires Defendant to respond to Plaintiff's Complaint. In his complaint, in a large paragraph on page 10, Plaintiff states "The Grand Jury Audio is a public record subject to release because the transcript of the grand jury proceeding is already public record." (Compl. p. 6.) The paragraph then continues in Brewington's legal theory. In Defendants' Answer, Defendants responded:

This section a summary of the entire complaint and, accordingly, no response is necessary. The section fails to comply with the mandates of Rule 8 because it is neither short nor plain. To the extent a response is necessary, these allegations are denied except to the extent that specific allegations are repeated in the complaint and then admitted above.

(Answer p. 4.) As these allegations were not were not repeated in Plaintiff's Complaint or admitted elsewhere in Defendants' Answer, then "these allegations are denied." (Answer p. 4.) As Defendants denied Plaintiff's allegation that the grand jury audio is releasable public record,

Defendants then clearly disputed that “the grand jury audio in question is a releasable public record under the APRA.” In fact, that is the main issue in this lawsuit.

3) “An admission by Defendants that the grand jury record is complete...” (Pl. Br. pp. 3-5, ¶ 3)

Brewington himself creates a dispute of fact, as this is his own hypothetical alternative to his own section “4)”. Second, Brewington cites to no evidence to support his claim. Regardless, it is not material. It is entirely in reference to the transcripts Brewington received during his criminal trial. The issue in this case is Brewington’s APRA request for audio recordings dated January 29, 2016.” (Complaint, pp. 1-2.)

4) “Any claim by the Defendants that...” (Pl. Br. pp. 5-7, ¶ 4)

Brewington himself creates a dispute of fact, as this is his own hypothetical alternative to his own section “3)”. Second, Brewington cites to no evidence to support his claim. Regardless, it is not material. It is entirely in reference to the transcripts Brewington received during his criminal trial. The issue in this case is Brewington’s APRA request for audio recordings dated January 29, 2016.” (Complaint, pp. 1-2.) Further, as explained above, this is entirely based on Brewington’s belief that he did not receive his entire Grand Jury proceedings. He did. He did not receive the audio recordings of the other criminal investigations that occurred on February 28, 2011, March 1, 2011, and March 2, 2011.

Defendants do specifically dispute 4)(c): “The Dearborn Superior Court II represented the CD-R of the audio as a copy of an official record, but denied that representation in Defendants’ ANSWER.” First, Plaintiff does not cite to which part of Defendants’ answer he is referring. Defendants’ assume he is referring to his Complaint Paragraph 18, in which Brewington alleged “[o]n July 19, 2016 Brewington obtained a CD-R the Dearborn Superior Court II purported to be

a copy of the audio record from the Grand Jury in question.” (Compl. ¶ 18.) Defendants responded “Defendants admit that Brewington obtained a CD-R from the Dearborn Superior Court II. Defendants deny all remaining allegations in Paragraph 18.” (Answer ¶ 18.) Defendants denied the remaining allegations because it is clear that Brewington is alleging that “the Grand Jury in question” includes the grand jury proceedings that involved other criminal investigations unrelated to his criminal investigation. Brewington received the audio recordings of the grand jury proceedings “pertaining to the case of State of Indiana vs Daniel Brewington, Cause No: 15D02-1103-FD-00084.”

5) “Brewington is somewhat confused...” (Pl. Br. pp. 7-8, ¶ 5)

This section contains no alleged facts to dispute.

6) The Dearborn Superior Court...” (Pl. Br. pp. 8-13, ¶ 6)

6a) EXHIBIT B – Ruwe certifies the transcription..

Brewington simply cites to the exhibit and then claims the contention is false, without any support other than his own conspiracy theory. Again, this creates a dispute of fact as he disputes his own exhibits.

6) EXHIBIT C – In Hill’s Order on..

Brewington simply cites to the exhibit and then claims the contention is false, without any support other than his own conspiracy theory. Again, this creates a dispute of fact as he disputes his own exhibits. Regardless, any previous denial of requested records is immaterial to this challenge.

6c); 6d); 6e).

Brewington simply cites to exhibits and then provides his own commentary. These do not create a material fact, because the issue in this case is Brewington's APRA request for audio recordings dated January 29, 2016." (Complaint, pp. 1-2.)

6f); 6g).

Brewington again discusses the transcripts involved in his criminal case. Although relevant background for his APRA request, it is unnecessary for the decision of this APRA request. It does not a material fact because the issue in this case is Brewington's APRA request for audio recordings dated January 29, 2016." (Complaint, pp. 1-2.)

7) "EXHIBIT H Hill's order on request...." (Pl. Br. pp. 14-18, ¶ 7)

Brewington cites to Judge Hill's April 20, 2016 Order and then explains his belief that it is false. To prove this, Brewington cites to the Order, and then spends several pages explaining why he believes the Order is incorrect. He literally disputes his own evidence. Brewington is not entitled to summary judgment, as his own evidence is in conflict with his claims. *Boylard*, 58 N.E.3d at 932. Defendants absolutely dispute Plaintiff's claim that the Order is false. Ironically, the Order itself disproves Brewington's claim. (Ex. J.) Judge Hill further explained to Brewington the misunderstanding. (Ex. L.) In deciding whether summary judgment in Brewington's favor is proper, the Court must "construe all factual inferences in favor of the non-moving party and resolve all doubts regarding the existence of a material issue against the moving party." *Myers*, 61 N.E.3d at 1212.

8)-9) "EXHIBIT H Hill's order on request...." (Pl. Br. pp. 18-28, ¶¶ 8-9)

Brewington does not create any material fact in these ten pages because he cites to no evidentiary support. Brewington relies only on his hypothetical creations.

B. Plaintiff is not entitled to judgment as a matter of law.

Even if all of Brewington's claims are taken as true, it does not change the law: grand jury proceedings are exempted from disclosure under APRA. "Indiana Code section 5-14-3-4 creates an exception for certain document types and declares that the public agency 'may not' disclose such documents." *Indianapolis Newspapers*, 739 N.E.2d at 150. "If the undisclosed records fall within a mandatory exception listed under Indiana Code Section 5-14-3-4(a), as a matter of law the records shall not be disclosed." *Groth*, 67 N.E.3d at 1112. This includes records "declared confidential by state statute." Ind. Code § 5-14-3-4 (a)(1). Indiana Code § 35-34-2-1 *et seq.* clearly states grand jury proceedings are not public and confidential. *Pigman v. Evansville Press*, 537 N.E.2d 547, 551 (Ind. Ct. App. 1989).

Further, the only possible statutory exception related to grand jury proceedings clearly states that someone may only receive *the transcript* "after a showing of particularized need for the transcript." Ind. Code § 35-34-2-10(b). There is absolutely no statutory exception for the disclosure of audio recordings of grand jury proceedings. Additionally, as explained above, even if grand jury proceedings could be disclosed through APRA, it could never apply to the request for Grand Jury proceedings which are unrelated to the requester. Brewington may not receive the audio recordings he now requests, and thus he is not entitled to summary judgment.

Brewington's entire claim rests on his misplaced belief that no other criminal investigations took place during the Grand Jury proceedings on February 28, 2011, March 1, 2011, and March 2, 2011. His beliefs are disproved by the April 20, 2016 Order. Brewington only is able to dispute this fact based on his own hypothetical allegations. Further, should the Court find that Brewington's unsupported and conclusory claims have created a dispute of fact, Defendants believe it would be appropriate for the Court, by in-camera review, to listen to the audio recordings

of February 28, 2011, March 1, 2011, and March 2, 2011, and confirm that the other investigation involved investigations that did not involve Brewington. Ind. Code § 5-14-3-9(h).

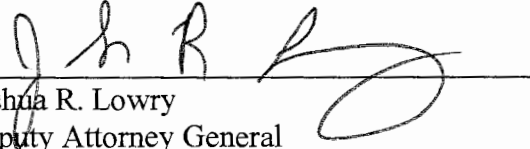
VI. Conclusion

For the above reasons, Defendants respectfully move the Court to grant summary judgment in their favor and against Plaintiff, to dismiss the related claim against them, and to grant all other relief deemed just and proper by the Court.

Respectfully submitted,

CURTIS T. HILL, JR.
Attorney General of Indiana
Attorney No. 32676-29

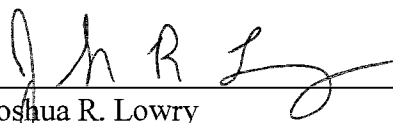
By:


Joshua R. Lowry
Deputy Attorney General
Attorney No. 32676-29

CERTIFICATE OF SERVICE

I do hereby certify that a copy of the foregoing has been duly served upon parties and counsel of record listed below, by United States mail, first-class postage prepaid, on ~~April 26~~, 2017: May 1

Daniel P. Brewington
[REDACTED]
[REDACTED]



Joshua R. Lowry
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Amended request for Grand Jury Audio

February 8, 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):

This is an amended public records request to clarify Requester's prior request for copies of the audio discs from the Grand Jury proceedings pertaining to the case of State of Indiana vs Daniel Brewington, Cause No: 15D02-1103-FD-00084:

February 28, 2011

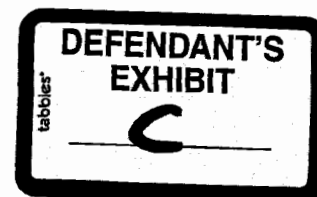
March 1, 2011

March 2, 2011

In this Court's ORDER ON REQUEST FOR RELEASING AUDIO RECORDINGS, filed February 4, 2016, Special Judge Brian Hill stated,

"Mr. Brewington has alleged that these audio recordings were admitted into evidence at his criminal trial, however, the Court finds that they were not, and there's been no sufficient reason set forth which would necessitate the release of said audio recordings."

A number of problems exist in Judge Hill's denial of Requester's request for the audio from the grand jury proceedings in the above case. Judge Hill made the claim that Requester "alleged that these audio recordings were admitted into evidence at his criminal trial." Requester made no such allegation. Requester went to great lengths in explaining that the written transcripts and the audio from the grand jury proceedings were simply different means of maintaining the record of the proceedings to "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." Requester specified how Judge Hill's prior orders regarding the release of the grand jury audio resorted "to splitting hairs on the technicality that an actual audio record from the Grand Jury proceedings was not physically admitted during trial." Just as the grand jury audio was not admitted into evidence, neither was the audio from any hearing in the above case, yet the Court has authorized the release of the audio from all trial court proceedings in the above case to more than one individual. Requester also requested the Dearborn County Superior Court II to refer Requester to the appropriate agency responsible for maintaining the grand jury information in the case the responsibility did not fall upon the Dearborn County Superior Court II. Any claim by Judge Hill that Requester alleged audio from the grand jury proceedings was admitted as evidence during any criminal trial is not only misleading, but



is also patently false and only serves as an attempt to negatively impact Requester's credibility in future proceedings on this matter.

Another problem arising from the order out of the Dearborn County Superior Court II is the finding by Judge Hill that "there's been no sufficient reason set forth which would necessitate the release of said audio recordings." Judge Hill's contention sharply conflicts with IC 5-14-3-1, regarding disclosure of public records which "place[s] the burden of proof for the nondisclosure of a public record on the public agency that would deny access to the record and not on the person seeking to inspect and copy the record." Judge Hill's finding that Requester failed to provide a sufficient reason as to why the public should have the ability to inspect or copy the public record clearly shifts the Court's burden of proof for non-disclosure, as a public agency, to the Requester. Not only did Judge Hill's order fail to "state the statutory exception authorizing the withholding of all or part of the public record," Judge Hill's order effectively invites Requester to provide the Dearborn County Superior Court II with a list of potential reasons as to why the Court should prohibit the release of the audio. Even more troubling is the question of why the Dearborn County Superior Court II is dragging its feet in the Court's reluctance to release a public record. As Indiana law relieves Requester of the burden to demonstrate why the public record should be released, Requester offers the potential consequences associated with the release of the grand jury audio related to the above cause number:

1. The transcription of the audio from the grand jury proceedings is not accurate and/or incomplete, thus demonstrating incompetence and/or misconduct in abusing the grand jury process or, in the least, the inaccurate transcription of the grand jury record.

That is the extent of any damage potentially incurred by the release of the audio from the grand jury proceedings. All evidence and testimony of witnesses before the grand jury are part of the public record because the transcripts of the audio were admitted as evidence during trial. All witnesses testifying before the grand jury also testified during the above criminal trial. If the release of the grand jury audio mirrors the restrictions set forth by the orders releasing the audio from the criminal trial, which prohibits the sharing of the audio with other persons, the grand jury audio would be limited to the ears of the Requester and any subsequent legal counsel. If the Court is concerned of "potential intentions" of what the Requester "might do" with the audio in regards to potentially sharing the information publicly, then the Court has the authority to punish Requester via criminal contempt proceedings for not following any potential orders of the court. If the court's decision to release the grand jury audio is contingent on what the Requester "might do" with the record, then the Court has already acknowledged that the records are subject to release.

The Dearborn County Superior Court II has issued three conflicting orders in response to requests for the audio from the grand jury proceedings occurring on February 28, 2011, March 1, 2011, and March 2, 2011. The Court's order dated January 12, 2012, ordered the court reporter to prepare compact disk audio recordings of the grand jury proceedings. The Court then issued an amended order dated February 2, 2012 stating the audio from grand jury proceedings was not admitted during trial and the Court rendered


the request moot and failed to address the matter any further. On February 4, 2016, the Court of Judge Sally A. McLaughlin, Dearborn County Superior Court II, issued an order that erroneously claimed Requester alleged that the grand jury audio was submitted during trial. However, rather than once again rendering the request moot, the Court declined to release the grand jury audio claiming Requester failed to specify why the release was necessary. Even though the recent ruling conflicts with Indiana laws regarding the release of public records, the Dearborn County Superior Court II issued a ruling on the matter, demonstrating that the court of Sally A. McLaughlin (Blankenship) does have the authority to order the release of the grand jury audio in question. The Requester offers this amended request for the audio from the aforementioned grand jury proceedings to avoid wasting the resources associated with initiating an action in a court of law because the court of Sally A. McLaughlin (Blankenship) continues to give varying responses regarding the release of public records, which are contrary to fact and Indiana law. Any further sua sponte attempts by the Court to oppose releasing the audio from a proceeding from which transcripts have already been deemed reviewable public record can only be perceived as an attempt to provide cover for misconduct. If this Court would once again change its mind and determine it does not retain authority over the release of the grand jury audio, Requester asks that the Court staff refer him to the appropriate agency responsible for maintaining the record.

I understand by seeking 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, Requester asks that the Dearborn County Superior Court II provide an explanation of the statutory exception authorizing the withholding of all or part of the public record that does not conflict with Indiana Code § 5-14-3-9(e). As Special Judge Brian Hill issued three conflicting orders regarding the release of the grand jury audio, it may be necessary for Judge Hill or Judge McLaughlin to seek the appointment of a new judge for the matter given Judge Hill's advocacy against releasing the audio from an already public grand jury proceeding. The Court's resistance to transparency only serves to call into question the integrity of the usually secretive grand jury process operating under current Indiana Supreme Court applicant, Dearborn County Superior Court II Judge Sally A. McLaughlin (Blankenship).

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

DEARBORN SUPERIOR COURT II
JUDGE SALLY A. McLAUGHLIN
215 W. HIGH ST.
2nd FLOOR
LAWRENCEBURG, IN 47025
TELEPHONE 812-537-8800
FAX 812-532-3238

facsimile transmittal

To: Judge Hill
From: Judge McLaughlin
Re: Response to Complaint
Date: 3.17.16

Fax # 765-932-2856

☐ Urgent ☐ For review ☐ Please comment ☐ Please reply ☐ Please recycle

Here is a copy of my response to the office of the
Indiana Public Access Counselor. Have a great weekend.

Confidential

INSTRUCTIONS: This form is to be used only when filing complaints under Indiana Code 5-14-5
All information provided is disclosable under the Access to Public Record Act. PUBLIC ACCESS

tabbies®

**DEFENDANT'S
EXHIBIT**

D

FORMAL COMPLAINT TO THE OFFICE OF THE PUBLIC ACCESS COUSELOR

Brewington files this complaint against Rush County Superior Court Judge Brian Hill ("Hill") and Dearborn County Superior Court II Judge Sally McLaughlin ("McLaughlin") for failing to produce the audio record from a grand jury proceeding that is already public record. Please note that Brewington understands that I.C. § 35-34-2 governs and protects the confidential nature of grand jury proceedings, however the grand jury record in question is already public record. Hill and/or the Dearborn Superior Court II took a "because we said so" approach in denying Brewington's request as Hill failed to provide any statutory reason for nondisclosure of the grand jury audio despite the fact that Hill had long since released the evidence and transcripts from the same proceedings into the public record. In a public record request addressed to McLaughlin (formerly Blankenship), dated January 29, 2016, Brewington requested copies of audio discs from the grand jury proceedings relating to Brewington's criminal case, Cause No: 15D02-1103-FD-00084. [See attached appendix for Brewington's request] Hill, who served as special judge for the majority of Brewington's criminal proceedings in 2011 following McLaughlin's recusal, issued an order [See appendix for February 4, 2016 Order] stating the following:

"The Court declines to grant the request for audio recordings from the Grand Jury proceedings occurring on February 28, 2011, March 1, 2011, and March 2, 2011. Mr. Brewington has alleged that these audio recordings were admitted into evidence at his criminal trial, however, the Court finds that they were not, and there's been no sufficient reason set forth which would necessitate the release of said audio recordings."

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It should first be noted that Hill's order also addresses a separate request by Brewington for copies of the audio from several hearings in Brewington's criminal proceedings [See appendix. The Dearborn Superior Court II requires individuals wishing to listen to court audio outside of the courthouse to pay for their own copies. Hill threatens to hold people in contempt if they share copies of the public records with other individuals.] Unlike Brewington's request for audio from the grand jury proceedings, Hill granted Brewington's request for the court audio from the criminal proceedings despite the court audio not being admitted into evidence during any proceeding. As for Hill's claim that Brewington alleged the grand jury audio was admitted into evidence during the criminal proceedings, Brewington made no such claim. In fact, Brewington's request specifically acknowledged the audio version of the grand jury record was not physically admitted during trial:

"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."

Brewington's January 29, 2016 request made reference to prior rulings by Hill regarding requests for the same audio records made by other individuals. [Please note that prior to January 29, 2016, Brewington has never filed a public records request with the Dearborn Superior Court II and other requests and orders mentioned herein are independent of Brewington's January 29, 2016 request] In an order dated January 12, 2012 [Included in Brewington's January 29, 2016 request], Hill stated the following:

The Court Reporter is hereby ORDERED to prepare compact disc audio recordings of the following requested hearings:

a. Grand Jury proceedings of February 28, 2011, March 1, 2011 and March 2, 2011.

Hill also ordered the Court Reporter of the Dearborn Superior Court II to prepare copies of audio recordings from several other hearings from Brewington's proceedings including the pretrial hearing of July 18, 2011. Without explanation or warning, on February 2, 2012 Hill filed an Amended Order Releasing Audio Copies [Also included in Brewington's January 29, 2016 request] stating:

1. Subsequent to the issuance of those two Orders, the Court has discovered 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.

2. The Final Pretrial Conference/Bond Reduction Hearing which had originally been set on July 18, 2011 was continued on the State's Motion and no hearing took place on that date. If a telephonic conference with counsel was held on that date, it was merely an effort to reschedule and find an agreeable date and no recordings were made. Therefore, no audio recording exists for July 18, 2011.

3. For the above stated reasons, the recipients' request for audio recordings of the Grand Jury Proceedings for February 28, 2011, March 1, 2011 and March 2, 2011 and a Pretrial Hearing for July 18, 2011 are rendered moot because there are no such audio recordings existing in this case.

The most prominent issue regarding Hill's response to Brewington's request is that Hill denied Brewington's request while rendering prior requests "moot." Hill wrote,

"No such audio recordings exist[ed] in this case" in his denial prior requests for audio records. Unbeknownst to the casual reader, Hill's contention that the hearing on July 18, 2011 never took place was clearly erroneous. The pretrial hearing that occurred on July 18, 2011 was the hearing where the prosecution informed the defense that the nature of Brewington's indictments could be gleaned from the "complete transcript of the grand jury proceedings." [See appendix for Deputy Prosecutor Joe Kisor's statements appearing on page 21 of the transcripts from the July 18, 2011 hearing.] At no point has Hill or any other party claimed the record of the grand jury proceedings remained confidential under I.C. § 35-34-2 because Hill admitted both the grand jury transcripts and exhibits into evidence during Brewington's bond reduction hearing on August 17, 2011. [See appendix for page 20 of transcripts from August 17, 2011 hearing.] However, it was during the hearing on August 17, 2011 that the prosecution ceased to use the term "complete" to describe the transcripts from the grand jury proceedings by stating, "State's [exhibit] 4 is the Grand Jury testimony in this case your honor." Given the sparse interaction between the prosecution and the members of the grand jury, one would question how a panel of laypeople would understand their roles as grand jurors in the absence of any record of instruction by the state at the beginning of the proceedings. In certifying the transcripts from the grand jury [See appendix], Barbara Ruwe, Reporter of the Dearborn Superior Court II, stated:

"That upon the hearings of the grand jury in this cause, I transcribed all of the statements of the witnesses given during the hearings."

In *Wurster v. State* 715 N.E.2d 341 (Ind. 1999) the Indiana Supreme Court applied Criminal Rule 5 to the recording of grand jury proceedings which provides the recording "of any and all oral evidence and testimony given in all cases and hearings, including both questions and answers, all rulings of the judge in respect to the admission and rejection of evidence and objections thereto, and any other oral matters occurring during the hearing in any proceeding." [Excluding jury deliberations and occasions when jurors are alone] Indiana statute provides no authority that grants prosecutors the ability to arbitrarily "create" a record of proceeding by ordering the selective transcription of a normally secretive grand jury process. Even holding a prosecutor could order a court reporter to transcribe *only* the testimony of witnesses during a grand jury proceeding, the transcripts from the grand jury proceeding on March 2, 2011 are void of any witness testimony. The final day of the grand jury proceedings involved only a brief explanation by Negangard of how Brewington's internet writings crossed the lines of free speech and then Negangard proceeded to give a general reading of the criminal statutes for the jurors to consider. The Dearborn Superior Court II cannot tailor a transcript of a grand jury proceeding to meet the needs of a prosecutor and authorize omissions from the grand jury record without informing the defendant, especially in a case

where the prosecution offers the transcripts, or the prosecution's version of the transcripts, to serve as the basis for mounting a defense against the prosecution's case. Brewington is unaware if the Dearborn Superior Court II and/or the Office of the Dearborn County Prosecutor manipulated the record of the grand jury proceedings but Brewington is left scratching his head as to why the Dearborn Superior Court II would go to such lengths to prevent the release of the audio of a legal proceeding that the Court already deemed to be admitted as a public record. Hill reiterated that the record of the grand jury was indeed available to the public during the final pretrial hearing on September 19, 2011 [See appendix]:

"This matter is set today for a final pre-trial conference with a jury trial set to commence on October 3, 2011 at 9:00 a.m. A couple of the issues that we had, um, for consideration today, um, first of all back in August, I think it was even maybe prior to our last bond reduction hearing, the State had made a motion to release Grand Jury Exhibits which was granted and those were actually admitted into evidence at the bond reduction hearing that was held on August 17th. I believe that was the date it was. Being that those have been admitted as public record, there was a question by Defense counsel, we just had a brief conference in chambers before coming out on the record to make sure that those were allowed to be released to the Defendant and yes, that is the case and I don't, uh, there were some conversations between Mr. Negangard and Mr. Barrett about getting that transcript and that might happen I think immediately after this hearing today."

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Hill confirmed that the record of the grand jury was admitted as public record. Despite the prosecution's claim that Brewington's defense could rely on a "complete transcript" record of the grand jury to decipher the general indictments, Hill failed to allow Brewington and his public defender to have access to any specific charging information until less than two weeks before Brewington's jury trial commenced on October 3, 2011. Two weeks to prepare a defense seems almost like a gift in lieu of Hill's original attempt to force Brewington to trial on August 16, 2011. The order vacating the August 16, 2011 jury trial was filed on August 17, 2011. The order releasing the record of the grand jury was filed on August 23, 2011. [See appendix for Chronological Case Summary (CCS) entry] No objections were ever made by Brewington's public defender Bryan Barrett. Rush County Superior Court Judge Brian Hill appointed and allowed Rush County Chief Public Defender Bryan Barrett to continue representing Brewington despite Hill knowing that Barrett refused speak with Brewington prior to trial while denying Brewington the right to play any role in preparing a defense.

As Brewington expects any potential response to this complaint from Hill or the Dearborn County Superior Court II to be accompanied by an argument that Brewington's complaint is conspiracy-laden, the fact still remains that in 2012 Hill first ordered the clerk to prepare copies of the audio from the grand jury proceedings and then later rendered the requests moot claiming that the grand jury audio did not exist. Rather than render Brewington's request moot, Hill denied Brewington's request. If there is a provision in Indiana law that differentiates a paper transcript record of a grand jury proceeding from an audio record of the same proceeding, Hill failed to offer that provision in the Court's denial. Brewington originally assumed that by rendering prior requests moot, Hill was without jurisdiction to order the release because Hill only presided over Brewington's case and the record of the grand jury was maintained by the court of Dearborn Superior Court II Judge Sally McLaughlin. When Brewington made a request for the grand jury records four years after Hill rendered prior requests moot, Hill denied Brewington's request stating "there's been no sufficient reason set forth which would necessitate the release of said audio recordings." Hill confuses the law regarding the release of public records as the burden falls squarely on the shoulders of the public agency to prove why the records should not be accessible by the public.

Brewington's inclusion of extraneous examples of conduct not directly related to Brewington's public record request for grand jury audio is simply an attempt to provide the Counselor with some perspective as to why the Dearborn Superior Court II refuses to release the audio record from an already public record without reason. The actions of Judge Brian Hill and the Dearborn County Superior Court II are at best suspicious. The worst case scenario is Hill and former Indiana Supreme Court applicant Dearborn Superior Court II Judge Sally McLaughlin are obstructing access to public records in a case where McLaughlin's Court Reporter assisted Dearborn County Prosecutor F. Aaron Negangard in manipulating the record of a grand jury proceeding to deny Brewington of a fair trial. Indiana Administrative Rule 9(D)3 states, "If a Court Record, or portion thereof, is excluded from public access, there shall be a publicly accessible indication of the fact of exclusion but not the content of the exclusion." The "complete transcript of the grand jury proceedings" is void of any notations indicating that any information was redacted during the transcribing of the grand jury audio. No party or person has provided any written "notice to the Trial Court identifying the transcript page and line number(s) containing any Court Record to be excluded from Public Access; and the specific Administrative Rule 9(G)(2) or 9(G)(3) grounds upon which that exclusion is based."

I.C. 5-14-3-2 defines the term "public record" broadly to include any writing, paper, tape recording that is either created, received, maintained, used, filed, or generated on magnetic or machine-readable media. Three weeks after Hill's January 12, 2012

order for the court reporter to prepare copies of the grand jury audio, Hill arbitrarily represented the grand jury audio as something other than just an electronic form of the record equally represented by the paper transcripts. A claim that there is more information in the audio of the grand jury than what exists in the transcripts of the same proceedings is acknowledging that the transcription of the grand jury audio is not accurate and Brewington was denied a fair trial. Making matters even more suspicious is the fact Brewington was indicted for making, what Dearborn County Prosecutor F. Aaron Negangard claimed to be "over the top" and "unsubstantiated statements" about court officials. Brewington was convicted of criminal defamation but his convictions were upheld based on alleged "hidden threats" though the term "hidden threat" does not appear anywhere in the audio or transcripts from the criminal proceedings and does not appear anywhere in the paper representation of the grand jury record. The Dearborn Superior Court II has not offered any statutory exception justifying the Court's failure to disclose the electronic version of the grand jury record that is already a public record. Brewington attempted to resolve the issue with an Amended Request for Grand Jury Audio [See appendix for Request dated February 8, 2016] but the Dearborn Superior Court II failed to respond. Brewington sent a Public Records request to Dearborn County Prosecutor F. Aaron Negangard in the chance the grand jury audio was maintained by the Office of the Dearborn County Prosecutor but Brewington received no response from Negangard as well. [See appendix for Request to Negangard] Hill and the Dearborn Superior Court II had at least four opportunities to provide a legal reason why not to release the audio version of the grand jury record. Other than claiming the audio did not exist, the only reason Hill provided for not releasing the audio was that Brewington did not give a "good enough" reason to release a copy of the digital record. Page 1 of the grand jury transcript [See appendix] is void of any introduction or explanation of the proceedings. The written record of the grand jury documents Prosecutor Negangard's opening statements to be, "Alright, we would call our first witness, Michael Kreinhop. Would you swear in the witness?" If the audio record demonstrates any communication between Negangard and the grand jury prior to Negangard calling his first witness, then Barbara Ruwe, court reporter of the Dearborn Superior Court II, illegally altered an official court record, presumably on behalf of Dearborn County Prosecutor F. Aaron Negangard. Further suspicion of potential omissions appear on page 284 of the grand jury transcripts [See appendix]. At the end of Prosecutor Negangard's questioning of witness Angela Loechel, Ms. Loechel says, "Okay, thank you." The next line is Negangard stating, "Okay are we on record. Let the record show that we're reconvening after our morning break, um, we'll show that the State has called Heidi Humphrey before the Grand Jury." Unless Prosecutor Negangard quietly led the jurors out of the room between Ms. Loechel's testimony and going back on the record after morning break,

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the record of the grand jury was altered. Any manipulation of the grand jury record to intentionally harm Brewington's constitutional right to a fair trial would almost certainly be grounds for immediate dismissal of the convictions that caused Brewington to be incarcerated for 2.5 years.

A copy of this complaint and links to the transcripts of the grand jury proceedings and other documentation can be found on www.danbrewington.blogspot.com. As the above case involves concerning behavior by government officials, Brewington is forwarding a copy of this complaint and supporting documentation to the Federal Bureau of Investigation Office, 8825 Nelson B Klein Pkwy, Indianapolis, IN 46250 as well as the United States Attorney's Office, 10 W. Market St, Suite 2100, Indianapolis, IN 46204. Thank you in advance for your attention to this matter.

Respectfully,



Daniel P. Brewington

[REDACTED]
[REDACTED]
[REDACTED]

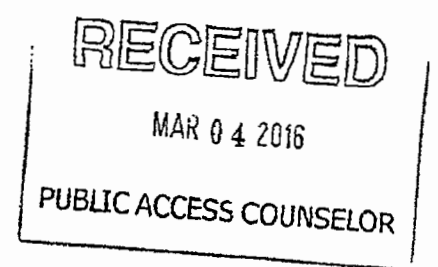
contactdanbrewington@gmail.com

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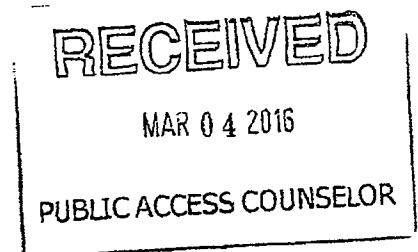
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APPENDIX



APPENDIX

Brewington's January 29, 2016 Public
Record Request for copies of audio discs
from the grand jury



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):

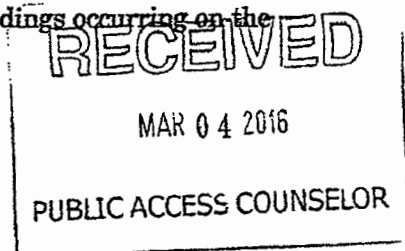
Pursuant to the Access to Public Records Act (Ind. Code 5-14-3), Requester would like copies of the following public records pertaining to the case of State of Indiana vs Daniel Brewington, Cause No: 15D02-1103-FD-00084:

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

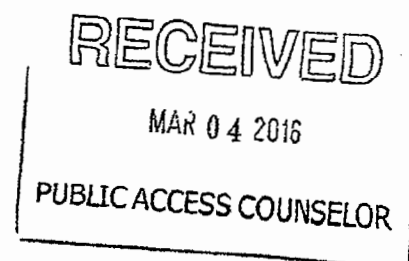
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procedural instructions from Negangard that the grand jurors could indict Brewington for making "over the top, um unsubstantiated statements" about Dearborn County Court Officials. The transcript of the audible record also establishes that Negangard 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.

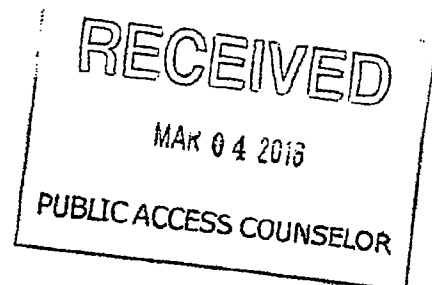
Respectfully,



Daniel P. Brewington, Requester

[REDACTED]
[REDACTED]
[REDACTED]

contactdanbrewington@gmail.com



Rush Superior Court

*Rush County Courthouse
101 East Second Street
Rushville, Indiana 46173
Phone: (765) 932-2829 / (765) 932-3520
Fax: (765) 932-2856*

Brian D. Hill, Judge

*Tonya Muckerheide, Court Reporter
Sandra A. Land, Court Administrator*

March 8th, 2016

Ms. Dale L. Brewer
Office of the Public Access Counselor
Indiana Government Center South
402 West Washington Street, Rm W470
Indianapolis, IN 46204

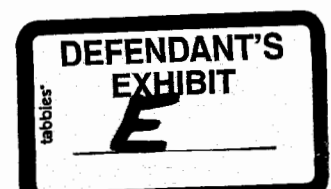
Re: Formal Complaint 16-FC-48

Ms. Brewer,

I am in receipt of the above-referenced complaint dated March 7, 2016. Mr. Brewington's request as to the audio recordings of the Grand Jury proceedings of February 28, 2011, March 1, 2011, and March 2, 2011 was denied by me simply because I did not preside over those proceedings. I was appointed special judge over the criminal case that followed. I am aware that the statute allows the judge who presided over the criminal trial to make decisions as to the release of grand jury information related to the criminal charges, however, I did not feel it was appropriate in this case. Mr. Brewington has had full access to the official transcript of these proceedings. I didn't feel that his latest allegation of a conspiracy between the prosecuting attorney and court reporter was sufficient justification to release an audio record that he already has the transcript to. In addition, we are talking about grand jury proceedings which led to an indictment that went to jury trial and was subsequently affirmed by both the Court of Appeals and Indiana Supreme Court.

Mr. Brewington seems to take offense that orders releasing these recordings prohibit the broadcast or publication of the material, however, I believe that admonishment is required by the Code of Judicial Conduct, Rule 2.17. I have not intended to deprive Mr. Brewington to his right of access to his criminal proceedings. As I said earlier, I did not preside over his grand jury proceedings and did not feel comfortable releasing those hearings in yet another format. If you come to a different conclusion, I would be happy to comply immediately.

If I can be of further assistance or answer any questions, please let me know.



Sincerely,

A handwritten signature in black ink, appearing to read "Brian D. Hill", with a large, stylized loop at the end.

Brian D. Hill
Judge, Rush Superior Court
Special Judge, Dearborn Superior II

New request to listen to Grand Jury Audio

March 8, 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):

In light of the Court's failure to provide any statutory exception as required by Indiana Statute for this Court's denial of request for copies of the audio from an already public grand jury record, Requester files this new public records request. Pursuant to the Access to Public Records Act (Ind. Code 5-14-3), Requester would like to schedule a time to listen to the audio from the following grand jury proceedings pertaining to the case of State of Indiana vs Daniel Brewington, Cause No: 15D02-1103-FD-00084, at a time convenient to the Court staff:

February 28, 2011

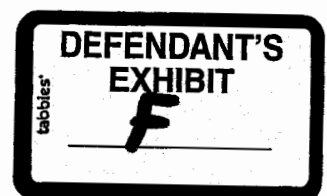
March 1, 2011

March 2, 2011

On August 23, 2011, this Court issued an order releasing the transcripts and the exhibits of the above mentioned grand jury proceedings and admitted the information as evidence, so the information is a public record.

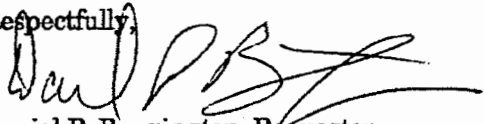
This Court denied a previous request for copies of the grand jury audio based on the Court's finding that Requester did not provide a "good enough" reason to release copies of the audio from the grand jury proceedings. Despite Indiana Statute placing the burden on the public agency to state the statutory exemption for denying a request for public records, Requester seeks the audio to verify whether the prosecution had absolutely no interaction with members of the grand jury prior to presenting the State's case or if any instructions given to the jurors or any other communications were omitted from the transcripts. Regardless of whether the prosecution failed to give jurors any explanation of their roles as members of a grand jury investigation or if the prosecution directed this Court's reporter to omit information from the transcription of the official record, both are examples of malicious prosecutorial misconduct and serve as grounds to initiate legal action in a state and/or federal court to attack Requester's convictions.

According to the statute, you have seven (7) days to respond to this request. If you choose to deny the request, please state the statutory exception authorizing the withholding of all or part of the public record rather than applying the Court's normal "because we said so" response used in denying requests for copies of audio. If Judge Hill is unwilling or



incapable of following the statutes governing the release of public records in providing a valid statutory exception, Requester would expect Judge McLaughlin to take appropriate measures to ensure that a competent judicial officer presides over matters regarding public records that are maintained by the Dearborn Superior Court II. 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

Re: Altered Grand Jury Record

March 8, 2016

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

Dear Judge Sally A. McLaughlin (Blankenship):

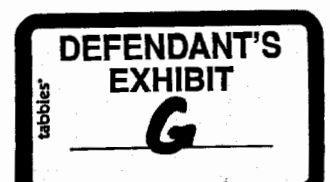
On January 29, 2016, pursuant to the Access to Public Records Act (Ind. Code 5-14-3), I submitted a request to your court for copies of the audio record from the grand jury proceedings pertaining to the case of State of Indiana vs Daniel Brewington, Cause No: 15D02-1103-FD-00084. In this Court's ORDER ON REQUEST FOR RELEASING AUDIO RECORDINGS, filed February 4, 2016, Special Judge Brian Hill stated"

"Mr. Brewington has alleged that these audio recordings were admitted into evidence at his criminal trial, however, the Court finds that they were not, and there's been no sufficient reason set forth which would necessitate the release of said audio recordings."

In his third conflicting ruling regarding the release of the audio record from the grand jury proceedings in the above cause, Hill failed to provide a statutory reason as to why not to release the audio from the grand jury proceedings that are already public record. Instead, Hill continued his unsubstantiated excuse making in denying requests for the audio. The Chronological Case Summary in the above cause demonstrates that Hill granted the prosecution's motion to release the grand jury transcripts/evidence on August 23, 2011. Regardless of the means in which the record of the grand jury proceedings is preserved, the record is public. Hill's actions can only be viewed as an attempt to obstruct access to a public record in an effort to cover up unethical and/or illegal conduct on the part of Dearborn County Prosecutor F. Aaron Negangard and your Court Reporter, Barbara Ruwe, in their efforts to alter the official record of a grand jury proceeding.

"MR. NEGANGARD: Alright, we would call our first witness, Michael Kreinhop. Would you swear in the witness?"

The above are the opening statements by Dearborn County Prosecutor F. Aaron Negangard appearing in the transcripts for the grand jury proceedings on February 28, 2011, as reported by Barbara Ruwe. As the opportunities for public



viewing of the records from grand jury proceedings are rare, it is difficult to determine what actually transpires during the course of a grand jury. One would assume that an introduction as well as an explanation as to why the jurors were called for duty would be a part of the proceedings. In comparison, the transcripts of the grand jury proceedings in the case of State of Missouri v. Darren Wilson, regarding the shooting death of Michael Brown in Ferguson, Missouri, include nearly 3000 words by the prosecution prior to presenting the first witness. The transcripts demonstrate how the prosecution in the Ferguson grand jury opened with the following colloquy:

“MS. ALIZADEH: ‘Good morning. Today's date is September 3rd, 2014 and it is about, I can't see my watch, a little before 9:00, 9:55. (sic)’”

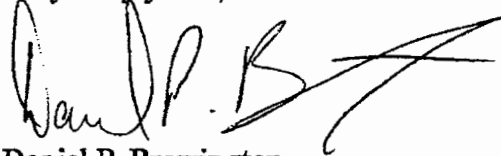
Prior to calling the first witness the prosecution in the Ferguson grand jury asked jurors if they were given menus for the day, told jurors more fans would be added to the room to keep the room cool, and also asked the jurors if they had any questions regarding their roles on the grand jury. In stark contrast, the record of the grand jury proceedings convened in Dearborn County, Indiana is almost void of any interaction between the prosecution and the jurors. The only instruction Negangard gave to the grand jury came on March 2, 2011, the final day of the grand jury proceedings. Apart from a bland reading of the criminal statutes at hand, Negangard's instruction to the jurors consisted of less than 200 words. The word count of the grand jury proceedings initiated by Negangard consists of roughly 750,000 words yet somehow less than 200 words are strictly between the prosecution and members of the grand jury.

There is little doubt that the record of the grand jury is not complete. The transcripts of the criminal proceedings demonstrate Negangard using the words “Grand Jury testimony” to describe the transcription of the grand jury. Barbara Ruwe certified “That upon the hearings of the grand jury in this cause, I transcribed all of the statements of the witnesses given during the hearings. I further certify that the foregoing transcript, as prepared, is full, true, correct and complete.” The prosecution cannot selectively choose what parts of an official proceeding it would like the court reporter to include in the transcription of a proceeding just as a court reporter cannot assign a particular wording to a partial transcription of a record and represent the transcript as the record of an official proceeding, at least not without the direction of a judge. Even holding it is constitutionally permissible to only transcribe witness testimony, no witnesses testified on March 2, 2011, the final day of the grand jury proceedings yet Ruwe included Negangard's brief instructions as to why Brewington was the target of the grand jury investigation. Just as you would never employ a petit jury without giving the

jurors any instruction as to their purpose and responsibilities during trial. It is entirely impossible for a grand jury to convene without any explanation from the prosecution prior to the prosecution's presentation. Given the transcripts were electronically generated from the audio rather than being manually transcribed [see over 205 examples of "yell" appearing in place of "yes"] it took more effort to omit events from the official record than it did to include all the information in the transcripts of the grand jury proceedings. If your court reporter, Barbara Ruwe, selectively recorded and/or transcribed the record of the grand jury proceedings then it is your responsibility as judge of the Dearborn Superior Court II to take appropriate measures to report the conduct. The same goes for the conduct of Dearborn County Prosecutor F. Aaron Negangard. If Negangard gave any instruction to members of the grand jury prior to the prosecution presenting its case, that instruction does not appear on the record then Negangard and your court reporter conspired to alter the record of a grand jury in a direct effort to deprive a defendant of a constitutionally fair trial. Ignoring the matter is your prerogative, however I am forwarding this letter to other Indiana officials as well as federal law enforcement especially as this case deals with abuse of the grand jury process and to provide some protection against further retaliation by Dearborn County Officials for reporting unethical/unlawful conduct. Please note that I have already secured the services of professionals in the field of audio recording for if/when I receive copies of the grand jury audio to ensure there have been no attempts to alter the record.

A copy of this letter can be found on www.danbrewington.blogspot.com for your convenience.

Very truly yours,



Daniel P. Brewington

[REDACTED]
[REDACTED]
[REDACTED]

contactdanbrewington@gmail.com



DEARBORN SUPERIOR COURT II
Sally A. McLaughlin, Judge

March 17, 2016

Mr. Luke H. Britt
Office of the Indiana Public Access Counselor
Indiana Government Center South
402 W. Washington Street, Room W470
Indianapolis, IN 46204

RECEIVED

MAR 17 2016

PUBLIC ACCESS COUNSELOR

RE: Complaint 16-FC-48 by Mr. Daniel Brewington

Dear Mr. Britt:

This letter is in response to your request for comment on a complaint by Mr. Daniel Brewington. The complaint is related to requests for grand jury proceedings involving the case of State of Indiana vs. Daniel Brewington, Cause No. 15D02-1103-FD-084, that was filed in Dearborn Superior Court No. 2 on March 7, 2011.

Although I am the Judge of Dearborn Superior Court No. 2, I do not have jurisdiction in this matter. A request was made for a special judge to be appointed by the Indiana Supreme Court on March 17, 2011. The Indiana Supreme Court appointed the Honorable John Westhafer as Special Judge in response to that request. The Indiana Supreme Court appointed the Honorable Brian Hill as Special Judge on June 3, 2011 after the Honorable John Westhafer recused himself. Pursuant to Indiana Rules of Trial Procedure, Judge Hill retains jurisdiction in this matter. Indiana Rules of Trial Procedure, Rule 79(K), provides that upon the certification of a request for the appointment of a special judge, the Supreme Court may order the appointment of a special judge and such order vests jurisdiction in that special judge. Thus, in the matter of State of Indiana vs. Daniel Brewington, jurisdiction is vested in the Special Judge, the Honorable Brian Hill. The Indiana Rules of Trial Procedure further provide that a special judge shall retain jurisdiction of the case through judgment and post judgment matters, Rule 79(L). Therefore, pursuant to the Indiana Rules of Trial Procedure, the Honorable Judge Hill retains jurisdiction in this matter which would include post judgment matters and requests for records.

DEFENDANT'S
EXHIBIT

H

Mr. Brewington and his relatives have made several requests to the Court to obtain records and address other matters on his behalf over the past few years. Each request has been forwarded to Special Judge Hill who has jurisdiction.

A review of the chronological case summary in this matter, which is a public record, provides that this matter proceeded to a jury trial with verdicts filed and judgment of conviction signed on October 6, 2011. A sentencing order was issued by Special Judge Hill on October 24, 2011. On November 1, 2011, pauper counsel was appointed to represent the Defendant on his appeal. On January 18, 2012, private counsel entered an appearance for the Defendant's appeal. The Indiana Court of Appeals issued an opinion for publication in this matter on January 17, 2013, Brewington v. State, 981 N.E.2d 585 (Ind. Ct. App. 2013). The Indiana Supreme Court accepted transfer and issued an opinion on May 1, 2014, Brewington v. State, 981 N.E.2d 585 (2013). Mr. Brewington ultimately had convictions sustained for Count II, Intimidation of a Judge, a Class D Felony; Count IV, Attempted Obstruction of Justice, a Class D Felony; and Count V, Perjury, a Class D Felony.

Disclosure of grand jury proceedings are controlled by Indiana Code 35-34-2-10 which provides that the transcript of a witness before a grand jury may be produced only:

- (1) For the official use of the prosecuting attorney; or
- (2) Upon order of:
 - (A) The court which impaneled the grand jury;
 - (B) The court trying a case upon an indictment of the grand jury; or
 - (C) A court trying a prosecution for perjury;

but only after a showing of particularized need for the transcript.

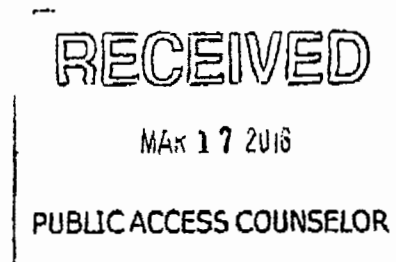
This case has progressed beyond the issuing of indictments by the grand jury and has had verdicts returned at a trial by jury over which the Special Judge presided. The Defendant appealed this matter to the Indiana Court of Appeals and the Indiana Supreme Court which have issued published opinions. The Special Judge has knowledge of whether any Grand Jury testimony has been made public in the course of the matter proceeding to trial and has presided over the matter. The Defendant has been represented by pauper and/or private counsel throughout the proceedings.

Indiana Code 35-34-2-10 also provides that unauthorized disclosure of grand jury testimony is a Class B Misdemeanor. The Code does not state that the transcript "shall" be released but rather states "may be produced only" and provides specific circumstances where they may be released. The Statute does not address the release of audio tapes from grand jury proceedings.

Please advise if I can be of any further assistance. Thank you.

Sincerely,


Judge Sally A. McLaughlin





STATE OF INDIANA

MICHAEL R. PENCE, Governor

PUBLIC ACCESS COUNSELOR
LUKE H. BRITT

Indiana Government Center South
402 West Washington Street, Room W470
Indianapolis, Indiana 46204-2745
Telephone: (317)234-0906
Fax: (317)233-3091
1-800-228-6013
www.IN.gov/pac

April 14, 2016

Mr. Daniel P. Brewington



Re: Formal Complaint 16-FC-48; Alleged Violation of the Access to Public Records Act by the Dearborn County Superior Court 2

Dear Mr. Brewington:

This advisory opinion is in response to your formal complaint alleging the Dearborn County Superior Court 2 ("Court") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 et. seq. The Court has responded via Honorable Judge Sally A. McLaughlin and the Honorable Judge Brian D. Hill. The Judges' responses are enclosed for your review. Pursuant to Ind. Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on March 4, 2016.

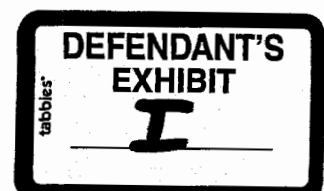
BACKGROUND

Your complaint dated March 3, 2016, alleges the Dearborn County Superior Court 2 improperly denied your records request for audio recordings of grand jury proceedings in your criminal case.

On January 29, 2016, you submitted a request for public records to Judge McLaughlin for audio discs of grand jury proceedings associated with your criminal case from 2011. Although Judge McLaughlin presides over Superior Court 2, Judge Hill, from Rush County Superior Court, responded to your request as he was the special judge appointed to preside over your specific case.

On February 4, 2016, the Court via Judge Hill issued an order denying the audio recordings of the grand jury proceedings. Public records associated with grand jury proceedings are governed by Ind. Code § 35-34-2-10 and their release is discretionary at the judgment of the Court. While the statute addresses transcripts of those proceedings, audio recordings are not referenced.

The transcripts of the proceedings were indeed made available to you in 2011. You seek the audio recordings to compare with the transcripts. You also seem to take exception to the Court's language stating that individuals who broadcast or publish the records may be held in contempt of court.



ANALYSIS

The public policy of the APRA states that "(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information." See Ind. Code § 5-14-3-1. The Dearborn County Superior Court 2 is a public agency for the purposes of the APRA. See Ind. Code § 5-14-3-2(n)(1). Accordingly, any person has the right to inspect and copy the Court's disclosable public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. See Ind. Code § 5-14-3-3(a).

First, it should be noted that although Dearborn Court Superior Court 2 is the custodian of the records in question, Judge Hill presided over the case as special judge and retains exclusive jurisdiction over release of records pursuant to Indiana Rule of Trial Procedure 79(L) superseding the jurisdiction of any other judge previously assigned to the case (including those records associated with proceedings over which he did not preside). Any decisions under the Administrative Court Rules or the APRA would lie solely with Judge Hill. Judge McLaughlin's response on behalf of the Court is appreciated, however, and duly taken into consideration.

Ind. Code § 35-34-2-10 states:

(a) Except when required to do so by law, a person who has been present at a grand jury proceeding and who knowingly or intentionally discloses:

- (1) any evidence or testimony given or produced;
- (2) what a grand juror said; or
- (3) the vote of any grand juror;

to any other person, except to a person who was also present or entitled to be present at that proceeding or to the prosecuting attorney or his representative, commits unauthorized disclosure of grand jury information, a Class B misdemeanor.

(b) The transcript of testimony of a witness before a grand jury may be produced only:

- (1) for the official use of the prosecuting attorney; or
- (2) upon order of:
 - (A) the court which impaneled the grand jury;
 - (B) the court trying a case upon an indictment of the grand jury; or
 - (C) a court trying a prosecution for perjury;

but only after a showing of particularized need for the transcript.

On January 12, 2012, Judge Hill issued an order giving instruction to the Court Reporter to prepare an audio recording of the grand jury proceedings to a third-party requestor. This order was amended a month later when the Judge was advised they were not admitted into evidence (as previously thought), and the order to produce the audio recordings was vacated. The transcripts of the proceedings have been released and made available to you.

The heart of this issue is whether audio recordings are any different from paper copies for the purposes of public records release. Although the definition of public record includes both (see Ind. Code § 5-14-3-2(o)), there are instances when electronic records are distinguished from paper records. A public agency that maintains records electronically, such as audio recordings, should make reasonable efforts to provide a duplicate of those records. See Ind. Code § 5-14-3-3(d).

When it comes to the judiciary, the APRA is balanced against several other regulatory considerations. For example, pursuant to Administrative Court Rule 9(D)(4), a Court may manage access to audio and video recordings of its proceedings to the extent appropriate to avoid substantial interference with the resources or normal operation of the court. According to the information provided, Judge Hill previously exercised his discretion under Ind. Code § 35-34-2-10 to allow reproduction of the grand jury transcript during the criminal proceedings. Because the case has been adjudicated and the transcript released, it stands to reason that providing you an audio copy of the proceeding would neither prejudice the operation of the court, nor compromise grand jury proceedings. Consider the commentary to Administrative Rule 9:

The objective of this rule is to provide maximum public accessibility to Court Records, taking into account public policy interests that are not always fully compatible with unrestricted access. The public policy interests listed above are in no particular order. This rule attempts to balance competing interests and recognizes that unrestricted access to certain information in Court Records could result in an unwarranted invasion of personal privacy or unduly increase the risk of injury to individuals and businesses. This rule recognizes there are strong societal reasons for allowing Public Access to Court Records and denial of access could compromise the judiciary's role in society, inhibit accountability, and endanger public safety.

This rule starts from the presumption of open Public Access to Court Records. In some circumstances; however, there may be sound reasons for restricting access to these records. This rule recognizes that there are times when access to information may lead to, or increase the risk of, harm to individuals. However, given the societal interests in access to Court Records, this rule also reflects the view that any restriction to access must be implemented in a manner tailored to serve the interests in open access.

Neither should your reason for wanting the recordings prohibit your access. A requestor of public access should not have to justify the purpose of the request to any public agency, regardless of your intentions or reservations of the agency. With very limited exception, a compelling interest is not required for obtaining access to public records.

Finally, you note the Judge's prohibition on broadcasting or publishing the materials. Under Judicial Code of Conduct Rule 2.17, a judge shall prohibit the broadcasting of information without prior approval of the Supreme Court. A judge may exercise some discretion in certain circumstances, but issuing an Order to prohibit broadcasting generally is appropriate.

RECOMMENDATIONS

Based on the forgoing, it is the Opinion of the Public Access Counselor that because the transcript of the grand jury proceedings have previously been provided to you, a copy of the audio recordings of said proceedings should be released as well. I have spoken with Judge Hill and he has indicated his willingness to amend the February 4, 2016 order and instruct the Dearborn County Court to produce the recordings.

Apr. 14. 2016 6:42PM

No. 0078 P. 5

Regards,

A handwritten signature in black ink, appearing to be 'LH Britt', written in a cursive style.

Luke H. Britt
Public Access Counselor

Cc: Hon. Judge Sally A. McLaughlin; Hon. Judge Brian D. Hill

STATE OF INDIANA

DEARBORN SUPERIOR COURT II

COUNTY OF DEARBORN

CAUSE NO. 15D02-1103-FD-084

STATE OF INDIANA,

Plaintiff

vs

DANIEL BREWINGTON,

Defendant

FILED

APR 20 2016

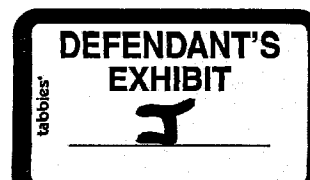
P. M. [Signature]
CLERK OF DEARBORN CIRCUIT COURT

ORDER ON REQUEST FOR RELEASING AUDIO COPIES (AS TO GRAND JURY PROCEEDINGS OF FEBRUARY 28, 2011, MARCH 1, 2011, AND MARCH 2, 2011)

Based on an Advisory Opinion issued by the Public Access Counselor, Luke H. Britt, on April 14, 2016, the Court issues the following Order regarding the audio recordings of Grand Jury proceedings conducted in this Court on February 28, 2011, March 1, 2011 and March 2, 2011, hereby amending a previous Order regarding these recordings issued on February 4, 2016.

The Court now **ORDERS** as follows:


1. The Court Reporter is hereby **ORDERED** to prepare a compact disc of audio recordings of the Grand Jury proceedings regarding this matter conducted on February 28, 2011, March 1, 2011, and March 2, 2011.
2. It is the Court's understanding that the Grand Jury impaneled for this matter also heard evidence in four to five other Grand Jury proceedings during this time, often going back and forth between all of the cases. The audio recordings being released shall contain only the matter regarding Daniel Brewington and no other Grand Jury proceedings.
3. Daniel Brewington shall be responsible for reasonable copying fees pursuant to I.C. 5-14-3-8. Additional costs may be required due to the



nature of the Grand Jury proceedings, because of efforts made to maintain the confidentiality of the other proceedings that were conducted simultaneous with the matter regarding Daniel Brewington.

4. The release of these audio recordings are hereby specifically limited to the personal review by Daniel Brewington. The recipient, Daniel Brewington, is barred from broadcasting or in any other way publishing these records in any manner. Violation of this Order may result in contempt proceedings.

ALL OF WHICH IS ORDERED this 20th day of April, 2016.


BRIAN D. HILL, Special Judge
Dearborn Superior Court II

Distribution:
Honorable Brian D. Hill
Prosecuting Attorney
Daniel Brewington

Amended request for All Audio from Grand Jury

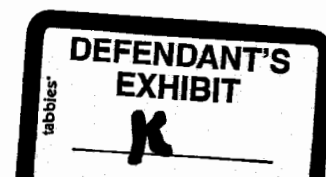
May 2, 2016

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

Dear Judge Brian Hill/Judge Sally A. McLaughlin (Blankenship):

On April 20, 2016, Judge Brian Hill issued the Court's ORDER ON REQUEST FOR RELEASING AUDIO COPIES (AS TO GRAND JURY PROCEEDINGS OF FEBRUARY 28, 2011, MARCH 1, 2011, AND MARCH 2, 2011). Brewington now requests complete unedited copies of the grand jury audio pertaining to Cause No. 15D02-1103-FD-084. If the Court is unwilling to provide Brewington with an unaltered copy of the official audio from Brewington's grand jury proceedings due to the Court's recent allegation of misconduct by court staff and/or Dearborn County Prosecutor F. Aaron Negangard, then the court should respond appropriately and vacate Brewington's convictions. The recent order from the Dearborn Superior Court II alleges misconduct on the part of the court's own reporter and then denies Brewington the opportunity to investigate the extent of the misconduct. The order also gives Dearborn County Prosecutor F. Aaron Negangard the ability to write the records of grand jury proceedings while removing any way for the public to prove misconduct. Judge Hill's order inadvertently offers new evidence that the Dearborn Superior Court II omitted portions of an official proceeding in transcribing grand jury audio. Hill's perseverance in denying the public and Brewington access the already public grand jury record causes Hill to overlook the obvious misconduct resting firmly in the Court's reasoning in denying Brewington an exact copy of an official record. In orders filed in the Dearborn Superior Court II, dated April 20, 2016, Judge Hill wrote:

"It is the Court's understanding that the Grand Jury impaneled for this matter also heard evidence in four to five other Grand Jury proceedings during this time, often going back and forth between all of the cases. The audio recordings being released shall contain only the matter regarding Daniel Brewington and no other Grand Jury proceedings."



Hill's new claim of intertwined grand jury audio is quickly disproven by the transcripts of the grand jury audio as Negangard skipping back and forth between cases presented to the grand jury would require Dearborn County Prosecutor F. Aaron Negangard to notify the grand jury when the focus of the investigation returned to Brewington's case. Any such activity would have had to appear in the transcripts of the grand jury. [See *Wurster v. State*, 715 N.E.2d 341 (Ind. 1999), re: maintaining record of all communication between prosecutor and jurors.] As the transcripts are void of any such notice, Hill's contention that Negangard ran four to five concurrent grand jury investigations (in addition to Brewington's) hinges on the notion that court reporter Barbara Ruwe omitted more of the grand jury record than originally alleged by Brewington. Despite the new findings, Hill ordered Ruwe to reconstruct an "official copy" of the grand jury audio by cutting and pasting segments from the official audio record that Hill now contends to contain audio from several other grand jury investigations occurring simultaneously on February 28, 2011, March 1, 2011, and March 2, 2011. The suggestion that a prosecutor would randomly jump around between as many as six criminal investigations during a three day grand jury proceedings is either laughable or horrifically frightening. If Hill maintains that the grand jury transcript is a complete and accurate transcription of the audio, it would be impossible for Ruwe to only cut and paste the audio pertaining to Brewington because Brewington's grand jury proceedings are void of any cues from the prosecution to notify when Brewington's case starts and stops. Hill bases his decision to limit Brewington's access to records on private correspondence with unnamed people that are absent from any official record and without Brewington's knowledge or participation. Hill's new "findings" demonstrate that Negangard failed to specify which case the prosecution was presenting to the grand jury, or that Ruwe arbitrarily omitted the information from the record, OR someone is providing false information to the Court in an effort to save his or her backside. Any of the contentions beg for the release of the entire unedited audio containing Brewington's grand jury proceedings. The new information may be plausible grounds to vacate Brewington's convictions. As such, in addition to requesting an unedited copy of the official record of the audio from the grand jury investigation of Daniel Brewington, Brewington also requests the name(s) of the individuals responsible for providing this court with the information responsible for Hill's excuse in denying Brewington's right to access the official audio from the grand jury proceedings.

Judge Hill has issued several orders and letters, dating back to January 12, 2012, in response to multiple requests for the grand jury audio in question. Despite providing a plethora of excuses as to why the Court should ignore or deny requests for the audio behind an already public transcript, this is Hill's first mention of the intertwining grand jury investigations. One only has to look at the witness

testimony of Dearborn County Sheriff Michael Kreinhop. Page 16 of the grand jury transcripts show Negangard stating, "We're back on record to so that we're addressing the handgun issue." Prior to Negangard's statement, the record is void of any indication of a break or an intention to go off the record yet Negangard suddenly announces that the record is back on. Negangard and Kreinhop went to great lengths in discussing a handgun legally purchased and owned by Brewington despite the absence of any claim that Brewington used the gun in any unsafe or unlawful manner. Without warning, the record shuts off and comes back on with Negangard and Kreinhop discussing concealed carry permits where Negangard informs the jurors, "I would point out that permits in Indiana, if you don't have a felony, they are relatively easy to obtain." Ruwe, Negangard, Dearborn County Sheriff Michael Kreinhop and possibly others share a potential stake in what transpired when the needle suddenly appeared to have slipped off the grand jury record and now Hill wants to trust Ruwe to accurately recreate the audio despite Ruwe being responsible for omitting portions of the grand jury proceedings from the transcripts.

"The legislature's requirement that a record be kept of grand jury proceedings can only be designed to serve as an important check on the potential of prosecutorial abuse of the grand jury process." *Wurster v. State*, 715 N.E.2d at 347. Any contention that Brewington is pursuing an obscure procedural error in an attempt to seek relief from his convictions is misplaced. The Office of the Dearborn County Prosecutor never provided Brewington with any explanation of what actions the State alleged to be in violation of law. The prosecution instructed Brewington to rely on the record of the grand jury transcripts knowing that Ruwe omitted portions of the official record from the transcripts. It is a violation of the rights of the public for this Court to continue any private investigation into the concerns of others regarding the release of the grand jury audio outside of a public hearing. It would be irresponsible, and potentially unconstitutional, for this Court to place the sole responsibility on the Dearborn County Superior Court II to recreate a copy of the official audio record in Brewington's grand jury proceedings without Brewington's participation, input, or the ability to call witnesses. Recreating the audio is virtually impossible in the absence of Negangard affirmatively stating, "We are back on record in the State's investigation of Dan Brewington." As the grand jury transcripts are void of any similar transition, Ruwe would have no idea what parts of the audio pertained to Brewington. If any alleged omissions from the written record were a result of Ruwe's inability to understand or follow which investigation the prosecution was presenting at any given time, a grand jury of laymen would be even more lost especially with Negangard allegedly bouncing between the presentations of five to six criminal cases to the same grand jury in the span of three days. Given that Judge Hill's current order prohibits Brewington from

sharing, any of the grand jury audio with anyone the secrecy of other alleged grand jury investigations would not be compromised. The only potential harm in releasing the audio of other grand jury proceedings is if the audio were to contain additional examples of grand jury abuse by Dearborn County Prosecutor F. Aaron Negangard.

Brewington has remained consistent in requesting information and evidence and this Court has been consistent in providing new excuses in denying Brewington the evidence. Judge Hill's animosity towards Brewington's requests for information and constitutional protections date back over 4.5 years. During Brewington's sentencing hearing on October 24, 2011, Hill made the following remarks about Brewington's numerous verbal and written complaints about not having access to legal counsel and charging information prior to trial:

"I've never seen anyone better at manipulating or turning the facts around to make yourself out to be the victim." -Judge Brian Hill Tr. 81

During the same hearing, Dearborn County Prosecutor F. Aaron Negangard also attacked Brewington for alleging misconduct on the part of the prosecution by stating:

"Brewington's convicted at a jury now, and his response was to say it was my fault. Um, it's the prosecutor's fault, we lied, we misrepresented the law, um, whatever, again, no acceptance of responsibility and that's ultimately what the Court is to determine at a sentencing is what it takes to get someone to accept responsibility for his actions" -Dearborn County Prosecutor Negangard Tr. 67-68

It is worthy to note that Indiana Supreme Court Chief Justice Loretta H. Rush wrote Negangard's use of "criminal defamation" to prosecute Brewington was "plainly impermissible" but upheld Brewington's convictions claiming Brewington's public defender, Bryan Barrett, attempted to take advantage of Negangard's unconstitutional prosecution and somehow invited the errors associated with it. Rush's opinion is void of any mention of criminal defamation being the only argument Negangard presented to the grand jury, at least the only argument appearing in the transcripts. [The trial record demonstrates Barrett, who was appointed by Hill, failed to take any measures to determine the nature of the indictments against Brewington. Brewington still maintains Barrett refused to share evidence, gather evidence, question witnesses, meet with Brewington, or allow Brewington to play any role in preparing a defense strategy. The record is replete with examples where Brewington told Rush County Superior Court Judge Brian Hill that Barrett refused to meet with Brewington, yet the record is void of ANY examples where Hill directly addressed Brewington's concerns that Rush County Chief Public Defender Bryan Barrett refused to meet with Brewington prior to trial. Meeting minutes from the Indiana Public Defender Commission

demonstrate that on September 19, 2012, Judge Hill appeared with Bryan Barrett before the Commission because of Barrett's non-compliance with caseloads maximums for the past four quarters. Ironically, it was during Brewington's final pretrial hearing on September 19, 2011, exactly one year prior, where Hill refused to question Barrett about Brewington's allegations that Barrett refused to meet or speak with Brewington about his case prior to trial. Two weeks later, Hill again refused to address Barrett about the matter and marched Brewington to trial without providing Brewington a fundamental explanation of the charges against him.] Not only did Judge Hill allow Negangard to misrepresent the law and prosecute Brewington for criminal defamation, Hill is currently denying Brewington access to an "official record" that Hill's recent order acknowledges to be incomplete. Judge Hill's current stance on transparency is that Brewington may have a copy of the audio after the people responsible for withholding indictment information from Brewington are finished recreating the audio from the grand jury. As such, Brewington requests an exact copy of the original and unedited grand jury audio, the name of any individual(s) responsible for the information behind the Court's reasoning in denying Brewington's request for an exact copy of the official record, and a public hearing giving Brewington the ability to respond and cross-examine those objecting to the release of the audio. Please note that Brewington is forwarding this request to the Indiana Public Access Counselor, local, state and federal officials, in addition to the FBI and U.S. Department of Justice to help provide shelter from any further prosecutorial and/or judicial retaliation. Any further excuses not to release exact copies of the records should be viewed as further attempts to provide cover for the misconduct by Dearborn County Prosecutor F. Aaron Negangard, Dearborn County Court Reporter Barbara Ruwe, and other officials within the Dearborn County Court System. If the Court believes this matter is better suited for post-conviction hearings or federal proceedings so Brewington can subpoena individuals and determine who is responsible for altering the grand jury transcripts, Brewington would respond accordingly. Brewington would also initiate the process of obtaining the names of individuals serving on the grand jury in an effort to reconstruct the incomplete record. If Judge Hill or any officer of the court believes the content of this document includes false statements or misrepresentations of fact, Brewington welcomes the Court to set a hearing on matters regarding the obstruction of public records where Brewington will gladly testify under oath to the truth of the statements. This hearing will also clear up any confusion as to the accuracy of the transcripts as Barbara Ruwe will be able to testify why the transcripts are void of any introduction to the proceedings and who instructed her to omit portions of the official record.

According to the statute, you have seven (7) days to respond to this request. If you choose to deny the request, Brewington asks that the Dearborn County

Brian D. Hill, Judge
Rush Superior Court
101 East Second Street, Courthouse
Rushville, Indiana 46173
Phone: (765) 932-2829 / (765) 932-3520
Fax: (765) 932-2856

Sandra A. Land, Court Administrator

Tonya Muckerheide, Court Reporter

May 6, 2016

Daniel Brewington
[REDACTED]
[REDACTED]

RE: Response to Amended Request for all Audio from Grand Jury

Dear Mr. Brewington:

I have just received your Amended Request for all Audio from Grand Jury. Pursuant to the Court's Order following the opinion of the Public Access Counselor, you are entitled to receive all audio recordings regarding your proceedings. You are not, however, entitled to receive any audio recordings from other Grand Jury proceedings that may have been conducted on those same days with the same Grand Jurors.

Sincerely,



BRIAN D. HILL, Judge
Rush Superior Court

BDH:sl

cc: Dearborn Superior Court II
215 W High Street
Lawrenceburg, IN 47025

