

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

MOTION FOR SUMMARY JUDGMENT IN FAVOR OF PLAINTIFF AND  
MOTION TO DISQUALIFY THE OFFICE OF INDIANA ATTORNEY GENERAL  
CURTIS HILL FROM PROVIDING LEGAL REPRESENTATION IN THIS  
MATTER

Plaintiff, Daniel Brewington (“Brewington”), pursuant to Indiana Rules of Trial Procedure 56, files this Motion for Summary Judgment in Favor of Plaintiff and Motion to Disqualify The Office of Indiana Attorney General Curtis Hill and in support states the following:

- 1) Brewington’s Motion for Summary Judgment makes a prima facie showing that Brewington is entitled to judgment as a matter of law.
- 2) Defendants’ agree that the grand jury audio is a releasable record and that Brewington satisfied the requirements of the APRA by filing a complaint with the

Office of the Indiana Public Access Counselor (“PAC”) prior to initiating this action. The PAC ruled in favor of releasing the grand jury audio in question.

3) An admission by the Defendants that the grand jury record is *complete* requires illegal conduct by Indiana Chief Deputy Attorney General F. Aaron Negangard and at least one of the Defendants.

4) Any claim by the Defendants that the grand jury record provided to Brewington is *incomplete* is far more sinister in nature because such a claim requires an assertive effort by at least one of the Defendants, in their official capacity with the Dearborn Superior Court II, to alter grand jury records in addition to engaging in a continued conspiracy to cover up such illegal activity.

5) As to Defendants’ claims of immunity, given the unabashed actions of the Defendants in altering grand jury records and the apparent attempt to conceal the conduct, Brewington can only speculate that defense counsel, Deputy Attorney General Lowry, confused Brewington’s APRA action with a ITCA claim seeking damages for loss. In the alternative, Deputy Attorney General Lowry employed a vague immunity defense to prevent the release of records that would be damaging to one of Lowry’s superiors in the Office of the Indiana Attorney General, Chief Deputy Attorney General F. Aaron Negangard

6) The Dearborn Superior Court II has withheld the audio record of the grand jury in bad faith. Evidence of bad faith are found in Defendants’ own proclamations appearing in Exhibits A through H in Brewington’s COMPLAINT, filed February 21, 2017. See Memorandum

- 7) Hill makes false allegations of intertwining grand jury proceedings to further obstruct public access to the grand jury records. Hill's order authorized the court reporter of the Dearborn Superior Court II to alter the grand jury audio as necessary to omit incriminating evidence.
- 8) If this Court would require more evidence to grant Brewington's request for Summary Judgment, Brewington would advise this Court to review the Indiana Supreme Court decision in *Brewington*, referenced by McLaughlin in McLaughlin's March 17, 2017 letter to the PAC.
- 9) McLaughlin's has multiple interests in not releasing the grand jury audio
- 10) The above events and actions of the Defendants brought forth the need to name multiple defendants in this case.
- 11) The evidence of the case demonstrates Chief Deputy Attorney General F. Aaron Negangard engaged in illegal conduct. For this reason and others mentioned in the attached memorandum, the conflicts of interest should disqualify the Office of the Indiana Attorney General from providing representation in this matter.
- 12) The Defendants have not made any claim that would bar Brewington from bringing this action.

WHEREFORE, for the reasons set forth in Brewington's MOTION FOR SUMMARY JUDGMENT IN FAVOR OF PLAINTIFF AND MOTION TO DISQUALIFY THE OFFICE OF INDIANA ATTORNEY GENERAL CURTIS HILL FROM PROVIDING LEGAL REPRESENTATION IN THIS MATTER, and MEMORANDUM Brewington requests that this Court: Disqualify the Office of the

Attorney General from representing the Defendants in this matter; Grant Brewington's Motion for Summary Judgment by entering an injunction ordering the Court Reporter of the Dearborn Superior Court II to promptly produce the entire unedited audio record of the Grand Jury Proceedings relating to Cause No. 15D02-1103-FD-00084; Award Brewington any attorneys' fees and costs in bringing this action; and Award Brewington any other appropriate relief.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Daniel Brewington", written over a horizontal line.

Daniel Brewington  
*Plaintiff, Pro se*

**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 March 31, 2017.

Brian D. Hill, Judge  
Judge, Rush Superior Court  
101 East Second Street, 3rd Floor  
Rushville, IN 46173  
(765) 932-3520

Sally A. McLaughlin, Judge  
Judge, Dearborn Superior Court II  
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Daniel P. Brewington

*Plaintiff, pro se*

DANIEL BREWINGTON,	)	IN THE SUPERIOR COURT II
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	)	

MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT IN  
FAVOR OF PLAINTIFF AND MOTION TO DISQUALIFY THE OFFICE OF  
INDIANA ATTORNEY GENERAL CURTIS HILL FROM PROVIDING LEGAL  
REPRESENTATION IN THIS MATTER

Plaintiff, Daniel Brewington (“Brewington”), pursuant to Indiana Rules of Trial Procedure 56, files this memorandum in Support of Plaintiff’s Motion for Summary Judgment and in support states the following:

- 1) In *Reed v. Reid*, 980 N.E.2d 277 (2012) The Indiana Supreme Court explained the moving party in a motion for summary judgment “bears the initial burden of making a prima facie showing that there are no genuine issues of material fact and that it is entitled to judgment as a matter of law.’ *Gill v. Evansville Sheet Metal Works, Inc.*, 970 N.E.2d 633, 637 (Ind.2012).”

2) In the Defendants' ANSWERS, filed March 14, 2017<sup>1</sup>, Defendants do not dispute the following:

a) The grand jury audio in question is a releasable public record under the APRA.

b) Brewington satisfied the requirements of the APRA by filing a complaint with the Office of the Indiana Public Access Counselor prior to initiating this action.

c) The Office of the Indiana Public Access Counselor, issued an opinion, dated April 14, 2016, in favor of releasing the grand jury audio to Brewington.

(Exhibit D in Brewington's Complaint)

d) That on March 7, 2011, then Dearborn County Prosecutor F. Aaron Negangard filed the State's PRAECIPE directing "the Court Reporter of the Dearborn Superior Court II to prepare and certify a full and complete transcript of the grand jury proceedings in this cause of action." (Exhibit A in Brewington's Complaint)

e) That on June 15, 2011 Barbara Ruwe certified the transcription of the grand jury transcript "as prepared, is full, true, correct, and complete." (Exhibit B in Brewington's Complaint)

<sup>1</sup> Defendants failed to serve Brewington with a copy of the Defendants' ANSWER in accordance to Indiana Trial Rule 5. Defendants mailed a copy of the pleading and a certificate of service to an address not listed on the APPEARANCE filed by Brewington, thus delaying Brewington's access to filings from defense counsel.

f) The hyperlink found in footnote 3 on page four contains a copy of the 340-page transcript from the grand jury investigation in Brewington's criminal case [http://www.dadsfamilycourtexperience.com/Grand\\_Jury\\_Transcript.pdf](http://www.dadsfamilycourtexperience.com/Grand_Jury_Transcript.pdf).

g) Brewington obtained a CD-R from the Dearborn Superior Court II.

3) An admission by the Defendants that the grand jury record is *complete* requires illegal conduct by Indiana Chief Deputy Attorney General F. Aaron Negangard and at least one of the Defendants. On March 7, 2011, (then) Prosecutor Negangard filed the State's Praecipe stating:

"Comes now the State of Indiana by F. Aaron Negangard, Prosecuting Attorney for the Seventh Judicial Circuit, and praecipes the Court Reporter of the Dearborn Superior Court II to prepare and certify a full and complete transcript of the grand jury proceedings in this cause of action."

a) On June 15, 2011, Defendant Ruwe issued a Reporter's Certificate stating: "I further certify that the foregoing transcript, as prepared, is full, true, correct and complete."

b) In the time between the filing of the State's Praecipe and Ruwe's certification of the transcription of the grand jury audio, there is no pleading, order, or any other official record that instructed Ruwe to vary from Negangard's instruction to "prepare and certify a full and complete transcript of the grand jury proceedings in this cause of action."

c) In considering a prima facie review of the above, a claim that the grand jury record is complete requires the following:



i) A working agreement between Negangard and the court reporter to only record specific portions of the grand jury investigation. The arbitrary recording of the proceedings was at the discretion of Chief Deputy Attorney General F. Aaron Negangard, who felt it was necessary to omit any of the prosecutor's opening instructions to the grand jurors from the recording of the grand jury investigations; a violation of Indiana Code § 35-34-2-3(d).

ii) *Wurster v. State*, 715 N.E.2d 341 (1999) explains I.C. § 35-34-2-3(d) as follows:

“The court shall supply a means for recording the evidence presented before the grand jury and all of the other proceedings that occur before the grand jury, except for 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. The evidence and proceedings shall be recorded in the same manner as evidence and proceedings are recorded in the court that impaneled the grand jury....”

iii) Any such agreement between Negangard and the court reporter would also have to include the use of non-verbal cues from Negangard indicating when to stop the recording of the proceedings because the transcripts are almost void of any mention of the grand jury proceedings breaking for any reason.

iv) The only purpose in selectively recording grand jury proceedings is to shield prosecutorial misconduct:

“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*, at 347

v) An agreement between the court reporter and Negangard to circumvent the recording procedures set forth in Indiana Code § 35-34-2-3(d), with the intent of giving the prosecutor an unconstitutional advantage in obtaining indictments and convictions is, by definition, a conspiracy.

4) Any claim by the Defendants that the grand jury record provided to Brewington is *incomplete* is far more sinister in nature because such a claim requires an assertive effort by at least one of the Defendants, in their official capacity with the Dearborn Superior Court II, to alter grand jury records in addition to engaging in a continued conspiracy to cover up such illegal activity. If the Defendants claim that the recording procedures employed during the grand jury investigation of Brewington complied with Indiana Code § 35-34-2-3(d), the following is true:

a) Defendant Ruwe, Chief Court Reporter for the Dearborn Superior Court II, violated Administrative Rule 10(C)(2) by making unauthorized changes to the grand jury record. Ruwe's unauthorized changes include, at least, omitting all record of the proceedings prior to witness testimony during Ruwe's transcription of the audio.

b) If Ruwe omitted portions of the grand jury record while transcribing the grand jury audio, the Dearborn Superior Court II explicitly edited the grand jury audio to attempt to match Ruwe's transcription when Brewington requested the audio.

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.

d) The Dearborn Superior Court II charged Brewington \$300.00 to cover the expenses associated with the Court's alterations to the official record.

e) If Ruwe acted alone in making unauthorized alterations to the record of a grand jury proceeding to be used in a trial, it could have subjected Ruwe to contempt of court or constitute damage to a public record under I.C. § 35-43-1-2(a) via Administrative Rule 10(C)(2), of the Indiana Court Rules. If Ruwe did not act alone in omitting portions of the grand jury, then someone instructed Ruwe to do so.

f) Any authorization to violate Rule 10(C)(2) likely came from Indiana Chief Deputy Attorney General F. Aaron Negangard, who presented the altered grand jury transcripts during trial. Ruwe knew that the consequences of tampering with the record of grand jury proceedings included loss of employment, contempt of court, and possible prosecution. The theory that Ruwe acting alone required Ruwe to alter the record of the grand jury during transcription, certify the transcription as being full, true, correct and complete, and then present the altered record to Negangard, who also served as the head of the federally funded Dearborn County Special Crimes Unit. The only reason Ruwe would not fear losing her job or going to jail was if Negangard was the individual who authorized Ruwe to violate Rule 10(C)(2) *Prohibited Practices: False entry, unauthorized alterations, additions, or deletions or replacement of item or data elements.*

g) As discussed later in this MEMORANDUM, the Office of the Dearborn County Prosecutor instructed Brewington to rely on a complete transcription of the grand jury proceedings to be able to subject the State's case to adversarial testing during trial.

h) The only reason Negangard would feel comfortable with substituting the official grand jury record with a transcription void of opening arguments and any other content prior to witness testimony would be if Special Judge Brian Hill was already attuned with Prosecutor Negangard's plan.

i) If Indiana Chief Deputy Attorney General F. Aaron Negangard did not privately order Ruwe to alter the audio, the authorization had to come from either McLaughlin or Hill. Such authorization would constitute a conspiracy to assist Negangard's prosecution by withholding evidence and charging information from Brewington in his criminal trial.

5) Brewington is somewhat confused by Defendants McLaughlin and Hill's attempt to seek sanctuary in sovereign and/or absolute immunity, especially in the absence of any citation of statute or law. If McLaughlin and Hill's immunity defense is rooted in the Indiana Tort Claims Act, the Indiana Court of Appeals has already dismissed such a claim in *Lane-El v. Spears*, 13 N.E.3d 859 (2014):

"The ITCA applies only to claims or suits in tort. I.C. § 34-13-3-1. Neither party here has argued that Lane-El's claim is a tort claim, and we do not find support for the proposition that a violation of the APRA is a tort under Indiana law."

Just like the case of *Lane-El v Spears*, neither the Brewington nor the Defendants represent this civil action to be a tort claim. Given the unabashed actions of the Defendants in altering grand jury records and the apparent attempt to conceal the conduct, Brewington can only speculate that defense counsel, Deputy Attorney General Lowry, confused Brewington's APRA action with a ITCA claim seeking damages for loss. In the alternative, Deputy Attorney General Lowry employed a vague immunity defense to prevent the release of records that would be damaging to one of Lowry's superiors in the Office of the Indiana Attorney General, Chief Deputy Attorney General F. Aaron Negangard

6) The Dearborn Superior Court II has withheld the audio record of the grand jury in bad faith. Evidence of bad faith are found in Defendants' own proclamations appearing in Exhibits A through H in Brewington's COMPLAINT, filed February 21, 2017. Examples of bad faith in withholding the grand jury audio and/or potential explanations for withholding the records are as followed:

a) EXHIBIT B – Ruwe certifies that the transcription of the grand jury record is “full, true, correct, and complete.”

i) Such a contention is emphatically false, unless Chief Deputy Attorney General Negangard instructed court reporters to not record portions of grand jury proceedings occurring prior to witness testimony, which is a violation of law.

b) EXHIBIT C – In Hill's ORDER ON REQUEST FOR RELEASING AUDIO RECORDINGS, filed February 4, 2016 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.”

i) Brewington’s COMPLAINT addresses Hill’s claim that Brewington alleged the audio was admitted as evidence during trial. At no point has Brewington ever argued the grand jury audio was admitted as evidence in any proceeding.

ii) Paragraph 14 of the Defendants’ ANSWER states, “Defendants are without sufficient information to deny the allegations in footnote 4.” Footnote 4 in Brewington’s COMPLAINT addresses Hill’s false statement.

iii) Brewington is also without sufficient information to prove Brewington never made such a claim because such evidence does not exist. The false claim was a bad faith excuse by Hill to rationalize not releasing the records.

iv) Hill’s finding that Brewington failed to provide a reason *good enough* to necessitate the release of the audio is not a valid exception for disclosure under I.C. § 5-14-3-4 and is one of the many bad faith excuses by Hill.

c) EXHIBIT D – Opinion of the Indiana Public Access Counselor, Luke H. Britt, dated April 14, 2016, which includes letters from both McLaughlin and Hill.

i) The PAC opinion stated Hill’s rational for withholding the record was not a valid exception under the APRA.

d) EXHIBIT D – McLaughlin letter to PAC, dated March 17, 2016, attached to PAC Opinion.

i) Though claiming to not have jurisdiction over the matter, McLaughlin proceeded to write a letter to the PAC consisting of over 700 words, opposed to the presiding Judge Hill; whose letter to the PAC consisted of less than 300 words.

ii) McLaughlin stated that she did not have jurisdiction of the grand jury records and proceeded to thoroughly explain the timeline and procedures as to how jurisdiction was vested in Hill as special judge.

iii) Though not having jurisdiction of the matter, McLaughlin went to great lengths in explaining disclosure of records to the Indiana Public Access Counsel, whose main job function is being an authority on the public disclosure of records. McLaughlin went on to discuss grand jury disclosure and explaining how “the statute does not address the release of audio tapes from grand jury proceedings.”

iv) McLaughlin also gave the PAC an in-depth rundown of the dates of Brewington’s conviction (October 6, 2011), sentencing, appearances filed by appellate counsel, the dates and citations of Brewington’s appeals to the Indiana Court of Appeals (*Brewington v. State*, 981 N.E.2d 585 (2013)), and Indiana Supreme Court (*Brewington v. State*, 7 N.E.3d 946 (2014)), as well as the ultimate findings of the Courts. McLaughlin’s account of the case history demonstrates McLaughlin is aware of the expense and time associated with

appealing the matter, not to mention the 2.5-year prison sentence served by Brewington.

v) McLaughlin also acknowledged Brewington's relatives making several requests to the Court to obtain records on Brewington's behalf "over the past few years."

e) EXHIBIT D – Hill's letter to PAC, dated March 8, 2016, attached to PAC opinion.

i) Hill begins his letter with a bad faith excuse as to why he denied Brewington's request for grand jury audio.

"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."

ii) The above reasoning is void from Hill's multiple orders denying the release of the grand jury audio. Hill then proceeded to affirmatively acknowledge that Hill's own denial was in bad faith.

"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."

iii) Hill explained his own prior reasoning for denying Brewington's request was not valid then proceeded to apply an *appropriateness test* for releasing the record that has no basis in Indiana law.

iv) Hill's claim that, "Mr. Brewington has had full access to the official transcript of these proceedings" is unequivocally false, unless Chief



Deputy Attorney General Negangard instructed the court reporter to not record any of the grand jury proceedings prior to witness testimony.

v) Hill supported his *appropriateness test* by stating,

“I didn't feel that [Brewington's] latest allegation of a conspiracy between [Prosecutor Negangard and court reporter [Ruwe] was sufficient justification to release an audio record that he already has the transcript to.”

vi) Hill went on to state:

“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.”

vii) Hill made the above remark in justifying denying Brewington's requests for grand jury audio, which Hill admitted was a releasable public record, knowing that if Brewington was correct about the conspiracy between Negangard and the court reporter, Brewington's convictions would be vacated.

viii) At the end of Hill's letter consisting of less than 300 words, Hill reiterates the denial was in bad faith by claiming that he just “did not feel comfortable releasing those hearings in yet another format.”

f) EXHIBIT E – Hill's ORDER RELEASING AUDIO COPIES, dated January 12, 2012

i) Hill's Order is in response to an APRA request from Sue Brewington, mother of Plaintiff Brewington.

ii) Hill's Order states:

“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.”

iii) Hill made no mention of any “concerns” in releasing the audio in January 2012.

iv) Despite placing the burden on Brewington to provide “sufficient justification” for the release of the grand jury audio, Hill placed no similar requirements on prior requests for the public records.

g) EXHIBIT F – Hill’s AMENDED ORDER RELEASING AUDIO COPIES, dated February 2, 2012

i) Following the issuance of two orders releasing the grand jury audio to Sue Brewington and Matt Brewington, brother of Plaintiff Brewington, Hill issued an amended order rendering the requests for grand jury audio “moot” stating no grand jury audio was “admitted into evidence in this cause, therefore, these audio recordings are not a record in these proceedings.”

ii) Hill amended his order based on Hill’s new findings in the absence of any pleadings or hearings and without giving any indication of who contacted Hill with the new argument.

iii) Hill’s later orders would prove Hill knew this reasoning was baseless and just a bath faith excuse to withhold records.

iv) Hill’s Order also amended his order on prior requests for audio from a pre-trial hearing, dated July 18, 2011.

“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.”

v) Brewington attaches the seven-page transcript from the hearing occurring July 18, 2011 as “Exhibit A” to demonstrate the hearing did occur.

vi) Brewington requests that this Court pay particularly close attention to pages 20-21 where Brewington’s public defender addresses the fact the general indictments offered no indication of what actions the government claimed were responsible for the indictments.

vii) On page 21, Dearborn County Deputy Prosecutor Kisor informed Brewington, defense counsel, and Hill that Barrett could rely on a “complete transcript of the grand jury proceedings” to develop a defense against the State’s case.

viii) This can only be viewed as a conspiracy to deprive Brewington of indictment information. Kisor served as a setup man for Negangard by instructing Brewington to rely on the “complete” transcription of the grand jury proceedings, while knowing the records to be incomplete.

7) EXHIBIT H – Hill’s ORDER ON REQUEST FOR RELEASING AUDIO RECORDINGS (AS TO GRAND JURY PROCEEDINGS OF FEBRUARY 28, 2011, MARCH 1, 2011, AND MARCH 2, 2011), filed April 20, 2017. Hill’s order following the PAC opinion offered a new excuse to restrict access to the entire audio record.

a) Following the Opinion by the PAC, Hill filed an order releasing grand jury audio, dated April 20, 2016, but the order contained evidence of new findings by Hill:

“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.”

b) A review of the transcription of the grand jury proceedings demonstrates that Hill's new claim of “four to five other Grand Jury proceedings” intertwining with the audio of Brewington's proceedings is patently false.

i) The grand jury transcripts are void of any indication of Negangard transitioning between grand jury investigations. (i.e. “That is all for now in the investigation of Brewington,” “We are back on record in the investigation of Brewington”)

ii) In the absence of any verbal cues when Brewington's proceedings stop and start, Ruwe would have no way of accurately transcribing the audio. It is also axiomatic that the grand jurors would be unaware which investigation was before them.

c) The most significant problem with Hill's new evidence following the April 14, 2016 PAC Opinion, which deemed the grand jury audio a releasable public record, is the fact the evidence is a new revelation from by Hill.

i) Since February 2, 2012, Hill has provided a plethora of invalid excuses in denying the release of the grand jury audio in question and none of

the excuses included any mention of “four to five” other intertwining grand jury proceedings.

ii) Hill’s March 8, 2016 letter to the PAC made no mention of the “four to five” other intertwining grand jury proceedings.

iii) McLaughlin’s verbose letter to the PAC, dated March 17, 2016, though offering a detailed history of Brewington’s criminal case and explanations of law pertaining to record release, failed to make any mention of the newly alleged “four to five” other intertwining grand jury proceedings.

iv) The “four to five” other intertwining grand jury proceedings were discovered only *after* the April 14, 2016 Opinion by the PAC, but *before* Hill’s April 20, 2016 order.

d) Hill relied on Ex parte Evidence

i) Hill became aware of the “four to five” other intertwining grand jury proceedings prior to issuing the order granting the restricted release of grand jury records.

ii) Roughly a one hour, twenty-minute drive separates Hill, in his capacity as the Rush Superior Court Judge in Rush County, Indiana, from the Dearborn Superior Court II and its court staff.<sup>2</sup> As such, Hill’s “discovery” of the new evidence could not come from casual office conversation.

<sup>2</sup> Courtesy of Google Maps.

iii) Hill had not yet issued the order to release the grand jury audio, yet the staff of the Dearborn Superior Court II began delving into the audio record created over five years prior looking for a way to circumvent the Opinion of the PAC.

e) Defendant Dearborn Superior Court II/McLaughlin becomes an independent interested party in Brewington's APRA case.

i) In McLaughlin's letter to the PAC, McLaughlin stated:

"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."

ii) Though vested with jurisdiction over post-judgment affairs in Brewington's case, Hill's roll as Special Judge did not give Hill jurisdiction of the newly discovered grand jury proceedings.

iii) Hill's ruling stemming from communications between Hill and officials from the Dearborn Superior Court II regarding the newly discovered grand jury audio are ex parte in nature because the Dearborn Superior Court II became a party of interest.

iv) Hill's decision to yield Brewington's right to public records to the adverse interests of the Dearborn Superior Court II, firmly distinguishes the Dearborn Superior Court II as an interested party in the matter and creates conflicting jurisdictional issues.

v) Hill issued an ex parte order restricting Brewington's rights in favor of the interests of the Dearborn Superior Court II. Hill did not hold a hearing on the matter or allow Brewington to be a party to any arguments made by the Dearborn Superior Court II.

8) If this Court would require more evidence to grant Brewington's request for Summary Judgment, Brewington would advise this Court to review the Indiana Supreme Court decision in *Brewington*, referenced by McLaughlin in McLaughlin's March 17, 2017 letter to the PAC.

a) Justice Loretta Rush referenced the trial transcript in stating the following:

"Specifically, the prosecutor argued two grounds for Defendant's convictions, one entirely permissible (true threat) and one plainly impermissible ('criminal defamation' without actual malice). See Tr. 455-56." *Brewington v. State*, 7 N.E.3d at 973

b) The grand jury transcripts are void of Negangard offering two grounds for returning indictments against Brewington.

c) This Court need not scan the entire 340 pages of the grand jury transcripts as the only instruction from Negangard to the grand jury appears on pages 338-340 and there is no mention of a "true threat" ground for Brewington's indictment.

d) The entire unedited audio of the grand jury proceedings is necessary to determine one of the following:

i) If Negangard instructed the court reporter not to record Negangard presenting the “true threat” ground to the grand jury;

ii) If Negangard instructed Ruwe to omit the presentation of a “true threat” ground from the transcription of the grand jury audio; or

iii) If Indiana Chief Deputy Attorney General F. Aaron Negangard obtained indictments under an unconstitutional premise and then introduced a new criminal argument during the closing moments of trial, thus making it impossible to mount a defense against Negangard’s case.

e) Any of the above would require the immediate reversal of Brewington’s convictions.

9) McLaughlin’s interests in not releasing the grand jury audio do not end at protecting disclosure of “four to five other grand jury proceedings” that allegedly intertwine with Brewington’s proceedings.

a) Hill’s order specifying that the audio released to Brewington should only contain audio from Brewington’s grand jury proceedings is somewhat rhetorical.

i) At the heart of the debate regarding the release of grand jury records is the fact that by default, law normally prohibits the release of information from grand jury proceedings so there was no reason for McLaughlin and/or her staff to contact Hill because McLaughlin could have instructed her staff not to include audio from other grand juries.



ii) Brewington entertains no belief that the newly discovered “four to five” grand jury proceedings exist or at least interfere with the audio in Brewington’s case. Brewington feels certain that Hill issued the order to give Ruwe the flexibility necessary to change the format and file structure of the audio files so the files could be edited to match the transcripts. The copy of the grand jury audio provided to Brewington contains less information than the transcription of the audio. Brewington need not present the audio to this Court because the Defendants have already denied the fact that the CD-R provided to Brewington was a copy of the audio from the grand jury proceedings.

iii) If additional grand jury proceedings do exist, they would have to be in separate audio files given the fact the transcripts are almost void of any cues as to when the record of Brewington’s case starts and stops.

iv) To Brewington’s knowledge, the recording system of the Dearborn Superior Court II records court audio in five minute files and the system automatically saves and names files every five minutes. Audio file names contain the time and dates of when the individual files were recorded. If the court reporter stops a recording short of the five-minute mark, the system automatically saves the shorter audio file. When the court reporter starts the recording again, the system starts a fresh five-minute file. Any audio from intervening proceedings would be recorded in separate files that were automatically created when the court reporter stopped the system at the end of one investigation and started the system at the beginning of the next proceeding.

v) The only way the audio from Brewington's grand jury proceedings could intertwine with other proceedings is if the court reporter started the recording system at the beginning of the day and did not stop and restart the system between the grand jury investigations. Though clumsy and inefficient, it would serve as a seemingly plausible rationale for giving the court reporter the authority to modify the audio of the proceedings. Though such a rationale may seem like a good strategy by the Dearborn Superior Court II in covering its tracks, it presents a major problem for McLaughlin.

vi) If McLaughlin claims her employees started the recording system at the beginning of the day and ran the recording system continuously, thus necessitating the modification of the audio to omit the record of other proceedings, then Negangard's opening arguments and instructions to the grand jury in Brewington's case would be included somewhere on the digital audio record. If the recording system ran continuously, it would also record jurors when the jurors were alone if Negangard left the room to call on a witness, a violation of IC 35-34-2-3 as the entire proceedings are to be recorded "except for 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."

vii) Though Hill's order originally appeared to be a plausible strategy to justify the modification of grand jury audio to cover misconduct, analysis proves the contention to be fatally flawed. McLaughlin's claim of

intertwining grand jury proceedings only added another layer of culpability regarding the official misconduct in this case.

10) The above events and actions of the Defendants brought forth the need to name multiple defendants in this case. An explanation of the need for the individually named defendants is as follows<sup>3</sup>:

a) As explained above, Defendant Dearborn Superior Court II/Judge Sally McLaughlin has an adverse interest in withholding public records that are allegedly intertwined with Brewington's grand jury proceeding.

i) The Dearborn Superior Court II is a "public agency" as defined by I.C. § 5-14-3-2(n)(1). McLaughlin is the elected Superior Court II Judge in Dearborn County, Indiana.

b) Defendant Judge Brian Hill/Special Judge<sup>4</sup> was granted jurisdiction over records pertaining to Brewington's case but maintains no jurisdiction over the newly alleged records that supposedly intertwine with Brewington's proceedings. Hill based his last order on ex parte communication/evidence from McLaughlin.

c) Court Reporter Barbara Ruwe.

i) Ruwe is the Chief Court Reporter for the Dearborn Superior Court II.

<sup>3</sup> "Exhibit D" in Brewington's Complaint contains a letter to the PAC from Defendant McLaughlin, dated March 17, 2016 that gives a brief explanation of judicial appointments in Brewington's criminal case.

<sup>4</sup> In addition to a letter from Defendant McLaughlin, "Exhibit D" from Brewington's complaint also contains a letter to the PAC from Defendant Hill, dated March 8, 2016.

ii) Whether vested by McLaughlin, Hill, or another entity, Ruwe holds a quasi-judicial authority in the Dearborn Superior Court II, allowing Ruwe alter and/or recreate the record of official proceedings.

iii) Ruwe is responsible for omitting Prosecutor Negangard's instructions and opening arguments to the grand jury from the transcription of the grand jury proceedings. [The alternative, as mentioned earlier in this memorandum, Indiana Chief Deputy Attorney General Negangard conducted grand jury investigations, while instructing court reporters to selectively record grand jury proceedings at Negangard's behest during Negangard's reign as Dearborn County Prosecutor.]

d) As stated previously, this is not a tort action per the ITCA.

Brewington's decision to name multiple individuals, in addition to the public agency, was not due to the tortious nature of the individuals. As explained above, the newly alleged records and the ex parte order by Hill creates jurisdictional issues as well as somewhat of an identity crisis within the Dearborn Superior Court II because the Court is saddled with the responsibility of maintaining and releasing public records, while privately advocating against the release of some of the records it maintains. An order compelling the Dearborn Superior Court II to release records extends to McLaughlin as McLaughlin serves as the head of the public agency, but McLaughlin's jurisdictional reach does not extend to Hill. Hill's role as Special Judge in Brewington's case does not vest any jurisdiction in Hill over any other cases in the Dearborn Superior Court II, nor does Hill's role vest any administrative

control over any other records maintained by the Dearborn Superior Court II.

Naming Ruwe as a party to this action vests jurisdiction in this Court to directly compel Ruwe to prepare the records. Once again, aside from the Dearborn Superior Court II potentially being responsible for Brewington's legal expenses in bringing this action, none of the named Defendants assume any personal or professional liability because of this non-ITCA action.

11) The conflict of interest should disqualify the Office of the Indiana Attorney General from providing representation in this matter.

a) The following statements are fact:

i) Former Dearborn County Prosecutor F. Aaron Negangard is now Chief Deputy to Indiana Attorney General Curtis Hill.

ii) Page one of the transcription of the grand jury proceedings in Brewington's case begins at witness testimony.

iii) There are no orders on record authorizing Ruwe to omit any portion of the grand jury proceedings while transcribing the audio.

iv) In *Brewington*, the Indiana Supreme Court said Negangard argued two grounds for Brewington's conviction; one constitutional ground and one unconstitutional ground.

v) The transcription of the grand jury audio, certified by Ruwe as being "full, true, correct, and complete" only includes an unconstitutional ground for Brewington's indictments.

b) The facts mentioned in the subsections of paragraph 11(a) require at least one of the following:

i) While serving as Dearborn County Prosecutor, Indiana Chief Deputy Attorney General F. Aaron Negangard convened a grand jury and obtained indictments against Brewington under an unconstitutional premise and then introduced a constitutionally permissible ground for Brewington's conviction during trial.

ii) Negangard conducted grand jury investigations outside of the official record.

iii) Negangard privately ordered Chief Court Reporter Barbara Ruwe to selectively transcribe the audio from grand jury proceedings and certify the altered records to be "full, true, correct, and complete."

c) After the Office of the Dearborn County Prosecutor told Brewington that the foundation of the State's case against Brewington rested in the complete transcription of the grand jury proceedings, Negangard proceeded provided Brewington with Ruwe's transcription of the grand jury proceedings tailored to Negangard's interests. (For this to not be true Negangard had to authorize the court reporter not to record specific portions of the grand jury proceedings.)

d) There is no question that Chief Deputy Attorney General F. Aaron Negangard engaged in some form of unlawful conduct directly involving the grand jury records in this case but the extent of the illegal conduct is unknown. The sovereign immunity defense suggested by Defense Counsel only strengthens the

argument that the Office of the Indiana Attorney General should be disqualified from providing representation in this matter. Claiming that the Dearborn Superior Court II, a public agency as defined by the APRA, somehow enjoys immunity from court actions brought under the APRA, is simply a Hail Mary attempt to avoid this case going before a judge because even the admission that the grand jury audio is complete or incomplete demonstrates Chief Deputy Negangard abused the grand jury process and criminal process to deprive constitutional protections. The adverse interest of the Office of the Indiana Attorney General is that if this case goes before a judge, the second in command to Attorney General Curtis Hill will be implicated in criminal activity. A feeling of loyalty in the Office of the Indiana Attorney General may also negatively impact Deputy Lowry's ability to fairly represent Defendants.

e) A more basic conflict exists in the interests of the Defendants, whom are represented by the Office of the Indiana Attorney General. Defendants admit that the grand jury audio is a releasable public record yet came up with another excuse not to release the audio in its entirety following the PAC Opinion in favor of Brewington. Release of the audio will exonerate Brewington because the audio will demonstrate at least one of the following:

- i) Negangard conducted portions of the grand jury investigation outside of the audio record, or
- ii) Negangard had Ruwe selectively transcribe the grand jury audio to assist Negangard obtain convictions against Brewington.

f) This places the Office of Indiana Attorney General Curtis Hill in the position of representing judicial officials who have obstructed the release of grand jury audio with the intent to deprive Brewington the ability to overturn his convictions, and to conceal evidence of record tampering within the Dearborn Superior Court II. No matter how the Office of the Attorney General frames a defense, the inescapable underlying theme of any defense against the release of the grand jury audio is that such a defense cannot shake the appearance of being just another attempt to provide a safe house for official misconduct. Regardless of whether Defendants' obstruction is malicious, the obstruction still provides cover for Negangard's misconduct. Allowing the Office of the Indiana Attorney General to represent the Defendants in this case places Attorney General Curtis Hill in the position of saying, "The Office of the Indiana Attorney General is arguing against the release of the grand jury audio, but not for the purposes of covering up misconduct by our second in command, Chief Deputy Attorney General F. Aaron Negangard."

12) The Defendants have not made any claim that would bar Brewington from bringing this action.

a) Defendants' multiple claims that sections of Brewington's complaint fail "to comply with the mandates of Rule 8 because it is neither short nor plain" should not be grounds for dismissal as the Defendants' conduct over the course of many years is responsible for the complex nature of this action.



b) Claims of immunity from APRA civil actions are not consistent with Indiana Case Law. See *Lane-El v. Spears*, 13 N.E.3d 859 (2014)

c) Any attempt by the Defendants to dismiss this action on a procedural technicality overlooked by Brewington, in his capacity as a pro se litigant, only serves to waste more time and resources. A dismissal on procedural grounds does not relieve the Dearborn Superior Court II from being named in future civil complaints by members of the public looking to obtain the same records. In addition, arguing perceived procedural defaults rather than addressing the facts of the case, preys on the general public's lack of access to legal information and financial resources; thus, placing a much greater burden on the public's ability to promote transparency in government.

## **CONCLUSION**

Attached as "Exhibit B," are the opening statements in Brewington's criminal trial. The inclusion of these pages go to the weight of the importance of the release of the grand jury audio in question as well as demonstrating Hill's history of opposition towards Brewington. The opening transcript documents how Brewington explained to Hill that Brewington did not understand the indictments, lacked access to evidence, and expressed how the public defender appointed by Hill refused to ever meet with Brewington to discuss Brewington's criminal case. The pages also demonstrate how Hill ignored Brewington's pleas and forced Brewington to face a criminal trial stemming from indictments from a grand jury proceeding that was not fully recorded or accurately transcribed. If Defendants simply confirm whether

the entire grand jury proceeding was recorded, it will be grounds for vacating Brewington's convictions. An admission will confirm whether Negangard ordered the court reporter to not record portions of the grand jury proceedings or if Negangard privately ordered Ruwe to disregard the State's Praecipe and only transcribe specific sections of the grand jury audio beneficial to Negangard's prosecution against Brewington.

**WHEREFORE**, for the reasons set forth in this MEMORANDUM and in Brewington's MOTION FOR SUMMARY JUDGMENT IN FAVOR OF PLAINTIFF AND MOTION TO DISQUALIFY THE OFFICE OF INDIANA ATTORNEY GENERAL CURTIS HILL FROM PROVIDING LEGAL REPRESENTATION IN THIS MATTER, Brewington requests that this Court: Disqualify the Office of the Attorney General from representing the Defendants in this matter; Grant Brewington's Motion for Summary Judgment by entering an injunction ordering the Court Reporter of the Dearborn Superior Court II to promptly produce the entire unedited audio record of the Grand Jury Proceedings relating to Cause No. 15D02-1103-FD-00084; Award Brewington any attorneys' fees and costs in bringing this action; and Award Brewington any other appropriate relief.

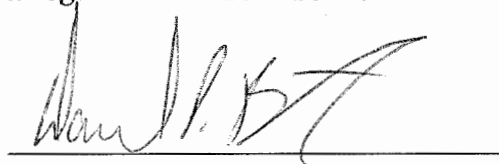
Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Daniel P. Brewington', with a horizontal line underneath it.

Daniel P. Brewington  
*Plaintiff, pro se*

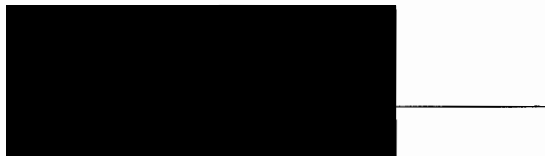
State of Ohio )  
 ) SS  
County of Delaware )

I, Daniel Brewington, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing petition; that I know the contents thereof; and that the matters and allegations therein set forth are true.



Signature of Affiant

Subscribed and sworn to before me this 31<sup>st</sup> day of March, 2017.



Notary Public

My Commission Expires:

3 31 17  
(month) (day) (year)



  
NOTARY PUBLIC  
FOR THE  
STATE OF OHIO  
My Commission Expires  


**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 March 31, 2017.

Brian D. Hill, Judge  
Judge, Rush Superior Court  
101 East Second Street, 3rd Floor  
Rushville, IN 46173  
(765) 932-3520

Sally A. McLaughlin, Judge  
Judge, Dearborn Superior Court II  
215 W High St  
2nd Floor  
Lawrenceburg, IN 47025  
(812) 537-8800

Barbara Ruwe, Chief Court Reporter  
Dearborn Superior Court II  
215 W High St  
2nd Floor  
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(812) 537-8800

Indiana Attorney General Curtis Hill  
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Daniel P. Brewington

*Plaintiff, pro se*

# EXHIBIT A

## APPEARANCES

2

3

4 ON BEHALF OF THE STATE:

5

6 BRIAN JOHNSON

7 DEPUTY PROSECUTING ATTORNEY

8 AND

9 JOSEPH KISOR

10 CHIEF DEPUTY PROSECUTING ATTORNEY

11 215 WEST HIGH STREET

12 LAWRENCEBURG, IN 47025

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14

15 ON BEHALF OF THE DEFENDANT:

16 BRYAN BARRETT

17 RUSH COUNTY PUBLIC DEFENDER'S OFFICE

18 101 EAST SECOND STREET, ROOM 315

19 RUSHVILLE, IN 46173

20

21

22

23

24

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1 **DANIEL BREWINGTON – HEARING ON JULY 18, 2011**

2 COURT: We're here in Case No. 15D02-1103-FD-84, State  
3 of Indiana versus Daniel Brewington. Let the  
4 record reflect that the State appears by Deputy  
5 Prosecuting Attorney, Mr. Kisor, and the Defendant  
6 appears in person and by counsel, Bryan Barrett.  
7 This matter is set today for a pre-trial conference  
8 and a bond reduction hearing, however the State had  
9 file a Motion to Continue that bond reduction  
10 hearing due to the fact that a material witness for  
11 that hearing would be unavailable on today's date  
12 and while I have not signed that in writing, I have  
13 indicated telephonically both to the prosecutor's  
14 office and to defense counsel, I would be granting  
15 that motion as to the bond reduction hearing and  
16 perhaps maybe get a solid date scheduled on today's  
17 date for that and also it was indicated to me that the  
18 parties wish to have this pre-trial conference. Right  
19 now we have a jury trial setting of August 16<sup>th</sup>, to  
20 commence that trial at 8:30 a.m. on that morning.  
21 Are there any specific issues that the State wishes to  
22 address today, Mr. Kisor?

23 MR. KISOR: No your honor.

24 COURT: And Mr. Barrett anything aside from scheduling that  
25 bond reduction hearing?

1 MR. BARRETT: Um, well I'm still trying to get discovery. I've been  
2 through some this morning with Mr. Brewington  
3 and I will get that from Mr. Watson I guess as soon  
4 as possible Judge but at this point, no. When is the  
5 Court looking at the bond hearing?

6 COURT: Well I just grabbed a few dates on my calendar at  
7 home before I left. If we wanted it earlier, we can  
8 get on the phone with my office and see. That first  
9 week of August, there's August 1<sup>st</sup>, I have the whole  
10 afternoon and August 3<sup>rd</sup> and August 5<sup>th</sup>, all those  
11 afternoon dates. I don't know if those may work  
12 with counsel and we don't have to have an answer  
13 right here, if we want to.

14 MR. BARRETT: The 1<sup>st</sup>, the 3<sup>rd</sup>, and the 5<sup>th</sup>? Is that what you said?

15 COURT: Yes, all in the p.m. Maybe counsel and I can  
16 discuss that after the hearing and see and make any  
17 of those a solid date.

18 MR. KISOR: That would work, what I would like to do, if we can  
19 have an opportunity to talk to the witness who is  
20 unavailable today to make sure with that much  
21 notice that whatever date we set, we would not miss  
22 the position of not having him here for that next  
23 hearing.

24 COURT: Would that be possible to do this afternoon?

25 MR. KISOR: I believe I could reach him by cell phone. I would

1 hope.

2 MR. BARRETT: I know I have a jury trial in Franklin County that's

3 currently set on the 1<sup>st</sup>. I've moved to continue that

4 but I don't know if that's been granted or not. As

5 far as I know the 3<sup>rd</sup> or the 5<sup>th</sup> would be fine, Judge.

6 COURT: Okay.

7 MR. BARRETT: Obviously my client is eager to have that hearing as

8 quickly as possible.

9 COURT: I understand that.

10 MR. BARRETT: And I think that probably has a lot to do with

11 whether or not...

12 COURT: Well and that's why, I was hoping to do this on the

13 same time...

14 MR. BARRETT: ...exactly...

15 COURT: ...but it's not going to happen but I thought maybe

16 that would have some bearing on your position as

17 far as the jury trial. As far as the discovery and

18 everything goes...

19 MR. BARRETT: I don't have any reason to believe I can't get it from

20 Mr. Watson. Obviously Mr. Brewington has a

21 substantial amount here himself but I don't, he's

22 obviously in custody so I don't actually have access

23 to that on a regular basis.

24 MR. KISOR: Your honor, we would be happy to provide a

25 duplicate copy if you want to stop down in the



1 office, I'm sure we could get this, whatever we've  
2 got, we could either reprint it or if there's something  
3 we could put on a disk for you, we would be glad  
4 to...

5 MR. BARRETT: Okay.

6 MR. KISOR: The paralegal is down there that would be able to do  
7 that and I could go down with you.

8 MR. BARRETT: Okay.

9 COURT: So aside from getting that scheduled maybe we can  
10 deal with some of the discovery after this hearing.

11 MR. BARRETT: Can I have just a minute Judge? I'm sorry.

12 COURT: Sure, go ahead.

13 MR. BARRETT: The inquiry that my client is making and obviously  
14 I'm at some disadvantage Judge as what specific,  
15 the informations in the indictments, the information  
16 and indictments are pretty general, I guess and they  
17 cover broad periods of time and I'm just obviously  
18 wondering what the specific things the government  
19 is saying that my client did that constituted  
20 intimidation and the various other offenses but  
21 obviously that's a discovery issue and probably for  
22 another hearing.

23 COURT: Okay.

24 MR. BARRETT: And obviously that was kind of the purpose of the  
25 bond hearing as well as those can certainly be

1 used for that purpose as well.

2 COURT: Well maybe I'm presuming wrong, I would  
3 anticipate the State's going to be putting on some  
4 specific evidence at that, for purposes of the bond  
5 hearing.

6 MR. KISOR: Uh, possibly, although there were some other  
7 matters unrelated to the indictments that were  
8 pertinent to the issue of bond, some subsequent  
9 matters.

10 COURT: Okay, I understand but I presume we'll hear...

11 MR. KISOR: Yes, I mean, if particularly the Court would make  
12 that request. There is a, as far as I know, a complete  
13 transcript of the grand jury proceedings.

14 MR. BARRETT: I do have that.

15 MR. KISOR: So I mean that would be what the grand jury  
16 determined.

17 MR. BARRETT: I have not had an opportunity to go over that with  
18 Mr. Brewington, but that's generally the  
19 information that you're relying upon?

20 MR. KISOR: Yes.

21 MR. BARRETT: Okay.

22 MR. KISOR: And I would be glad to talk to you more specifically  
23 more about that.

24 COURT: Anything else that needs to be addressed on the  
25 record at this time, Mr. Barrett?

1 MR. BARRETT: No Judge, we would request that the trial date be  
2 left at this point in time.

3 COURT: Okay, I'll leave that jury trial setting on and we will  
4 discuss matters, I'll allow the parties to make some  
5 phone calls and maybe contact that witness and see  
6 if we can be back here on the 3<sup>rd</sup> or the 5<sup>th</sup> of  
7 August, sometime in one of those afternoons. That  
8 will be all for this hearing for today.

9 MR. BARRETT: Thank you, your honor.

10 MR. KISOR: Thank you, your honor.

# EXHIBIT B

IN THE  
INDIANA COURT OF APPEALS

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APPELLATE NO. 15A01-1110-CR-00550

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DANIEL BREWINGTON	)	APPEAL FROM THE DEARBORN
	)	
APPELLANT/PARTY BELOW	)	SUPERIOR COURT II
	)	
VS.	)	TRIAL COURT CASE NO.
	)	15D02-1103-FD-0084
	)	
STATE OF INDIANA,	)	BEFORE THE HONORABLE
APPELLEE/PARTY BELOW	)	BRIAN HILL, SPECIAL JUDGE

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TRANSCRIPT OF JURY TRIAL

VOLUME I OF III

PAGES 1 - 250

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BARBARA RUWE  
OFFICIAL COURT REPORTER  
DEARBORN SUPERIOR COURT II

1 APPEARANCES

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3

4 ON BEHALF OF THE STATE:

5

6 AARON NEGANGARD

7 PROSECUTING ATTORNEY

8 AND

9 JOSEPH KISOR

10 CHIEF DEPUTY PROSECUTING ATTORNEY

11 215 WEST HIGH STREET

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15 ON BEHALF OF THE DEFENDANT:

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17 BRYAN BARRETT

18 RUSH COUNTY PUBLIC DEFENDER OFFICE

19 101 EAST SECOND STREET, ROOM 315

20 RUSHVILLE, IN 46173

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25

1 **DANIEL BREWINGTON – JURY TRIAL – OCTOBER 3, 2011**

2 COURT: (Outside the presence of the jury) We are here in  
3 case number 15D02-1103-FD-84, the State of  
4 Indiana vs. Daniel Brewington. Let the record  
5 reflect that the State appears by Prosecuting  
6 Attorney, Aaron Negangard and the Defendant  
7 appears in person and by counsel, Bryan Barrett and  
8 this matter is scheduled for jury trial this morning  
9 and about twenty (20) or thirty (30) minutes ago I  
10 received a file marked Motion to Dismiss, Motion  
11 to Disqualify F. Aaron Negangard and appoint  
12 Special Prosecutor and Motion to Dismiss for  
13 Ineffective Assistive of Counsel. Those are pro se  
14 motions filed by the Defendant. Mr. Brewington,  
15 you have legal counsel and I'm not inclined to  
16 contemplate pro se motions. I guess, what's your  
17 uh, what are you going for here? You've got  
18 counsel to represent you to give you legal advice  
19 and make these filings. Are you're uh, indicating to  
20 me that you're wanting to represent yourself or do  
21 you want to clarify that for me please?

22 MR. BREWINGTON: No your honor. Uh, I just, Mr. Barrett hasn't met  
23 with me since July, I believe the 17<sup>th</sup> of this year. I  
24 don't have any idea of the direction of my case other  
25 than what was just explained to me just in the past

1 few minutes before things got settled here. I still  
2 don't have some of the evidence. I don't have  
3 copies of the Grand Jury evidence. There's  
4 documents from Detective Kreinhop's investigation  
5 that are not included. There's transcripts that uh,  
6 that he said would be included in his investigation  
7 that were not included in discovery and I've never  
8 been able to obtain that information and Mr. Barrett  
9 has not communicated with me about that stuff and  
10 I just don't know the direction of my defense and he  
11 hasn't been able to meet with me, tell me anything,  
12 explain to me anything. I also do not have my  
13 medication. I take Ritalin for attention deficit  
14 disorder. It's been an issue of the defense. It's been  
15 brought up multiple times in the grand jury  
16 transcripts and without that I don't even have the  
17 ability to concentrate as hard. I have difficulties  
18 reading and that sort and Mr. Barrett waived my  
19 right to bring that up at trial as he made no objection  
20 to the motion in limine which I did not realize that a  
21 motion in limine had uh, was requesting the court to  
22 prohibit any discussion about medication that was  
23 given to me while I was incarcerated in DCLEC. So  
24 I have absolutely no idea what's going on in my  
25 case. I tried, everything that has been provided here





1 Barrett, are you ready to proceed with this case  
2 today?  
3 MR. BARRETT: Yes your honor.  
4 COURT: And is the State ready to proceed?  
5 MR. NEGANGARD: Yes your honor.  
6 COURT: Alright, then as I stated in opening the hearing, I'm  
7 going to find the pro se motions filed on this  
8 morning's date are denied. Um, and I think we're  
9 ready to bring in jury then. (Voir dire not  
10 transcribed)  
11 COURT: (outside the presence of the jury). We're on case  
12 #15D02-1103-FD-84, the State of Indiana versus  
13 Daniel Brewington. The State appears by  
14 Prosecuting Attorney, Mr. Negangard and the  
15 Defendant appears in person and by counsel and the  
16 jury is not present and I believe the next step would  
17 be the instructions for the jury. Do the parties have  
18 any uh, there was some proposed preliminary  
19 instructions supplied to the parties by the Court.  
20 Are there any objections or additions to any of those  
21 instructions Mr. Negangard?  
22 MR. NEGANGARD: Your honor, uh, on regards to Count I and I had  
23 mentioned this, we had prepared and filed relatively  
24 early on in this case an amended Count I which  
25 added the language, after with intent that Dr.