

DANIEL BREWINGTON,)	IN THE SUPERIOR COURT I
Plaintiff,)	
v.)	DEARBORN COUNTY, INDIANA
DEARBORN SUPERIOR COURT II/)	
JUDGE SALLY MCLAUGHLIN,)SS:	
JUDGE BRIAN HILL,)	
COURT REPORTER BARBARA)	CAUSE NO 15D01-1702-PL-00013
RUWE)	
Defendants.		

MOTION TO SET HEARING

Plaintiff, Daniel Brewington (“Brewington”), files this MOTION TO SET HEARING, and in support states as follows:

FACTS OF THE CASE

- 1) This lawsuit pertaining to the Access to Public Records Act (“APRA”) has been pending since February 21, 2017.
- 2) The Defendants have failed to release the complete audio record of the grand jury investigation pertaining to the criminal case of Indiana vs. Daniel Brewington, 15D02-1103-FD-000084.
- 3) In an Advisory Opinion dated April 14, 2016, the Indiana Public Access Counselor deemed the grand jury audio to be a releasable public record.
- 4) The Defendants failed to release any portion of the grand jury record occurring prior to witness testimony; i.e. instruction to the grand jury, opening arguments, or any information as to nature of the investigation.

- 5) IC 35-34-2-3(d) states, “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.”
- 6) Defendants claim no additional audio exists prior to witness testimony in the grand jury investigation of Daniel Brewington.
- 7) Dearborn County Prosecutor F. Aaron Negangard (“Negangard”) made Brewington the target of a grand jury investigation in the absence of any criminal complaint to determine if Brewington’s speech crossed the boundaries of free speech.
- 8) F. Aaron Negangard is now Chief Deputy to Indiana Attorney General Curtis Hill, whose office is representing the Defendants in this matter.
- 9) The grand jury audio record has been modified.
 - a) The Dearborn Superior Court II changed the file format of the audio.
 - b) The names of the individual audio files have been altered.
 - c) The transcription of the grand jury proceedings contains more information than the audio from which it was allegedly transcribed.
- 10) Defendants claim it was necessary to “edit” grand jury audio to omit content containing other intertwining grand jury investigations.
- 11) Defendants have offered no proof of intertwining audio from other grand jury proceedings nor have the Defendants offered any proof that the alleged intertwining audio necessitated modifying the original audio format.

HEARING IS NECESSARY

This Court has previously ruled that Summary Judgment is not available to either party in this matter. It is disingenuous for the Defendants to expect this Court to believe that any prosecutor would begin the presentation of evidence and witness testimony to a grand jury without giving any indication of the purported crime(s) responsible for convening that grand jury. Ironically, Defendants still assert that Brewington enjoyed a fair criminal trial and appellate process despite asserting that the grand jury record is incomplete. Brewington has provided a variety of evidence and arguments as to why transparency is imperative, while the Defendants' make a counterargument that is contingent on, at least, some level of misconduct by more than one official. A hearing will provide Brewington the opportunity to demonstrate, at the very least, that the transcription of the grand jury audio contains more information than the audio from which it was allegedly transcribed. The Defendants will have the opportunity to explain how the records disappeared or the Defendants can simply produce the records they have been withholding.

CONCLUSION

The Defendants can bring a quick resolution to this legal proceeding. The Defendants need only to produce an affidavit or testimony from defense counsel's colleague, Indiana Chief Deputy Attorney General F. Aaron Negangard. The affidavit simply needs a statement from Negangard stating, "Prior to witness testimony, I *did not* provide the grand jury with any explanation of the crime that the jury was convened to investigate", or "I *did* provide instructions and details of

the case prior to witness testimony but the court reporter either failed to record the information, or the record was lost or destroyed.” The latter contention requires the understanding that the Defendants and the Office of the Indiana Attorney General are fully aware that Negangard sought to exploit the incomplete record in obtaining criminal convictions. The latter contention also required Negangard to ignore the fact that, for unknown reasons, the court reporter altered the official record of a grand jury proceeding.

The obstruction of the grand jury records has been a cooperative effort. Dearborn Superior Court II Judge Sally McLaughlin (“McLaughlin”) deferred jurisdiction of the APRA request to Rush Superior Court Judge Brian Hill (“Hill”) because Hill served as special judge in the related criminal trial. In an order to release grand jury audio, dated April 20, 2016, Hill 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.”

Someone contacted Hill about not releasing grand jury audio to Brewington prior to the April 20, 2016 order because Hill would have had no prior knowledge of unrelated grand jury proceedings occurring in a different jurisdiction in 2011. Hill had no way of knowing that the additional grand jury proceedings were not stored in separate audio files. McLaughlin, and/or McLaughlin’s staff, after deferring jurisdiction to Hill, became an adverse party to Brewington because at some point McLaughlin (or staff) contacted Hill in making an argument against the release of


the entire grand jury record. Prior to Hill's order dated April 20, 2016, which directed the court reporter to prepare a copy of the grand jury audio, no party had any reason to begin listening to grand jury audio from February 2011. If McLaughlin did not contact Hill, the only official with personal knowledge of the grand jury proceedings would have been Negangard. If no party contacted Hill, then Hill became an adverse party to Brewington when Hill privately sought out reasons why not to release the entire record to Brewington. All private discussions opposing the release of the complete grand jury audio record to Brewington took place behind closed doors prior to Hill's ORDER ON REQUEST FOR RELEASING AUDIO COPIES (AS TO GRAND JURY PROCEEDINGS OF FEBRUARY 28, 2011, MARCH 1, 2011, AND MARCH 2, 2011), dated April 20, 2016.

Brewington requests this Court to remember that the above Defendants involve two Indiana judges¹. Any claim of procedural "ignorance" in recording and/or maintaining grand jury records should fall on deaf ears.

WHEREFORE, for the reasons, Brewington requests that this Court to set the matter for a hearing, compel the Clerk of the Dearborn Superior Court II to produce an unedited official copy of the grand jury record audio that can be reviewed in the courtroom before all parties, and award Brewington any other appropriate relief.

¹ In 2016, Judge Sally McLaughlin was an applicant for a vacancy on the Indiana Supreme Court.

Respectfully submitted,



Daniel P. 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 January 5, 2018.

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Daniel P. Brewington
Plaintiff, pro se