

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.)	
)	

**PLAINTIFF’S AMENDED RESPONSE IN OPPOSITION TO DEFENDANT’S
CROSS-MOTION FOR SUMMARY JUDGMENT**

Plaintiff, Daniel Brewington (“Brewington”), respectfully submits this response in opposition to DEFENDANTS’ CROSS-MOTION FOR SUMMARY JUDGMENT and MEMORANDUM OF LAW IN SUPPORT OF CROSS-MOTION FOR SUMMARY JUDGMENT AND RESPONSE IN OPPOSITION TO PLAINTIFF’S MOTION FOR SUMMARY JUDGMENT, as Defendants’ motion argues conflicting material “facts” and acknowledges illegal conduct by Defendants and Indiana Chief Deputy Attorney General F. Aaron Negangard.¹ In support, Brewington states as follows:

¹ Chief Deputy Attorney General F. Aaron Negangard formally served as Dearborn County Prosecutor in addition to serving as the head of the Dearborn County Special Crimes Unit.

- 1) Defendants have not released all records to which Defendants claimed Brewington was entitled.
- 2) No matter how hard the Defendants' try to convince this Court otherwise, Brewington's grand jury proceedings have been public record for nearly six years when Defendant Judge Brian Hill made the record of the proceedings public.
- 3) Defendant Hill ordered Brewington is entitled to "all audio" from Brewington's grand jury proceedings but Defendants refused to do so.
- 4) Defendants' request for this Court to render Brewington's grand jury records "unpublic" is improper under I.C. 5-14-3-5.5
- 5) Defendants' claims are barred by *res judicata*. Defendants are requesting this Court to issue a finding that Brewington's grand jury records are not subject to requests under the APRA, despite the issue already being adjudicated by another Indiana trial court. Defendants' request for relief from a prior order also constitutes *quasi-invited* error as Brewington's grand jury proceedings became public record via judicial action by Defendant Judge Hill.
- 6) Chief Deputy Attorney General F. Aaron Negangard violated federal law in obstructing access to evidence and indictment by requesting Chief Court Reporter for the Dearborn Superior Court II, Barbara Ruwe, to omit all portions of

Negangard initiated the criminal investigation of Brewington, conducted the grand jury investigation of Brewington, and headed the prosecution of Brewington.

Brewington's grand jury proceedings occurring prior to witness testimony during Ruwe's transcription of the audio.

- 7) Defendants request for Summary Judgment dies by its own sword because Defendants allege Brewington received all grand jury audio, while arguing the audio matches the transcription of witness testimony. "All audio" pertaining to Brewington's grand jury proceedings includes all portions of the proceedings prior to witness testimony; thus creating a dispute of material fact within itself.
- 8) Defendants argue Brewington's criminal proceedings were flawed.
- 9) Defendants, by the Office of the Indiana Attorney General Curtis Hill shamelessly attack the opinion by Indiana Public Access Counselor, Luke Britt. Defendants argue Britt erred in deeming Brewington's grand jury proceedings public record, when it was Defendant Hill who made the records public in 2011.
- 10) Defendants concede representation by the Office of the Indiana Attorney General presents a conflict of interest only if Defendants and Chief Deputy Attorney General did NOT conspire to deprive Brewington of indictment information and evidence in Brewington's criminal proceedings.
- 11) Defendants attempt to "dumb" Brewington down rather than address the fact Defendants altered grand jury records.
- 12) Defendants cut and pasted grand jury audio to match transcripts that were altered in 2011.
- 13) For the convenience of this Court, Brewington includes a CD-R containing an electronic version of these pleadings and an electronic copy of the transcription of

the grand jury investigation of Brewington prepared by Chief Court Reporter Barbara Ruwe. [Attached as Appendix I]


CONCLUSION

No mincing of words or law by Defendants can change the fact that the record of Brewington's grand jury proceedings is incomplete, yet Defendants continue to obstruct Brewington's access to all audio pertaining to Brewington's grand jury proceedings by misrepresenting the grand jury record as something other than confidential record made public by the Defendants' own actions in 2011. The fact that a Defendant may be a judge should not afford them any more or less credibility than Brewington. Given the number of false statements made by the Defendants appearing in their own orders as well as pleadings in this case should lend more weight to Brewington's claims.

WHEREFORE, for the reasons set forth in Brewington's PLAINTIFF'S AMENDED RESPONSE IN OPPOSITION TO DEFENDANT'S CROSS MOTION FOR SUMMARY JUDGMENT, and AMENDED MEMORANDUM in support thereof, Brewington requests that this Court: Deny Defendants' requests, 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,



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, priority postage prepaid, on May 20, 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
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Indiana Attorney General Curtis Hill
Deputy Joshua R. Lowry
Indiana Government Center South, 5th Floor
302 West Washington Street
Indianapolis, IN 46204-2770
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A handwritten signature in black ink, appearing to read 'Daniel P. Brewington', is written over a horizontal line.

Daniel P. Brewington

Plaintiff, pro se

DANIEL BREWINGTON,	)	IN THE SUPERIOR COURT
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.)	
)	
)	
)	
)	

PLAINTIFF’S AMENDED MEMORANDUM IN SUPPORT OF PLAINTIFF’S
RESPONSE IN OPPOSITION TO DEFENDANTS’ CROSS-MOTION FOR
SUMMARY JUDGMENT

Plaintiff, Daniel Brewington (“Brewington”), respectfully submits this amended response in opposition to DEFENDANTS’ CROSS-MOTION FOR SUMMARY JUDGMENT and MEMORANDUM OF LAW IN SUPPORT OF CROSS-MOTION FOR SUMMARY JUDGMENT AND RESPONSE IN OPPOSITION TO PLAINTIFF’S MOTION FOR SUMMARY JUDGMENT. Brewington respectfully requests the Court to deny the Defendants’ CROSS-MOTION FOR SUMMARY JUDGMENT and enter judgment in favor of Plaintiff.

I. DEFENDANTS HAVE NOT RELEASED RECORDS TO BREWINGTON

Brewington first directs this Court’s attention to the end of this Memorandum where Brewington has attached a signed affidavit supporting Brewington’s statements and encourages this Court to hold Brewington responsible

for any false statements or misrepresentations of fact. The facts in this case are clear. Defendants have not provided Brewington with all the audio from the grand jury investigation of Brewington. The audio provided to Brewington is void of all audio occurring prior to the introduction of witness testimony and exhibits by Indiana Chief Deputy Attorney General F. Aaron Negangard¹. The grand jury record is void of former Prosecutor Negangard providing the grand jury with any instruction or constitutional ground for Brewington's indictment, most notably the "true threat" ground mentioned in *Brewington v. State*, 7 N.E.3d 946 (2014). The Indiana Supreme Court upheld Brewington's convictions for attempted obstruction of justice and intimidation of a judge based on a "true threat" finding that does not appear in the grand jury transcripts. The lack of a constitutional ground for Brewington's indictments is especially noteworthy because it was during a pretrial hearing on July 18, 2011, that the State instructed Brewington to rely on the complete transcription of the grand jury proceedings to build a defense for trial. [See Exhibit A in Plaintiff's Motion for Summary Judgment].

II. BREWINGTON'S GRAND JURY PROCEEDINGS HAVE BEEN PUBLIC RECORD FOR NEARLY SIX YEARS.

Defendants go to great lengths to explain the reasoning behind the confidential nature of grand jury proceedings and make a thorough argument as to

¹ Chief Deputy Attorney General F. Aaron Negangard formally served as Dearborn County Prosecutor in addition to serving as the head of the Dearborn County Special Crimes Unit and oversaw the criminal investigation, grand jury investigation, and the prosecution of Brewington. Negangard also played an active role in opposing Brewington's appellate process and attended oral arguments during Brewington's appeal to the Indiana Court of Appeals and Indiana Supreme Court.

why the grand jury records in Brewington's case should not have been disclosed.

Defendants also express importance requiring someone to show a "particularized need" for making grand jury records public. Defendants actions are simply an attempt to confuse this Court because Defendants were responsible for making the records public.

The following are arguments made in 2011 regarding admitting Brewington's grand jury proceedings to the public record:

MR. NEGANGARD: State's 4 is the Grand Jury testimony in this case your honor.

COURT: Any objection to that Mr. Barrett?

MR. BARRETT: No your honor.

COURT: State's 4 is offered and admitted.

MR. NEGANGARD: State's 5 is the internet postings and all the Grand Jury Exhibits that were presented during the course of the grand jury. It's on a CD.

COURT: And those postings were the exhibits in the Grand Jury?

MR. NEGANGARD: Yes.

COURT: Okay. Any objection to 5?

MR. BARRETT: No objection your honor.

COURT: I'll show State's 5 offered and admitted.

In the above conversation, "Court" is Brian Hill, Rush County Superior Court Judge and a Defendant in this action. "Mr. Barrett" is Bryan Barrett, Chief Public Defender for Rush County, Indiana, whom Defendant Hill appointed to represent

Brewington in Brewington's criminal trial. "Mr. Negangard" is F. Aaron Negangard, who was the Prosecutor of Dearborn County at that time, prior to becoming the current Chief Deputy to Indiana Attorney General Curtis Hill. The above conversation occurred during Brewington's August 17, 2011 bond reduction hearing. [Page 20-21 of the transcript from the August 17, 2011 hearing attached as part of "EXHIBIT A".] The Defendants' request for Summary Judgment essentially requests this Court to grant relief from Defendants' own ruling nearly six years ago. Any question of whether Brewington's grand jury records became public record upon being admitted as evidence is quickly resolved by reviewing Hill's statements at the beginning of Brewington's final pretrial hearing on September 19, 2011 [Tr. 66]:

"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 and as I recall, I think I may still, I'm pretty sure the transcript, I didn't bring that back. That's still at my office, so for whatever reason if Mr. Barrett needs that, it can happen in Rush County too, I suppose. [Transcript from 9/19/2011 pretrial hearing attached as "EXHIBIT H"]

III. DEFENDANTS ALREADY ORDERED BREWINGTON IS ENTITLED TO “ALL AUDIO” FROM BREWINGTON’S GRAND JURY PROCEEDINGS.

Any contention by Defendants that Brewington is not entitled to all audio from Brewington’s grand jury proceedings is patently false. The following appears in Defendants’ Memorandum:

“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.”

“Plaintiff has already received the records he requested and is not entitled to the records he now further requests.”

“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.’”

IV. DEFENDANTS’ REQUEST IS IMPROPER UNDER IC 5-14-3-5.5

Defendants’ argument against release of the complete audio record is improper under IC 5-14-3-5.5(C), Sealing certain records by court; hearing; notice. IC 5-14-3-5.5(C) states:

“Before a court may seal a public record not declared confidential under section 4(a) of this chapter, it must hold a hearing at a date and time established by the court. Notice of the hearing shall be posted at a place designated for posting notices in the courthouse.”

Defendant Hill and Chief Deputy Attorney General F. Aaron Negangard agreed to make the record of Brewington’s grand jury proceedings public record

when both parties agreed to admit the record of the proceedings as evidence in a public trial. No party made any attempt to seal the records. Defendant Hill later confirmed the record of Brewington's proceedings were public record. Defendants cannot simply request this Court to make the grand jury records "unpublic."

Defendant Hill and Chief Deputy Negangard had every opportunity to initiate an action to seal the records that both Hill and Negangard were responsible for making public, but they failed to do so. *Bobrow v. Bobrow*, 810 N.E.2d 726 (2004) states:

The cardinal rule of statutory construction is that if a statute is unambiguous, then we need not and cannot interpret it; rather, we must apply its plain and clear meaning. *Bolin v. Wingert*, 764 N.E.2d 201, 204 (Ind.2002); *Coplen v. Omni Rests., Inc.*, 636 N.E.2d 1285, 1287 (Ind.Ct.App.1994).

Defendants are responsible for making the record of Brewington's grand jury proceedings a public record. The fact the public records came from a grand jury proceeding is irrelevant. Now that Defendants are faced with having to explain why they edited the official audio record of a grand jury proceeding, Defendants attempt to bury the issue by requesting this Court to effectively render the records "unpublic."

V. DEFENDANTS CLAIMS ARE BARRED BY RES JUDICATA

Res Judicata bars Defendants from requesting this Court to review the final judgment by another trial court; especially when the trial court issuing the opinion and the Defendant are one and the same. In *Hilliard v. Jacobs*, 957 N.E.2d 1043 (2011), the Indiana Court of Appeals wrote:

“Res judicata serves to prevent repetitious litigation of disputes which are essentially the same. *MicroVote General Corp. v. Ind. Election Comm'n*, 924 N.E.2d 184, 191 (Ind.Ct.App.2010). The doctrine of res judicata consists of two distinct components: claim preclusion and issue preclusion. *Dawson v. Estate of Ott*, 796 N.E.2d 1190, 1195 (Ind.Ct.App.2003). Claim preclusion applies when a final judgment on the merits has been rendered in a prior action, and it acts to bar a subsequent action on the same claim between the same parties. *MicroVote*, 924 N.E.2d at 191. Claim preclusion applies when the following four factors are satisfied:”

“1) the former judgment must have been rendered by a court of competent jurisdiction; 2) the former judgment must have been rendered on the merits; 3) the matter now in issue was, or could have been, determined in the prior action; and 4) the controversy adjudicated in the former action must have been between the parties to the present suit or their privies.”

The issue of whether the record of the grand jury investigation of Brewington is a public record was settled by Defendant Judge Brian Hill in 2011, while serving as Special Judge for Defendant Dearborn Superior Court II. The grand jury audio in Brewington’s case was deemed a releasable public record when Special Judge Hill issued an order in the Dearborn Superior Court II that declared the audio to be a releasable public record. Res judicata would bar anyone else from bringing the same claim to a different court, especially after failing to challenge the ruling at the appellate level. Defendants could not have appealed their own ruling but Defendants could have sealed the public record by holding a public hearing consistent with Indiana Code. One could only assume Defendants never sought to seal the grand jury record because Hill believed his ruling was correct. Defendants failed to claim the release of the records was erroneous until *after* being represented

by the Office of the Indiana Attorney General. At that point, Hill could not issue an amended order reversing his prior ruling on the grand jury audio because that ruling would have been based on ex parte advice from defense counsel, Indiana Attorney General Curtis Hill. Now Defendants are refusing to follow their own orders and are now requesting this Court to overrule the Defendants' own rulings made in 2011 and 2016.

**VI. CHIEF DEPUTY ATTORNEY GENERAL NEGANGARD VIOLATED
FEDERAL LAW.**

As the record stands, it is difficult to argue that Negangard's action do not constitute a color of law violation under, at least, TITLE 18, U.S.C., SECTION 242 of the federal code. As both the written and audio record of Brewington's grand jury proceeding begin at witness testimony, there is no contesting that the grand jury record is incomplete. On March 7, 2011, Negangard filed the State's PRECIPE stating [See Exhibit A contained within Brewington's COMPLAINT UNDER INDIANA ACCESS TO PUBLIC RECORDS ACT ("APRA") AND FOR INJUNCTIVE AND DECLARATORY RELIEF]:

"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"

During a pretrial hearing on July 18, 2011, the Office of the Dearborn County Prosecutor advised Brewington to rely on a "complete" transcript of the grand jury proceedings to determine the specific nature of the State's case against Brewington.

[See “Exhibit A” contained within Brewington’s MOTION FOR SUMMARY JUDGMENT IN FAVOR OF PLAINTIFF], but Negangard only provided Brewington with a portion of the record. For the grand jury transcripts to begin at witness testimony, one of the two scenarios must apply: a) Negangard privately instructed Defendants, or an employee of the Dearborn Superior Court II, to omit any opening arguments/instructions from the transcription of the grand jury audio; or b) Negangard instructed the Court Reporter of the Dearborn Superior Court II not to record the grand jury proceedings prior to witness testimony. Both are attempts to intentionally deprive Brewington of indictment information and evidence.

Any contention that Brewington was only entitled to witness testimony raises a problem because there was no order distinguishing what parts of the grand jury Brewington was or was not entitled to review. As Negangard’s Praecipe, filed March 7, 2011 directed the court reporter to transcribe the complete proceedings of the grand jury investigation of Brewington, any instruction to prepare a transcription of anything less than the complete record came in the form of ex parte communication unbeknownst to Brewington. The same problem arises in preparing a copy of the audio from Brewington’s grand jury proceedings. Even if the Defendants choose to argue Brewington was only entitled to witness testimony, Hill’s order to release a copy of the audio from Brewington’s proceedings made no mention of limiting that release to only include witness testimony, so the order to do so was ex parte in nature.

A contention that the grand jury record is complete presents another problem. The record is void of Negangard providing the “true threat” ground mentioned in *Brewington v. State*. Negangard, under color of law, made Brewington a target of a grand jury investigation in the absence of any clear violation of Indiana law.

VII. DEFENDANTS REQUEST FOR SUMMARY JUDGMENT DIES BY ITS OWN SWORD.

Page 6 of Defendants’ Memorandum states the following:

“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).”

Defendants implant their own disputed material “facts” by making conflicting arguments as to what records Brewington received. Defendants assert that Brewington received all grand jury audio related to the criminal investigation into Brewington’s activities while also arguing that Brewington was provided with audio matching the transcription of witness testimony. Defendants make the following two statements in their Memorandum:

“Brewington only received the audio recordings related to the criminal investigation into his activities”

“Brewington received the transcripts of witness testimony from the related Grand Jury proceedings.”

It is axiomatic that the audio “recordings related to the criminal investigation into [Brewington’s] activities” [Pg. 2 Defendants’ Memorandum] would include any instructions and opening arguments Negangard provided the grand jury prior to

witness testimony in Brewington's investigation. By making the above two claims, if the audio contained content other than what appeared in transcription of witness testimony, then the Defendants acknowledge Court Reporter Barbara Ruwe omitted indictment information and evidence relevant to Brewington's defense. A claim that the grand jury audio is complete is simply a false claim and requires the court staff to cut and paste portions of the grand jury audio to match the 2011 transcription.

Where the Defendants' request for Summary Judgment truly fails is in the Defendants' argument that the record from Brewington's grand jury proceedings are not public record. As mentioned earlier, sole responsibly for allowing the record of Brewington's grand jury investigation to become public record falls squarely on the shoulders of Defendants because Hill granted Negangard's request to make the records public, nearly six years ago. Any argument to the contrary demonstrates the facts alleged in Defendants' request for Summary Judgment are unquestionably disputed.

VIII. DEFENDANTS ARGUE BREWINGTON'S CRIMINAL PROCEEDINGS WERE FLAWED

Defendants' Memorandum cites *Pigman v. Evansville Press*, 537 N.E.2d 547 (Ind. Ct. App. 1989), in emphasizing the importance in maintaining the secrecy of grand jury records:

"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."

The Defendants' Memorandum also states the following:

"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.'"

The Defendants' Memorandum cites IC 35-34-2-10(b) at least fifteen times in arguing the importance of protecting the grand jury process but neither Hill nor Negangard showed any concern for the same statute that Defendants' now claim is vital to the integrity of the grand jury process. Defendants should not be allowed to ignore the laws regarding the release of grand jury records when beneficial for the prosecution and then request another court to grant relief from their own actions when the release of the records are averse to the interests of Defendants or Chief Deputy Negangard. The Defendants' "particularized need" argument obviously runs afoul in this case because the record of the grand jury proceeding was already public when Brewington requested a copy of the audio. Another problem arises because Hill refused to apply the same "particularized need" requirement when Negangard originally sought to admit the grand jury records as evidence during Brewington's bond reduction hearing on August 17, 2011. Hill knew applying the "particularized need" requirement to Negangard would have forced Negangard to provide Brewington with some insight as to the nature of the State's case against Brewington, which Negangard had refused to do up to that point. Defendants' selective application of the "particularized need argument" demonstrate Hill's bias against Brewington during trial. For more evidence of Defendants' bias against Brewington this Court need only review other statements made by Hill during the

August 17, 2011 hearing. Page 3 of the transcript contains Hill's following statement:

"We were ready to go to trial and then those circumstances continued which necessitated my order vacating that jury trial this week, so we're here on Defendant's request for bond reduction and we'll deal with that jury setting when we can get that started after the conclusion of today's hearing." ["EXHIBIT A" page 3]

This statement came before Hill allowed Negangard to release the grand jury transcripts. Hill tried to rush Brewington to trial knowing Brewington did not have any understanding of the indictments because Brewington did not have a copy of the grand jury transcripts. The transcripts from Brewington's final pretrial hearing on September 19, 2011 not only confirms the grand jury records are public, but confirms the State failed to provide Brewington with the evidence and indictment information contained within those transcripts until less than two weeks before trial. When Brewington explained to Hill a continuance was necessary because Brewington had yet to receive the indictment information necessary to subject the State's case to any adversarial testing, Hill gave the following response:

We've got two (2) weeks until trial. Based on my understanding of things, there isn't anything that the State's going to offer that's not going to be available to you by the end of this afternoon. So you've got two (2) weeks to confer with counsel and we'll get started with the jury trial on October 3rd at 9:00 a.m. [Tr. 81 "EXHIBIT H"]

Hill was fully aware Brewington had been detained in the Dearborn County Law Enforcement Center since March 11, 2011 but failed to protect Brewington's right to charging information. Brewington did not receive the grand jury transcripts

until less than two weeks before trial, and even then, the transcripts provided to Brewington were modified by Defendants in an effort to assist Negangard's unconstitutional prosecution. Not only did Defendant Hill fail to protect Brewington's right to mount a defense, Defendant Hill also appointed a public defender² who refused to meet with Brewington or discuss the criminal case with Brewington prior to trial. When Defendant Hill asked former Prosecutor F. Aaron Negangard about the State's position on Brewington's request to continue Brewington's criminal trial scheduled for October 3, 2011, Negangard stated the following:

"I just don't know that Mr. Brewington is being honest with the Court. He wasn't concerned in August of this month that his attorney had not had time to prepare a defense. ***Now in October, now in September where we are two (2) weeks from the jury trial, now he's um mad that his attorney hasn't talked to him enough as far as I can tell.*** Um, if the Defendant wants a continuance, um, you know, I'm not going to take a position one way or the other with regard to that. I'm anxious and looking forward to trying this case on October 3rd."

This is not some fictitious television crime drama. The transcripts from the final pretrial hearing that occurred two weeks prior to Brewington's criminal trial document how Defendant Judge Hill refused to continue Brewington's criminal trial. Judge Hill's denied Brewington's request despite Defendant Hill boldly

² Defendant Special Judge Brian Hill, from the Rush County Superior Court, appointed Rush County Chief Public Defender Bryan Barrett to represent Brewington. Despite Brewington's numerous complaints of Barrett refusing to meet with Brewington to discuss Brewington's case in any manner, and Prosecutor Negangard acknowledging the same, Hill refused to address the issue with Barrett. Hill forced Brewington to trial with Barrett serving as a prop to give Brewington's trial the appearance of legitimacy.

acknowledging *on record* that neither Brewington nor Brewington's public defender had received any of the specific indictment information allegedly contained within the grand jury transcripts. When asked for the State's position on continuing the matter, Negangard portrayed Brewington as being irrational, claiming Brewington was just "mad that [Brewington's] attorney [had not] talked to him." Defendants' actions in petitioning this Court for relief are unprecedented not just because Defendants are effectively seeking relief from their own orders, but because Defendants are trying to prevent Brewington from obtaining the one piece of clear-cut evidence that would give Brewington the ability to clear his name, while at the same time exposing a criminal conspiracy involving judges and the current Chief Deputy for the Office of the Indiana Attorney General. It is unfathomable that a judge involved in a lawsuit seeking public records would seek Summary Judgment premised on the argument that the judge erred in his own rulings that allowed a grand jury record to become public record. In a normal appellate proceeding, this rationale would be the quintessential example of invited error as Defendants attempt "to take advantage of an error that [he] commits, invites, or which is the natural consequence of [his] own neglect or misconduct." *Wright v. State*, 828 N.E.2d 904, 907 (Ind. 2005). This defense strategy demonstrates the desperation of Defendants and the Office of Attorney General Curtis Hill in trying to protect "their own." Despite Defendants' "particularized need" argument being irrelevant to Brewington's efforts to obtain already public grand jury records, aside from a direct confession of guilt from a prosecutor or judge, a court of law would be hard pressed

to find a more pressing argument for “particularized need” than what is demonstrated by the above facts.

IX. SHAMELESS ATTACKS ON INDIANA PUBLIC ACCESS

COUNSELOR, LUKE BRITT

The Defendants, by the Office of the Indiana Attorney General mount a shameless attack on the April 14, 2016 opinion by Luke Britt, Public Access Counselor for the State of Indiana. Defendants attacked Britt’s finding that Brewington need not “justify the purpose of the [public record] request to any public agency” and then provided a long-winded explanation of the “particularized need” requirement for people seeking grand jury records. Defendants’ attack on Britt was malicious because Defendants were aware the “particularized need” requirement did not apply to Brewington’s request. If oranges were oranges, the Defendants’ argument might have some standing; however, Brewington’s grand jury records are apples. Once again, Brewington never had to request the transcripts from the grand jury investigation of Brewington because the current Chief Deputy to the Indiana Attorney General offered the grand jury transcripts as evidence in a bond reduction hearing and the grand jury transcripts became public record when Defendant Hill admitted the transcripts as evidence with no strings attached. The Defendants’ long-winded argument citing caselaw pertaining to a “showing of particularized need for the transcript” does not apply in Brewington’s case. Britt was never tasked with the burden of determining whether the grand jury record in Brewington’s case was a releasable public record because Hill made the grand jury transcript a public

record in 2011. The issue became whether the audio and the transcription of the audio were the same thing and Britt ruled in favor of Brewington. As the function of the Public Access Counselor (PAC) is simply to offer advisory opinions on matters pertaining to the ACCESS TO PUBLIC RECORDS ACT (APRA), Defendants had no obligation to release the grand jury audio following Britt's opinion. The Defendants chose to roll Indiana Public Access Counselor Luke Britt under the bus in the name of self-preservation. Brewington reminds this Court that Defendants McLaughlin and Hill are seasoned judges who are represented by the Office of the Indiana Attorney General so any "confusion" on the part of the Defendants about the ability to release Brewington's grand jury records was likely not accidental.

**X. DEFENDANTS' MEMORANDUM CONCEDES REPRESENTATION BY
THE ATTORNEY GENERAL IS A CONFLICT OF INTEREST**

The Indiana Rules of Professional Conduct for attorneys states:

"[I]f the probity of a lawyer's own conduct in a transaction is in serious question, it may be difficult or impossible for the lawyer to give a client detached advice.

The arguments made in Defendants' Memorandum require this Court to disqualify the Office of Attorney General Curtis Hill from representing the Defendants in this case. In response to Brewington's request to disqualify the Office of the Indiana Attorney General from providing representation, the Defendants offered the following:

"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.” Page 16

Deputy Attorney General Lowry acknowledges Brewington’s “hypothetical” conspiracy theory that the Defendants are obstructing access to grand jury audio to cover-up misconduct by Lowry’s superior, Chief Deputy F. Aaron Negangard, but Lowry fails to dispute Brewington’s contention. Lowry then proceeds to write that even if Negangard had an interest in obstructing the release of the grand jury audio, that interest would not be materially averse to the Defendants. Although incomprehensible to the layman how Deputy Lowry could argue that it is not a conflict for the Office of the Indiana Attorney General to provide representation in a legal proceeding that directly or indirectly helps conceal misconduct on the part of the Chief Deputy Attorney General, Lowry’s argument fails on the other side. There is no argument that both the audio and the transcription of Brewington’s grand jury proceedings are void of any content prior to witness testimony. In the opinion of *Brewington v. State*, 7 N.E.3d 946 (2014), the Indiana Supreme Court stated the prosecution argued two ground for Brewington’s intimidation convictions; a plainly impermissible “criminal defamation” ground and a permissible “true threat” ground. A problem arises as the grand jury audio is void of the “true threat” ground mention by the Indiana Supreme Court. Arguing that Ruwe did not omit the “true threat” ground from the transcription of the audio means Negangard made Brewington a target of a grand jury investigation without cause and Negangard withheld arguing the “true threat” ground until closing arguments in Brewington’s trial. The Defendants’ interests are adamantly opposed to Negangard’s if the

Defendants' denial of Brewington's access to the complete grand jury record was not malicious or rooted in conspiracy. If the Defendants were unaware that Negangard instructed a court reporter to omit Negangard's opening instructions and arguments from the recording and/or transcription of Brewington's grand jury investigation and if the Defendants were unaware that Negangard either failed to argue a constitutionally valid ground for Brewington's indictments or alternatively instructed the court reporter to omit the constitutional ground from the transcription, Defendants would have an interest in releasing the records to investigate why Court Reporter Barbara Ruwe omitted the information to assist Negangard's prosecution of Brewington. Sally McLaughlin, as the head of the Dearborn Superior Court II, has a very real interest that opposes Negangard's. McLaughlin differed judgment on the release of the records to Defendant Special Judge Brian Hill because McLaughlin did not have jurisdiction over the case. McLaughlin does not enjoy the same absolute immunity to civil liability as Hill. Rule 1.2 of the Indiana Code of Judicial Conduct states:

“A judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.”

Though quick to belittle Brewington for failing to understand the Indiana Rules of Professional Conduct, it appears to be Deputy Lowry that suffers from a “complete and utter misunderstanding of a conflict of interest.” The “interests” of the Dearborn Superior Court II/McLaughlin and Hill in this proceeding are the

same as their interests while sitting at the bench; administering justice while instilling confidence in the judiciary. The Defendants do not have an interest in withholding the grand jury records at all cost. If at any point, Deputy Lowry would determine that the grand jury records should be released or would discover that Negangard acted alone in abusing the grand jury process to obtain indictments and deprive Brewington of the right to a fair trial, a very real conflict arises. Lowry will face the difficult decision to advise Defendants that release is proper, or place Defendants in danger of incurring damages, whether professional, civil, and/or criminal by advising Defendants to continue fighting the release of the grand jury records in the interest of protecting Lowry's superior, Chief Deputy Attorney General F. Aaron Negangard. Like McLaughlin, Negangard does not enjoy absolute immunity from his role in Brewington's case because as the grand jury record currently stands, former Dearborn County Prosecutor F. Aaron Negangard convened a grand jury to investigate Brewington for violating criminal defamation laws that do not exist. Evidence of the conflict of interest already exists in Defendants' recent Memorandum. In response to Brewington's complaint to the PAC regarding Hill denying Brewington's request for grand jury audio, Hill stated that if the PAC found Brewington's grand jury audio was subject to release, Hill "would be happy to comply immediately." The filings by Defendants, by the Office of the Indiana Attorney General, support Brewington's argument that a conflict over representation exists because it was only after being represented by the Attorney General that the Defendants began to claim their own orders releasing grand jury

audio were erroneous. Defendants not only attack their own orders but also attack the findings of the PAC, while requesting this Court to, in effect, grant relief from Defendants' own orders. If this Court applies Defendants' own logic in arguing against Brewington's request to disqualify the Indiana Attorney General from this case, the only way a conflicting interest does *not* exist is if Defendants and Indiana Chief Deputy Attorney General F. Aaron Negangard are *in fact* conspiring to deprive Brewington access to the grand jury records to conceal a prior conspiracy to withhold evidence and records. Unless Deputy Attorney General Joshua Lowry wishes to argue his clients are participants in a conspiracy with the Chief Deputy Attorney General, then this Court should issue an order disqualifying the Office of the Indiana Attorney General from participating in this case.

XI. DEFENDANTS ATTEMPT TO "DUMB" BREWINGTON DOWN

Defendants should not be allowed to rely on dumbing Brewington down to support Defendants' request for Summary Judgment. The Defendants' Memorandum dedicates a significant amount of time explaining how Brewington does not understand many aspects of the grand jury process. Rather than address the content of Brewington's Motion for Summary Judgment, the Defendants default to the "Brewington does not understand what he's talking about" defense in the hopes this Court will overlook the substance of Brewington's petition as well as the irrelevant arguments and false statements appearing in the petitions filed by the Defendants.

“BREWINGTON DOES NOT UNDERSTAND PROCEDURE OF GRAND JURY
PROCEEDINGS”

Though Brewington’s personal experience with the inner workings of the grand jury process is limited to the two-hour testimony in his own investigation, the recording processes of the grand jury proceedings are clear-cut. IC 35-34-2-3(d) states:

“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.”

Any speculation by Defendants of whether Brewington understands the grand jury process or its procedures is moot. Brewington understands Defendants were required to record grand jury proceedings in their entirety with the exceptions mentioned above. Defendant Hill’s order dated April 20, 2016, cited in Defendants’ Memorandum, ordered the court staff to prepare a copy of the audio related to Brewington’s grand jury proceedings for Brewington. The audio is void of any record of the grand jury proceedings occurring prior to witness testimony. Unless the Office of the Indiana Attorney General wishes to argue that Defendants and Chief Deputy Attorney General F. Aaron Negangard conspired to selectively record the grand jury proceedings, Defendants have not provided Brewington with all the audio from Brewington’s grand jury proceedings.

“BREWINGTON DOES NOT UNDERSTAND A GRAND JURY CAN CONDUCT
MULTIPLE INVESTIGATIONS”

The Defendants attempt to convince this Court that Brewington does not understand an empaneled grand jury can oversee multiple grand jury investigations. Defendants based their assumption on Brewington expressing doubt about Defendants claim of “four to five” other grand jury proceedings often intertwining with the investigation of Brewington. Documents in Brewington’s initial filing in this matter demonstrate Defendants provided a plethora of invalid excuses for denying the release dating back to 2012, but the claim of “four to five” other proceedings did not appear until Hill’s order dated, April 20, 2016. As Hill stated Brewington was entitled to “all audio” from the grand jury proceedings related to Brewington and since the Defendants refused to provide Brewington with audio occurring prior to witness testimony, Brewington requested copies of the audio from the “four to five” other grand jury proceedings to obtain the audio from Brewington’s proceedings that Defendants are withholding from Brewington. Defendants try to portray Brewington as being feeble or incompetent despite Brewington’s request being a direct result of Defendants altering and withholding portions of grand jury audio. The obstructive tactics employed by Defendants forced Brewington to run around like a chicken with his head cut off, in chasing public records. In completing Brewington’s analogy, Defendants then put on a civil façade and point to Brewington running about the barnyard and tell this Court, “Brewington’s just crazy. Look at him.”

The Defendants also avoid a crucial element in Brewington’s argument that exposes a major problem within the Defendants’ own reasoning. The Defendants’ addressed how it was unnecessary to include and redact portions of the record when the “Grand Jury proceedings would move to another criminal investigation;” however, the Defendants fail to address why the court reporter omitted portions of the record indicating when the investigation moved *back* to Brewington’s case. The absence of verbal cues such as “We are back to the investigation of Brewington” either demonstrates omissions from the record of Brewington’s proceedings or demonstrates the Defendants are lying about the existence of other intertwining grand jury proceedings, or at least exaggerating how they interfere with the release of audio from Brewington’s grand jury audio. In the absence of any verbal cues when the record of the Brewington grand jury investigation stopped and started, there would be no way to determine what parts of the audio were related to Brewington’s case.³ The only means to determine which recordings applied to Brewington’s case would be if the audio files were marked accordingly. If this were indeed the case, then the “four to five” other grand jury proceedings alleged by Defendants would not present a problem.

“BREWINGTON DOES NOT UNDERSTAND CONFLICT OF INTEREST”

As discussed earlier in this Memorandum, Brewington most certainly understands conflict of interest and how it applies to the Office of the Indiana

³ It also goes without saying that the absence of verbal cues would prevent grand jurors from knowing which investigation was currently before them.

Attorney General. It appears Deputy Lowry is a little confused on the matter as Lowry seems to be mistaken about the Defendants' interests in this case.

"BREWINGTON DOES NOT UNDERSTAND SUMMARY JUDGMENT"

Defendants contend that Brewington's logic in disputing the "facts" included in the orders by the Defendants creates a dispute of material fact and precludes a claim for Summary Judgment. Despite failing to cite any statute or caselaw to support the following claim, page ten of the Defendants' Memorandum states, "First, an order of a court is undisputed evidence in any case." Though an order of a court may be undisputed evidence in any case, the content of a court cannot be considered undisputed fact in a civil proceeding where the assertions made in the order lie at the heart of the controversy. To suggest otherwise would give judges the ability to change definitive facts of life; i.e., no matter the legal circumstance, an order stating the Sun rises in the West will never change the scientific fact that the Sun rises in the East. A series of court orders containing conflicting statements of fact *can* be cited as undisputed evidence that Defendant Hill has a documented history of making false and/or deceptive statements during Hill's official duties as a judge. The following statements, pertaining to multiple requests for the audio from Brewington's grand jury proceedings, appear in orders filed by Defendant Hill, Special Judge for the Dearborn Superior Court II. [See Exhibits E, F, and G contained within Brewington's COMPLAINT UNDER INDIANA ACCESS TO PUBLIC RECORDS ACT ("APRA") AND FOR INJUNCTIVE AND

DECLARATORY RELIEF] The following statements are “undisputed evidence” that Defendant Hill does not tell the truth:

“COMES NOW THE COURT having received an Access to Public Records Request from Sue A. Brewington

And the Court having reviewed said request and being duly advised in the premises now FINDS and ORDERS as follows:

1. 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.” -Exhibit E, Order Releasing Audio Copies, filed January 12, 2012

“COMES NOW THE COURT having previously issued an Order Releasing Audio Copies to Sue A. Brewington on January 12, 2012 and to Matthew P. Brewington on January 24, 2012.

And the Court being duly advised in the premises now FINDS that those two orders should be amended as follows:

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 state 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.” -Exhibit F, Amended Order Releasing Audio Copies, filed February 2, 2012

“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 request now FINDS and ORDERS as follows:

1. The Court declines to grant the request for audio recordings from the Grand Jury proceedings occurring 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.” Exhibit G, Order On Request For Releasing Audio Recordings, filed February 4, 2016.

Hill’s finding that Brewington argued the grand jury audio was admitted during trial is akin to Hill issuing an order stating the Sun rises in the West. Brewington never made such a claim so the statement is emphatically false. A false statement in an order of a court can never turn a lie into a statement of truth, but several false statements appearing in a series of conflicting orders issued in the Dearborn Superior Court II can serve as “undisputed evidence” in this Court of law. Brewington’s initial complaint in this action details the false statements appearing in several conflicting orders issued by Defendants. The Defendants now claim

Brewington has all the audio from Brewington's grand jury proceedings, while being aware that the record of the proceedings prior to witness testimony are omitted from the audio. The opinion issued by the PAC found that all of Hill's excuses in denying requests for Brewington's grand jury audio were not valid exceptions under Indiana law. Now Defendants Hill and Dearborn Superior Court II/McLaughlin, through the Office of the Indiana Attorney General claim Brewington's grand jury records were not subject to APRA requests when Defendant Hill and Chief Deputy Negangard were responsible for making the records public in the first place. Defendants have gone as far to allege that their own orders are erroneous in arguing against the release of all the grand jury audio in Brewington's case.

"[A]n order of a court is undisputed evidence in any case" is precisely the same logic Brewington employs in arguing Brewington's case *for* Summary Judgment because one thing remains constant throughout all orders and letters by Defendants; Defendants do not tell the truth. It is a material fact that Defendants lied to this Court about Brewington being in possession of all audio pertaining to Brewington's grand jury investigation. It is a material fact that a court of law already deemed the grand jury to be public record. It is a material fact the release of the audio prior to witness testimony will demonstrate Chief Deputy Negangard withheld indictment information from Brewington during trial through the assistance of the Dearborn Superior Court II. It is also material fact that if Defendants claim no audio exists prior to witness testimony in Brewington's grand jury proceedings, Defendants cooperated with Chief Deputy Negangard in not

recording opening statements and arguments during grand jury proceedings, which is a violation of Indiana law. This holds true unless of course the Defendants wish to argue that Negangard never presented a constitutional ground for Brewington's indictments, which is how the record of the grand jury proceedings currently stands.

The indisputable material facts in this case really leave this Court with no other options but to order the release of the entire, unedited, grand jury audio from Brewington's case because anything less allows Defendants to continue to obstruct the release of records. Arguing any of these facts requires an admission of illegal conduct on the part of Chief Deputy Attorney General F. Aaron Negangard and/or Defendants and their agents. Even Court review under camera gives Defendants another opportunity to alter audio in the hopes of tricking a court that is less familiar with the history and content of the case. Regardless if there are "four to five" or one hundred intertwining grand jury proceedings, the Defendants' incompetence in failing to properly record official legal proceedings should not impede on Brewington's rights. If any of the above fails to convince this Court that an order to release the entire unedited audio is the most appropriate action, Brewington would invite this Court to review grand jury audio that was altered by Defendants.

XII. THE ALTERED GRAND JURY RECORD

Prior to this pleading, Brewington did not provide this Court with the CD-R containing portions of Brewington's grand jury proceedings provided to him by Defendants because the CD-R fails to have any characteristics of an official record

and Brewington questioned its admissibility as an official record. Also, the fact that the audio *nearly* matches the transcription of supposedly the same audio is almost irrelevant for Brewington's request for Summary Judgment because both the transcription and the audio are void of any portions of the proceedings prior to witness testimony. This demonstrates Defendants not only altered the record of the grand jury proceedings during transcription to assist Negangard's unconstitutional prosecution, but five years later the Defendants attempted to cut and paste grand jury audio to match the transcripts.

FAILURE TO RECORD AUDIO IN COMPLIANCE WITH IC 35-34-2-3(d)

IC 35-34-2-3(d) mandates that grand jury "evidence and proceedings shall be recorded in the same manner as evidence and proceedings are recorded in the court that impaneled the grand jury." The meaning of this statute is not ambiguous and Defendants failed to follow the statute on a variety of levels. A surface review of the filed structure of the audio files demonstrates the audio was altered. "EXHIBIT B" attached hereto, contains screenshots of two sets of audio files from the Dearborn Superior Court II. On top are audio files from criminal cases occurring on September 19, 2011, the same day as Brewington's final pretrial hearing. The lower audio files represent Brewington's grand jury investigation occurring on March 1, 2011. Included are notes explaining some of the discrepancies between the two records, which are vastly different and provide evidence that the Defendants conspired to alter the official record of the grand jury proceedings. Proceedings before the Dearborn Superior Court II are recorded in five-minute audio files. In the

current case, Defendants changed the format of the audio files from Brewington's grand jury proceedings, combined many of the five-minute files and renamed them. The Defendants claim Brewington has obtained all audio from the grand jury investigation pertaining to Brewington. This is simply false because the Defendants omitted all audio occurring prior to witness testimony. Brewington includes a copy of the CD-R that Defendants provided to Brewington to demonstrate the egregious nature of Defendants' claims. [Copy of audio attached as EXHIBIT C] In defense against Brewington's claims, footnote 3 on page 11 of Defendants' Memorandum states the following:

"Brewington cites to no authority to support his claim of what he believes should occur during a Grand Jury investigation."

For the Defendants to suggest Brewington assumes the burden of citing some authority that proves a prosecutor is required to provide instructions to a grand jury is merely an attempt to take advantage of a pro se litigant. With that said Brewington offers the following:

"Grand jury 'instructions must be comprehensible, and must not be so misleading or incomplete as to substantially undermine integrity of proceedings); see *Sparks*, 499 N.E.2d at 741 (Article I, Section 12 of Indiana Constitution violated when proceedings of grand jury render indictment abhorrent to fundamental concept of fair and proper justice).' *Ajabu v. State*, 677 N.E.2d 1035 (1997)."

Failing to provide a grand jury with any instruction prior to calling witnesses and offering evidence is "abhorrent to fundamental concept of fair and proper justice." Arguing otherwise would be akin to arguing it being constitutionally

sufficient to exclude a trial jury from opening arguments in a criminal proceeding, while waiting until after closing arguments before providing any instruction to the trial jury about the nature of the criminal case, how the evidence applies, etc.

TAMPERING OF DIGITAL GRAND JURY RECORD

In reviewing the CD-R Defendants provided Brewington, this Court will first notice the official root folder of the grand jury proceedings in Brewington's case is named "Dan." The CD-R represents the "Dan" folder as being created on 4/27/2016; the same date as Chief Court Reporter Barbara Ruwe's letter to Brewington which stated the following:

The cost of copying the discs is estimated to be between \$150.00 to \$300.00. Please inform the Court in writing if you want the Court to copy the discs and after the Court receives that, I will notify you in writing when they would be ready to be picked up." [Letter attached as "EXHIBIT C"]

The audio was already prepared the day Ruwe wrote the letter. Ruwe estimated the cost of preparing the disks knowing the audio files and the CD-R were already prepared. Brewington sent three letters to Ruwe via USPS in response to Ruwe's letter. [Brewington's three letters to Ruwe, dated 5/23/2016, 5/23/2016, and 7/05/2016, are attached hereto as "EXHIBIT D", "EXHIBIT E", and "EXHIBIT F", respectively] Ruwe never responded to Brewington's letters. Ruwe made no attempt to contact Brewington about the audio until Ruwe's letter to Brewington, dated 7/14/2016, where Ruwe stated the following:

The Court has not received a response from you regarding the letter dated April 27, 2016, that was sent to you indicating what the estimated cost of the disc would be. The Court was waiting for a letter in writing

from you (as indicated in the letter) to inform us if you still wanted the disc as requested by you. A copy of the April 27, 2016, letter is attached.

The charge will be \$300.00. The Court has spent many hours in getting the disc ready plus the cost that was incurred from our IT person.

The disc may be picked up in the auditor's office at your convenience.
[Letter attached as "EXHIBIT G"]

Ruwe's letter may appear spontaneous but it was on 7/14/2016 that Brewington initiated a legal action seeking audio from Brewington's grand jury proceedings.⁴ Though dated 7/14/2016, Ruwe's letter was not postmarked until 7/15/2016. The Dearborn Superior Court II charged Brewington the full \$300.00 for the "many hours in getting the disc ready plus the cost that was incurred from [the court's] IT person." Even holding that Ruwe never received Brewington's three letters and the timing of Ruwe's 7/14/2016 letter and the filing of Brewington's lawsuit were coincidental, the analysis of the audio files raises several questions. If the audio files and folders on the CD-R provided to Brewington were last modified on 4/27/2016:

Why did Chief Court Reporter Ruwe provide an estimated cost to prepare the audio when the audio was already completed?

Why did Chief Court Reporter Ruwe ask Brewington to confirm that Brewington was willing to pay for the audio prior to preparing the audio when Ruwe knew the grand jury audio under the file name "Dan Brewington" was already completed?

⁴ Brewington's original lawsuit seeking grand jury audio was dismissed without prejudice and subsequently refiled as this current action.

Why did Chief Court Reporter Ruwe wait until 7/14/2016 before “spontaneously” notifying Brewington about the grand jury audio being available for pickup?

Besides Ruwe and an unnamed “IT person” employed by the Dearborn Superior Court II, how many other people played a role in cutting and pasting the official record of the grand jury investigation of Brewington to match an incomplete transcription of the investigation that Ruwe prepared almost five years earlier?

It is impossible for Defendants to claim that no member of the court staff was aware that the CD-R with a copy grand jury audio was completed on 4/27/2011. Even a claim that the Court’s “IT person” prepared the audio and had yet to return the completed CD-R to the Court staff fails because the preparation of a limited portion of Brewington’s grand jury audio requires the assistance of a court staffer, or in the alternative, requires Defendants to hand the official grand jury audio to the “IT person” with an instruction to *just make the audio match the transcripts*.

CONSPIRACY TO ALTER GRAND JURY AUDIO

Brewington’s arguments are based on the premise that the Defendants normally record grand jury proceedings in a manner consistent with IC 35-34-2-3(d). Brewington understands this Court is not vested with any authority to award punitive damages or grant Brewington relief from Brewington’s convictions resulting from the unlawful grand jury process. Brewington provides the information to this Court in the case that Defendants and the Indiana Attorney General would deny such a conspiracy or portray all the events described in this petition as a prolonged series of coincidences and attribute Brewington’s claims to paranoia. Brewington also includes the information in this document to prevent the

Office of Attorney General Curtis Hill from being able to deny knowledge of the conduct. There is no question that Defendants are involved in a conspiracy to obstruct Brewington's access to grand jury records in a continued effort to cover-up an unconstitutional grand jury investigation and criminal prosecution where the Dearborn Superior Court II assisted Chief Deputy Negangard in withholding evidence and charging information from Brewington. Though the Office of Indiana Attorney General Curtis Hill may have dodged addressing the issue of illegal conduct prior to reading this Memorandum, there is no denying that Attorney General Curtis Hill is now aware that continuing to represent Defendants is an assertive effort to cover-up illegal conduct by Curtis Hill's second-in-command, Chief Deputy F. Aaron Negangard.

THE EX PARTE ORDER TO ALTER AUDIO

In an order filed April 20, 2016, Hill ordered the court staff of the Dearborn Superior Court II to prepare a copy of the grand jury audio from Brewington's proceedings. The first evidence of the conspiracy involving Hill is that the grand jury audio is void of any record of Brewington's investigation occurring prior to witness testimony. Hill's order stated:

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.

Nowhere in the order is there an instruction to omit portions of the grand jury proceedings that occurred prior to witness testimony. The instruction to exclude the information was ex parte in nature. Now Defendants, through Indiana Attorney General Curtis Hill, argue that Brewington received all grand jury audio pertaining to Brewington's investigation; an argument the Defendants know to be false. But tricking this Court into granting Summary Judgment in favor of Defendants is the only chance they have.

DEFENDANTS CUT AND COPIED GRAND JURY AUDIO

Such a contention seems implausible outside a Hollywood production but the Dearborn County Superior Court II cut and pasted grand jury audio to match the transcripts. This is easily proven by reviewing the end of some of the audio files because the transcripts contain *MORE* content of the proceedings than the audio from which the transcription was supposedly based on.

During the witness testimony of Dearborn County Sheriff Michael Kreinhop, Chief Deputy Negangard and Sheriff Kreinhop had the following exchange:

19 MR. NEGANGARD: We'll get to that later.

20 MR. KREINHOP: Okay.

21 MR. NEGANGARD: We're back on record to so that we're addressing
22 the handgun issue.

The audio version of the above exchange appears at 0:21:36 of the audio file named [JUVENILEWS]20110228-1055_01 cbd736060e5700, found in grand jury directory “Dan Brewington > Dan > 2-28-11.” The audio offer a different depiction of events:

Negangard: “We’ll get, we can ge....” [audio file abruptly ends.]

There was no “Okay” from Kreinhop. Negangard failed to complete his statement.

The audio record of the grand jury skips off as if the audio was being played through a needle on a phonograph. The audio is void of any explanation as to why the record suddenly stopped. The troubling part is the timing involved. The name of the first audio file includes the numbers “20110228-1055” which translates to February, 28 2011 at 10:55 a.m. This is when the audio began. The duration of the audio file, which has obviously been cut short, is 0:21:38 (h/mm/ss). Simple math tells us the earliest the altered audio could end is 11:16:38 a.m. The name of the next audio file suggests Negangard came back on record at 11:22 a.m. Five minutes of the proceedings vanish without a trace.

Barbara Ruwe certified the transcripts as being “full, true, correct and complete.” The only explanation for the grand jury audio not containing as much information as the transcription of the audio is that the Dearborn Superior Court II altered the transcripts in a conspiracy to help Negangard deprive Brewington of indictment information and evidence but failed in attempting to cut and paste grand jury audio to match the transcript that was altered five years prior. Even more suspicious is the subject of the conversation. Negangard and Kreinhop spoke extensively about Brewington’s legal gun ownership and concealed carry permit,

while informing the grand jury that the only way Brewington could lose the ability to carry firearms was if he was convicted of a felony and then record of the grand jury abruptly stops but five minutes expire before the proceedings begin again. Of concern is the fact that the gun issue is seemingly irrelevant to the criminal defamation grand jury investigation that is void of any instruction or arguments relating to violence.

The following statement appears in Defendants' Memorandum:

"Defendants would also suggest that the Court could compare it to the audio recordings Brewington received."

Brewington is dumbfounded by the arrogance and/or ignorance of such a statement given the content of the grand jury audio. Defendants' contention has the appearance of a last-ditch effort by a seasoned criminal to give the appearance of honesty when stopped by the police. "You can check the trunk. I have nothing to hide." is a common line among criminals when they realize the gig is up and know the police have probable cause to check the trunk anyway. When the trunk opens, the police often find guns, drugs, stolen merchandize, etc., but law enforcement officials, prosecutors, defense attorneys and judges are rarely surprised because caselaw is riddled with similar situations, as are a few hundred episodes of the television series COPS. Defendants employ a similar strategy that they have seen fail time and time again. The piecing together of the record is so unbelievably obvious, Defendants' confidence in requesting this Court to review the grand jury audio provided to Brewington would lead an average person to believe Defendants are requesting a "common courtesy" from a peer. To find examples of the altered

audio, one only needs to review a short audio file and then review the audio files falling on either side. This is the case of the audio file “[JUVENILEWS]20110228-1259_01 cbd7475c37c600”, which is only eleven seconds long and is sandwiched between “[JUVENILEWS]_20110228-1147 01 cbd73d41605400” and “[JUVENILEWS]20110228-1431 01 cbd7542147f620”. Lines 9-13 on page 67 of the grand jury transcript portray Negangard as stating the following:

9 MR. NEGANGARD: Thank you. 116 is the Court of Appeals decision
10 regarding the decision of Judge Humphrey. I want
11 to break for lunch at this point. I would call Dr.
12 Edward Conner to the stand. Please swear the
13 witness in.

The problem with the above statements lies in the middle file. The eleven-second file contains “116 is the Court of Appeals decision regarding the decision of Judge Humphrey. I want to break for lunch.” The audio does not include the “at this point” which is included in the transcript. Defendants will probably try to downplay this as being insignificant but it still represents that the audio was edited after the transcription and Defendants should not be given the latitude to explain off any omission as an attempt to protect the integrity of another investigation while claiming Indiana Code prohibits them from providing any proof of such claim.

Another problem with the grand jury audio provided to Brewington lies in a 5 second file that says nothing at all. File “Superior 2_20110301-0923_01cbd7f25f3bc080” appears at the beginning of the grand jury audio that

allegedly occurred on March 1, 2011. Issues arise when questioning why the file is included as part of Brewington's proceedings. What part of Brewington's proceedings was removed from the file? If the five-second file was accidentally included, what was accidentally left out? It is difficult to argue the file was significant enough to be a part of the record, if Defendants attempt to argue the omission of statements appearing in the transcripts are inconsequential. If the court reporter took such good care in stopping and starting the record, then there should be no problem providing Brewington with the original 5-minute audio files that make up Brewington's grand jury investigation.

There's only two occasions where the audio files in Brewington's grand jury proceedings do not end prematurely or shut off immediately after Negangard finishes. One example occurs at the end of Brewington's testimony on February 28, 2011. The audio in the file named "[JUVENILEWS]_20110228-1603_01 cbd761 Oc058900" continues to run for approximately 25 seconds after Negangard finished with Brewington's testimony. The other occasion is much more suspicious. Page 336 of the grand jury transcript contains the following statements from Negangard:

23 MR. NEGANGARD: I don't have any further questions at this time.

24 Okay one of the Grand Jurors has a question for

25 Sheriff Kreinhop.

The above consists of two separate audio files, "Superior 2_20110301-1606_01cbd82ab1003d00" with a duration of 0:10:36 and "Superior 2_20110301-1622_01cbd82cedc39690" which only lasted 0:01:34. The first file consists of

Kreinhop's final testimony ending with Negangard stating "I don't have any further questions." Roughly 16 seconds of ambient noise continues after Negangard's statement. A couple seconds into the second audio file, Negangard states "Okay one of the Grand Jurors has a question for Sheriff Kreinhop." What makes this problematic is not so much the duration of the empty audio between the two statements residing in different files but the duration between files themselves. The first file began recording at 16:06, or 4:06 p.m. The second recording began at 16:22, or 4:22 p.m. As the first of the two files lasted 0:10:36, roughly five minutes expired before the start of the second file when Negangard stated a grand juror had a question. Five minutes disappear from the record of Brewington's case. At some point during the five minutes a grand juror had to express to Negangard that the juror had a question. This could not be accomplished by simply raising a hand because Negangard specifically stated: "Okay one of the Grand Jurors has a question for *Sheriff Kreinhop*. Even holding the juror submitted the question in writing, the instruction for the procedure in submitting written questions is not included in the audio. Any contention that Negangard switched to another investigation and back within the five minutes would require Negangard to acknowledge the focus of the grand jury was to return to the Brewington investigation.

The only audio file representing the final day of Brewington's grand jury investigation is incomplete. The audio at the beginning of the file indicates there may have been discussions prior to Negangard announcing "Okay we're on record"

despite Indiana law having no provisions for Negangard going “off record” with the grand jury. The Defendants are not allowed to arbitrarily withhold portions of grand jury audio from Brewington’s proceedings based on Negangard’s arbitrary discretion of what parts of Brewington’s investigation Negangard wished to conduct on the “official” record. As for the last audio file representing the end of the proceedings, the transcripts state, “That's with regard to Dan Brewington” but the audio is cut off mid-sentence. The audio portrays Negangard stating, “That’s with regard t-.”

XIII. CONCLUSION

If this Court has any doubts about this action stemming from Chief Deputy Negangard’s abuse of the grand jury process Brewington invites this Court to review Brewington’s grand jury testimony, where Negangard viciously attacks Brewington. Brewington’s testimony, lasting over two hours, occurred on February 28, 2011. Brewington’s testimony is in the audio file “[JUVENILEWS]_20110228-1603_01 cbd761 Oc058900.” Brewington provide this as reference while requesting this Court to hold Defendants and opposing counsel to the same standard the Defendants place on Brewington. Defendants mock Brewington’s understanding of the legal process to provide a smokescreen for false claims and the attempts by the Defendants and the Office of the Indiana Attorney General to circumvent the legal procedures in which they are well versed. Defendants request this Court to dismiss Brewington’s lawsuit seeking records due

to technical procedural flaws, while at the same time requesting this Court to ignore Defendants' own feigned ignorance of law and fact. The facts in this case clearly demonstrate the Defendants altered grand jury audio to match the transcripts. To suggest otherwise requires Court Reporter Barbara Ruwe to regularly complete Negangard's sentences to improve the appearance of the former prosecutor's sentence structure. Regardless of whether Defendants believe the release of the grand jury record was improper, it was the Defendants who made the records public, while making no attempt to seal the records until now. Defendants are currently attempting to circumvent IC 5-14-3-5.5(C) by asking this Court to essentially reverse the Defendants' own rulings. If Chief Deputy Negangard made a practice of intertwining the introductions of grand jury proceedings in concerted effort to obstruct access to the records, it is of no consequence to Brewington. Judge Hill specifically told 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"

Defendant Hill's statement clearly states "all audio" and does not include an exception for portions of the Brewington grand jury record that Defendants failed to properly record and/or that Negangard intertwined with other proceedings.

In *Wurster v. State*, 715 N.E.2d 341 (1999), the Indiana Supreme Court stated, "A prosecutor exerts considerable control over a grand jury." The Court went on to explain,


“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.”

The audio provided to Brewington alone consists of over 7.5 hours. There is no opening introduction. A contention that no other audio exists requires the destruction of records. The duration of the final audio file in Brewington's proceedings 0:04:46. Excluding Negangard's general reading of the statutes, the argument Negangard made to the grand jury for indicting Brewington lasted less than two minutes. Negangard's two-minute argument is void of any mention of a “true threat” or any other criminal conduct. In 7.5 hours of audio, this is the only instruction Negangard provided to the grand jury as to the nature of the grand jury investigation. Defendants cannot expect this Court to believe that the current Chief Deputy to Indiana Attorney General Curtis Hill would preside over 7.5 hours of a grand jury investigation before providing less than two minutes of instruction, as to how Brewington's actions violated Indiana law, just moments from concluding the grand jury investigation of Brewington. Brewington is certain that the thought of having to argue such a contention is exactly why Defendants and the Office of Attorney General Curtis Hill are requesting this Court to offer Defendants some “professional courtesy” and render Brewington's grand jury proceedings “unpublic,” and simply make the problem go away.

WHEREFORE, for the reasons set forth in this AMENDED MEMORANDUM and in PLAINTIFF'S AMENDED RESPONSE IN OPPOSITION TO DEFENDANTS' CROSS-MOTION FOR SUMMARY JUDGMENT; Brewington

respectfully requests this Court to deny Defendants' CROSS-MOTION FOR SUMMARY JUDGMENT, enter an order to disqualify the Office of Indiana Attorney General Curtis Hill from representing Defendants, 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,



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 amended Memorandum; 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 20th day of MAY, 2017.

My Commission Expires:

(month) (day) (year)



**NOTARY PUBLIC
FOR THE
STATE OF OHIO**
My Commission Expires
January 20, 2020


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, priority postage prepaid, on May 20, 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

Indiana Attorney General Curtis Hill
Deputy Joshua R. Lowry
Indiana Government Center South, 5th Floor
302 West Washington Street
Indianapolis, IN 46204-2770
Telephone: (317) 233-6215



Daniel P. Brewington
Plaintiff, pro se

EXHIBIT A

IN THE
INDIANA COURT OF APPEALS

APPELLATE NO. 15A01-1110-CR-00550

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

TRANSCRIPT OF BOND REDUCTION HEARING AND FINAL PRE-
TRIAL HEARING

VOLUME I OF I

ATTORNEY FOR APPELLEE:

GREGORY ZOELLER
302 WEST WASHINGTON STREET
IGCS – 5TH FLOOR
INDIANAPOLIS, IN 46204
PHONE: (317) 232-6201

ATTORNEY FOR APPELLANT:

MICHAEL SUTHERLIN
P. O. BOX 441095
INDIANAPOLIS, IN 46244
317-634-6313

BARBARA RUWE
OFFICIAL COURT REPORTER
DEARBORN SUPERIOR COURT II

APPEARANCES

ON BEHALF OF THE STATE:

AARON NEGANGARD

PROSECUTING ATTORNEY

215 WEST HIGH STREET

LAWRENCEBURG, IN 47025

ON BEHALF OF THE DEFENDANT:

BRYAN BARRETT

RUSH COUNTY PUBLIC DEFENDER'S OFFICE

101 EAST SECOND STREET, ROOM 315

RUSHVILLE, IN 46173

1 **DANIEL BREWINGTON – BOND REDUCTION HEARING –**

2 **AUGUST 17, 2011**

3 COURT: Are you Mr. Negangard?

4 MR. NEGANGARD: Yes your honor.

5 COURT: Okay, um, we are on in 15D02-1103-FD-84, the
6 State of Indiana versus Daniel Brewington. Let the
7 record reflect the State appears by Prosecuting
8 Attorney, Aaron Negangard. The Defendant
9 appears in person and by counsel, Bryan Barrett.
10 This matter is set today for a hearing on Defendant's
11 Motion to Reduce Bond which was made some time
12 ago. Just to bring everyone up to speed, I think that
13 was set – once I was appointed – that was set for
14 some time in July. There was a Motion to Continue
15 which was granted, that was a motion from the State
16 and it was reset for the maybe August 3rd with a jury
17 trial to commence yesterday and due to certain
18 extenuating circumstances, um, that August setting
19 on that bond reduction hearing was vacated. We
20 were ready to go to trial and then those
21 circumstances continued which necessitated my
22 order vacating that jury trial this week, so we're
23 here on Defendant's request for bond reduction and
24 we'll deal with that jury setting when we can get
25 that started after the conclusion of today's hearing.

1 COURT: I will show State's 1 offered and admitted.

2 MR. NEGANGARD: State's Exhibit 2 is the Court of Appeals decision in
3 this case your honor in the divorce case that I would
4 move to admit.

5 COURT: That's State's 2. Any objection Mr. Barrett?

6 MR. BARRETT: No objection your honor.

7 COURT: I'll show 2 offered and admitted.

8 MR. NEGANGARD: State's 3 is a letter from Dr. Connor from the
9 divorce proceedings.

10 COURT: That's 3. Any objection Mr. Barrett?

11 MR. BARRETT: No, no objection your honor.

12 COURT: I'll show State's 3 offered and admitted.

13 MR. NEGANGARD: State's 4 is the Grand Jury testimony in this case
14 your honor.

15 COURT: Any objection to that Mr. Barrett?

16 MR. BARRETT: No your honor.

17 COURT: State's 4 is offered and admitted.

18 MR. NEGANGARD: State's 5 is the internet postings and all the Grand
19 Jury Exhibits that were presented during the course
20 of the grand jury. It's on a CD.

21 COURT: And those postings were the exhibits in the Grand
22 Jury?

23 MR. NEGANGARD: Yes.

24 COURT: Okay. Any objection to 5?

25 MR. BARRETT: No objection your honor.

1 COURT: I'll show State's 5 offered and admitted.

2 MR. NEGANGARD: State's 6 is a current CCS entry, CCS of the Ripley
3 County of the Ripley County divorce proceedings.

4 COURT: Any objection to State's 6?

5 MR. BARRETT: No objection your honor.

6 COURT: I'll show 6 offered and admitted.

7 MR. BARRETT: And State's Exhibit 7, there is a current Writ,
8 Petition to Writ a Habeas Corpus filed by Mr.
9 Brewington in the Federal Court.

10 COURT: Any objection to 7?

11 MR. BARRETT: No objection your honor.

12 COURT: I'll show State's 7 offered and admitted.

13 MR. NEGANGARD: And I would also at this time like to call Detective
14 Shane McHenry to the stand.

15 COURT: Okay, do you want to come on up please? Do you
16 swear or affirm under the penalties for perjury that
17 the testimony you are about to give is the truth, the
18 whole truth and nothing but the truth?

19 DET. MCHENRY: I do.

20 COURT: Please have a seat. You may proceed.

21 MR. NEGANGARD: Detective McHenry, please state your name for the
22 record.

23 DET. MCHENRY: Shane McHenry.

24 MR. NEGANGARD: And where are you employed?

25 DET. MCHENRY: I'm employed at the Dearborn County Sheriff's

EXHIBIT B

TRIAL COURT AUDIO

1

5

3

Name	Date created	Date modified	Type	Size	Length
Criminal_9-19-11 1-37_01cc76d141e79440	9/19/2011 2:42 PM	9/19/2011 2:42 PM	WAV File	3,527 KB	00:05:00
Criminal_9-19-11 1-42_01cc76d1f50268c0	9/19/2011 2:47 PM	9/19/2011 2:47 PM	WAV File	3,527 KB	00:05:00
Criminal_9-19-11 1-47_01cc76d2a821f830	9/19/2011 2:52 PM	9/19/2011 2:52 PM	WAV File	3,527 KB	00:05:00
Criminal_9-19-11 1-52_01cc76d35b43f8a0	9/19/2011 2:57 PM	9/19/2011 2:57 PM	WAV File	3,527 KB	00:05:00
Criminal_9-19-11 1-57_01cc76d40e57c840	9/19/2011 3:00 PM	9/19/2011 3:00 PM	WAV File	2,502 KB	00:03:33
Criminal_9-19-11 9-12_01cc76ac39645170	9/19/2011 10:17 AM	9/19/2011 10:17 AM	WAV File	3,527 KB	00:05:00
Criminal_9-19-11 9-17_01cc76acac836bb0	9/19/2011 10:22 AM	9/19/2011 10:22 AM	WAV File	3,525 KB	00:05:00
Criminal_9-19-11 9-22_01cc76ad9f7eaa40	9/19/2011 10:27 AM	9/19/2011 10:27 AM	WAV File	3,527 KB	00:05:00
Criminal_9-19-11 9-27_01cc76ae528f6ca0	9/19/2011 10:32 AM	9/19/2011 10:32 AM	WAV File	3,528 KB	00:05:00
Criminal_9-19-11 9-32_01cc76af05ae86e0	9/19/2011 10:37 AM	9/19/2011 10:37 AM	WAV File	3,527 KB	00:05:00
Criminal_9-19-11 9-37_01cc76afb8c8bf20	9/19/2011 10:42 AM	9/19/2011 10:42 AM	WAV File	3,528 KB	00:05:00

GRAND JURY AUDIO

2

7

6

8

4

Name	Date created	Date modified	Type	Size	Length
Superior 2_20110301-0923_01cbd7f25f3bc080	4/27/2016 3:46 PM	4/27/2016 3:46 PM	WMA File	55 KB	00:00:05
Superior 2_20110301-0933_01cbd7f3b3e47630	4/27/2016 3:47 PM	4/27/2016 3:47 PM	WMA File	28,206 KB	00:59:30
Superior 2_20110301-1125_01cbd80367e8c280	4/27/2016 3:50 PM	4/27/2016 3:50 PM	WMA File	7,991 KB	00:16:50
Superior 2_20110301-1144_01cbd805ffe7ab80	4/27/2016 3:52 PM	4/27/2016 3:52 PM	WMA File	9,531 KB	00:20:05
Superior 2_20110301-1342_01cbd81684dac100	4/27/2016 3:54 PM	4/27/2016 3:54 PM	WMA File	20,925 KB	00:44:08
Superior 2_20110301-1606_01cbd82ab1003d00	4/27/2016 3:55 PM	4/27/2016 3:55 PM	WMA File	5,042 KB	00:10:36
Superior 2_20110301-1622_01cbd82cedc39690	4/27/2016 3:55 PM	4/27/2016 3:55 PM	WMA File	753 KB	00:01:34

- 1) FILE NAMING STRUCTURE INCLUDES DATE AND NATURE OF PROCEEDINGS.
- 2) FILE NAMING STRUCTURE INCLUDES BREWINGTON'S NAME AND DATE OF 3/1/2011 PROCEEDINGS. ALSO INCLUDES A SUBFOLDER SIMPLY NAMED "DAN."
- 3) DATE AND TIME CREATED CORRESPONDS W/FILE NAME. 9-37 = 9:37AM (LESS DAYLIGHT SAVINGS) DATE CREATED EQUALS THE LENGTH OF AUDIO FILE + TIME WHEN AUDIO FILE WAS NAMED.
- 4) DATE CREATED/MODIFIED IS OVER FIVE YEARS AFTER GRAND JURY INVESTIGATION TOOK PLACE. AUDIO LENGTHS DO NOT CORRESPOND WITH FILE NAMES.
- 5) AUDIO FILE SIZES AND LENGTHS ARE UNIFORM AND DO NOT EXCEED 5 MINUTES.
- 6) AUDIO FILES SIZES AND LENGTHS VARY.
- 7) DEFENDANTS CHANGED FILE FORMAT OF GRAND JURY AUDIO.
- 8) FILE CONTAINS NO AUDIBLE DIALOGUE.

EXHIBIT C

April 27, 2016

[REDACTED]
[REDACTED]
[REDACTED]

Mr. Brewington:

The cost of copying the discs is estimated to be between \$150.00 to \$300.00. Please inform the Court in writing if you want the Court to copy the discs and after the Court receives that, I will notify you in writing when they would be ready to be picked up.

Barbara Ruwe

Barbara Ruwe, Court Reporter
Dearborn Superior Court II

EXHIBIT D

Re: Grand Jury Audio in Cause No. 15D02-1103-FD-00084

May 23, 2016

Dearborn County, Indiana Superior Court II
Chief Court Reporter Barbara Ruwe
215 W High St
2nd Floor
Lawrenceburg, IN 47025
812.537.8800

Dear Ms. Ruwe,

Pursuant to the order of Special Judge Brian Hill order dated, April 20, 2016, I am interested in obtaining the audio record from the grand jury proceedings pertaining to Cause No. 15D02-1103-FD-00084; however, I am seeking clarification as to what information will be provided. Judge Hill's order stated that I was entitled to receive "all audio recordings regarding your proceedings." Will you be providing only the portions of the audio transcribed for the criminal trial or will the audio also include the audio record of all interaction between the prosecution and members of the grand jury prior to witness testimony? Please pardon any confusion on the matter but I was initially told the transcripts were complete. In addition, can you please provide me with the name of the judge, or other authority, authorizing the transcription of only certain segments of the grand jury record?

A copy of this letter can be found on www.danbrewington.blogspot.com for your convenience. Feel free to contact me with any questions.

Very truly yours,



Daniel P. Brewington

[REDACTED]
[REDACTED]
[REDACTED]

contactdanbrewington@gmail.com

EXHIBIT E

Re: Grand Jury Audio in Cause No. 15D02-1103-FD-00084

May 23, 2016

Dearborn County, Indiana Superior Court II
Chief Court Reporter Barbara Ruwe
215 W High St
2nd Floor
Lawrenceburg, IN 47025
812.537.8800

Dear Ms. Ruwe,

I apologize for any potential confusion but this is the second of two letters, dated May 23, 2016. In referencing a quote by Special Judge Brian Hill in my previous letter, I accidently cited the wrong document from which the quote appeared. I stated the following in the first letter:

“Pursuant to the order of Special Judge Brian Hill order dated, April 20, 2016, I am interested in obtaining the audio record from the grand jury proceedings pertaining to Cause No. 15D02-1103-FD-00084; however, I am seeking clarification as to what information will be provided. Judge Hill’s order stated that I was entitled to receive ‘all audio recordings regarding your proceedings.’”

Though Judge Hill’s April 20, 2016 order authorized the release of the grand jury audio, the correct source of the quote is a letter I received from Special Judge Brian Hill, dated May 6, 2016 stating [Attached hereto]:

“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.”

Sorry for any confusion but I am just seeking clarity in determining if you are providing me with all the audio from the entire grand jury proceeding or only the audio from which transcripts of the proceedings. Regardless of which you provide, I still request the name of the entity responsible for authorizing the partial transcription of the official grand jury record.

A copy of this letter can be found on www.danbrewington.blogspot.com for your convenience. Feel free to contact me with any questions.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Daniel P. Brewington', with a long horizontal flourish extending to the right.

Daniel P. Brewington

[REDACTED]
[REDACTED]
[REDACTED]

contactdanbrewington@gmail.com

Attachments:

Judge Hill order filed April 20, 2016

Judge Hill letter dated May 6, 2016

Original letter to Barbara Ruwe dated May 23, 2016

STATE OF INDIANA

DEARBORN SUPERIOR COURT II

COUNTY OF DEARBORN

CAUSE NO. 15D02-1103-FD-084

STATE OF INDIANA,
Plaintiff

FILED

vs

APR 20 2016

DANIEL BREWINGTON,
Defendant

Rm AT
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

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]

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

Re: Grand Jury Audio in Cause No. 15D02-1103-FD-00084

May 23, 2016

Dearborn County, Indiana Superior Court II
Chief Court Reporter Barbara Ruwe
215 W High St
2nd Floor
Lawrenceburg, IN 47025
812.537.8800

Dear Ms. Ruwe,

Pursuant to the order of Special Judge Brian Hill order dated, April 20, 2016, I am interested in obtaining the audio record from the grand jury proceedings pertaining to Cause No. 15D02-1103-FD-00084; however, I am seeking clarification as to what information will be provided. Judge Hill's order stated that I was entitled to receive "all audio recordings regarding your proceedings." Will you be providing only the portions of the audio transcribed for the criminal trial or will the audio also include the audio record of all interaction between the prosecution and members of the grand jury prior to witness testimony? Please pardon any confusion on the matter but I was initially told the transcripts were complete. In addition, can you please provide me with the name of the judge, or other authority, authorizing the transcription of only certain segments of the grand jury record?

A copy of this letter can be found on www.danbrewington.blogspot.com for your convenience. Feel free to contact me with any questions.

Very truly yours,



Daniel P. Brewington

[Redacted]
[Redacted]
[Redacted]

contactdanbrewington@gmail.com

EXHIBIT F

Re: Grand Jury Audio in Cause No. 15D02-1103-FD-00084

July 5, 2016

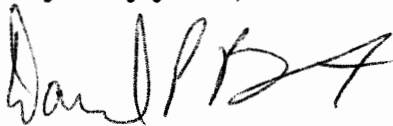
Dearborn County, Indiana Superior Court II
Chief Court Reporter Barbara Ruwe
215 W High St
2nd Floor
Lawrenceburg, IN 47025
812.537.8800

Dear Ms. Ruwe,

This letter pertains to my prior requests for the Grand Jury Audio in Cause No. 15D02-1103-FD-00084. I have not received a copy of the requested audio nor have I received any correspondence from the Dearborn Superior Court II regarding *the completion of the requested public record*. In the case there is any misunderstanding on the part of your office, I am requesting a copy of the audio record from the grand jury proceedings in Cause No. 15D02-1103-FD-00084, even in light of the possible extra fees associated with Judge Hill's order to alter the official grand jury audio record as the Court Reporter deems appropriate. Please prepare the record as soon as possible.

A copy of this letter can be found on www.danbrewington.blogspot.com for your convenience. Feel free to contact me with any questions.

Very truly yours,



Daniel P. Brewington

[Redacted]
[Redacted]
[Redacted]

contactdanbrewington@gmail.com

EXHIBIT G

July 14, 2016

Daniel Brewington


Mr. Brewington:

The Court has not received a response from you regarding the letter dated April 27, 2016, that was sent to you indicating what the estimated cost of the disc would be. The Court was waiting for a letter in writing from you (as indicated in the letter) to inform us if you still wanted the disc as requested by you. A copy of the April 27, 2016, letter is attached.

The charge will be \$300.00. The Court has spent many hours in getting the disc ready plus the cost that was incurred from our IT person.

The disc may be picked up in the auditor's office at your convenience.



Barbara Ruwe, Chief Court Reporter
Dearborn Superior Court II

attachment

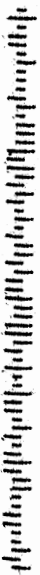


DEARBORN SUPERIOR COURT II
Sally A. McLaughlin, Judge

Courthouse
215 West High Street
Lawrenceburg, IN 47025

Daniel Brewington

45212-173029



CH. 452
15 JUL 16
PM 5:1

NEOPOST
07/15/2016
FIRST-CLASS MAIL
US POSTAGE \$000.46



ZIP 47025
041M11272911

1 about fifteen (15) days prior to trial and then we can
2 work that out in any instructions at that pre-trial.
3 Any other issues today, Mr. Barrett?
4 MR. BARRETT: You said trial rule, you mean criminal rule 4(a)?
5 COURT: Yell I'm sorry, criminal rule 4(a).
6 MR. BARRETT: Okay, I just wanted to be sure.
7 COURT: I think its subsection (a), it's under criminal rule 4.
8 MR. BARRETT: I think you're right.
9 COURT: But I think it's (a).
10 MR. BARRETT: I just wanted to be sure what you're referring to.
11 COURT: Anything else?
12 MR. BARRETT: And the Court's indication is that it will rule before
13 the end of the week on the motion to reduce bond?
14 COURT: I'm going to go right back to the office this
15 afternoon and try to get through the evidence and
16 hopefully have a ruling out tomorrow or Friday.
17 MR. BARRETT: Thank you, your honor.
18 COURT: Okay?
19 MR. NEGANGARD: Thank you, your honor.
20 COURT: That's all for today.

21 **DANIEL BREWINGTON – FINAL PRE-TRIAL HEARING -**

22 **SEPTEMBER 19, 2011**

23 COURT: We're here in Case # 15D02-1103-FD-84, the State
24 of Indiana versus Daniel Brewington. Let the
25 record reflect the State appears by Prosecuting

1 Attorney, Aaron Negangard. The Defendant
2 appears in person and by counsel, Bryan Barrett.
3 This matter is set today for a final pre-trial
4 conference with a jury trial set to commence on
5 October 3, 2011 at 9:00 a.m. A couple of the issues
6 that we had, um, for consideration today, um, first
7 of all back in August, I think it was even maybe
8 prior to our last bond reduction hearing, the State
9 had made a motion to release Grand Jury Exhibits
10 which was granted and those were actually admitted
11 into evidence at the bond reduction hearing that was
12 held on August 17th, I believe that was the date it
13 was. Being that those have been admitted as public
14 record, there was a question by Defense counsel, we
15 just had a brief conference in chambers before
16 coming out on the record to make sure that those
17 were allowed to be released to the Defendant and
18 yes, that is the case and I don't, uh, there were some
19 conversations between Mr. Negangard and Mr.
20 Barrett about getting that transcript and that might
21 happen I think immediately after this hearing today
22 and as I recall, I think I may still, I'm pretty sure the
23 transcript, I didn't bring that back. That's still at my
24 office, so for whatever reason if Mr. Barrett needs
25 that, it can happen in Rush County too, I suppose.

1 Um, so that release is allowed. Um, there was also
2 the State made a motion for confidentiality of
3 juror's names and identities and that was filed on
4 August 9, 2011. Is there any response to that
5 motion for the record Mr. Barrett?

6 MR. BARRETT: I don't object as long as we uh, or if something
7 should come up during the process. I'm sorry?
8 (Mr. Brewington conversing with Mr. Barrett) I do
9 not object. My client does object apparently your
10 honor, so I don't know if you want to...

11 COURT: And what's the nature of your objection Mr.
12 Brewington?

13 MR. BREWINGTON: Just a lack of evidence that I pose any danger to
14 anybody. There hasn't been any kind of evidence
15 admitted that I pose a risk to, physical risk to any
16 juror or any witness, anything like that, or at least
17 any credible evidence.

18 COURT: Okay, Jury Rule #10, subtitle, juror safety and
19 privacy, um, I'm going to emphasize privacy, uh,
20 personal information relating to a juror or a
21 perspective juror not disclosed in open Court is
22 confidential other than for the use of the parties and
23 counsel. The Court shall maintain that
24 confidentiality to an extent consistent with the
25 Constitutional statutory rights of the parties. Now

1 while that rule in itself makes would, makes the
2 juror identities confidential unless disclosed in open
3 Court, it ordinarily would be made available to you.

4 I'm going to disagree with you based on the
5 evidence that was presented at the bond reduction
6 hearing that some of your, and call them alleged or
7 whatever, I think that the State has made a prima
8 facia case at least that there's been a history of
9 disclosing private information. I don't know if
10 there would be information to say that you were a
11 physical risk to their safety but I think the privacy
12 issue is definitely a concern based on the evidence
13 that has been previously submitted and for that
14 reason that motion for confidentiality of juror's
15 names and identities is going to be granted. Um,
16 and the jury questionnaires that we have, the
17 summons' will go out today after this hearing and
18 um, both counsel received copies of the juror
19 questionnaires that have been returned. There are
20 several that have not been returned yet but as soon
21 as the Court gets those, the ones that are provided to
22 Counsel will have redacted names and signatures
23 and as far as I can tell, that's the only information
24 redacted from those juror questionnaires and as the
25 new questionnaires come back when the summons

1 are returned, those names will be redacted and they
2 will be provided to both counsel as soon as possible
3 once they get uh, once they are returned to the
4 Court. As to logistics, the day of the trial, um, and
5 this is the case with all jury trials in my Court any
6 way, they are going to be referred to as, the jurors
7 will be referred to as numbers. Everyone, all the
8 jurors will have and prospective jurors and all will
9 have placards around their neck that they'll have
10 their number. So I'm going to order that the parties
11 refer to those jurors by their number. There will be
12 asking of names or addresses or phone numbers
13 during voir dire or frankly anytime during the trial.
14 If there comes up an issue in either party, whether
15 the State or the Defendant can show a good cause
16 why an individual's identity needs to be revealed to
17 the parties, we'll deal with that on a case by case
18 basis and if that is, if sufficient evidence is shown
19 that that would be necessary, then we'll deal with
20 that. I don't know if we'll get all the other jurors
21 out or have a in chambers conference to question
22 that juror or whatever but the Defendant or the State
23 for that matter would have right if there's good
24 cause to show why a particular jurors name needs to
25 be revealed. We can take precautions and do that.

1 Um, the Defendant had previously filed a Motion in
2 Limine; file marked back on September 6th. Does
3 the State have any objection to that Motion in
4 Limine?

5 MR. NEGANGARD: No your honor.

6 COURT: Okay. The State filed their Motion in Limine, file
7 marked September 19th of this year. Is there any
8 response to that, Mr. Barrett?

9 MR. BARRETT: There's no objection to it at this point your honor.

10 COURT: The final, well actually not the final issue; I have
11 sent out some proposed preliminary and final
12 instructions. Obviously it's a little premature on the
13 final instructions but as far as the preliminary were
14 there any known issues with that and again I'm not
15 going to prohibit from adding any if they want to, if
16 what we find out anything in voir dire if you want to
17 add a preliminary instruction but any issue that we
18 know of with the proposed preliminaries at this
19 point from the State's perspective, Mr. Negangard?

20 MR. NEGANGARD: No your honor.

21 COURT: Mr. Barrett?

22 MR. BARRETT: No your honor.

23 COURT: Okay and I think we do have an electronic copy of
24 those here so if we do need to make some changes,
25 we ought to be able to do that in short order. Um,

1 the Court anticipates summoning eighty (80) jurors
2 based on the number and what I've been told about
3 the Courtroom and our capacities, I'm intending to
4 call forty (40) jurors to be here first thing in the
5 morning and then we'll begin voir dire and then in
6 the summons we'll have the subsequent forty (40),
7 probably appear somewhere around 12:30, 1:00
8 p.m. and we'll have a second batch if we need to get
9 into the second forty (40) to get our jury. Is there
10 any issue or objection to that process Mr.
11 Negangard?
12 MR. NEGANGARD: No your honor.
13 COURT: Mr. Barrett?
14 MR. BARRETT: No your honor.
15 COURT: Alright um, any other issues which need to be
16 addressed today from the State's prospective Mr.
17 Negangard?
18 MR. NEGANGARD: No your honor.
19 COURT: Mr. Barrett?
20 MR. BARRETT: My client wishes to address the Court your honor.
21 COURT: Go ahead Mr. Brewington.
22 MR. BREWINGTON: Uh, I've prepared just a statement. I've been
23 incarcerated in DCLEC, the Dearborn County Law
24 Enforcement Center for over six (6) months and I
25 have yet to receive the following from either of my

1 public defenders. I have absolutely no explanation
2 of the alleged crimes leading to the charges against
3 me including dates, specific incidents, etc. I've
4 haven't had any meeting to discuss trial preparation.
5 I've only met with Mr. Barrett and John Watson for
6 a combined total of less than two (2) hours. I
7 haven't been provided with any evidence from a
8 public defender. The only evidence that I've
9 gathered has been given to me by my family. Uh,
10 there has been no approach, no effort to approach
11 me about potential evidence and witnesses to aid in
12 my defense. Mr. Barrett has refused to contact my
13 mother to obtain such information even after my
14 mother volunteered to hand deliver beneficial
15 evidence. Mr. Barrett has also failed to provide me
16 with any of the prosecution's evidence submitted
17 during the Court. I understand today that you just
18 ruled on the Grand Jury evidence but I don't have
19 any of the exhibits that have been, any of the other
20 exhibits that have been submitted during Court. Uh,
21 to my knowledge, Mr. Barrett has not attempted to
22 obtain any information concerning Keith Jones.
23 That's the man who made the allegation that I
24 somehow uh, approached him to cause harm to one
25 of the uh, allegedly cause harm to one of the

1 witnesses in this case. Uh, there's quite a bit of
2 information about him that was obtained in
3 Columbus, Ohio in the capital. You know most of
4 this information involves first amendment rights. I
5 have no idea if there has been a first amendment
6 expert that was subpoenaed. There hasn't been any,
7 to my knowledge, there's been no subpoena from
8 mental health expert to refute any of the findings of
9 Dr. Connor which has been, the prosecution used
10 the phrase that I have a psychological disturbance
11 that doesn't lend itself well to proper parenting a
12 number of times but haven't been, you know, to my
13 knowledge, there's no way to even refute, there's
14 going to be no way to refute that because there is
15 not expert. Also my defense has failed to subpoena
16 Dr. Connor's case file from the August 29, 2009, or
17 2007 child custody evaluation which is where Dr.
18 Connor's findings are derived from. Uh, to my
19 knowledge, there's been absolutely no depositions
20 from the State's witnesses or any of the alleged
21 victims. Uh, my public defender has failed to file
22 any motions to help preserve appealable issues
23 including but not limited to Motion to Dismiss due
24 to constitutional defective indictment, motion for a
25 special prosecutor, motions to suppress evidence as

1 the prosecution obtained my records from a
2 psychologist without my knowledge and without a
3 hearing per Indiana law and these are just some of
4 the problems that jeopardize my right to a fair trial
5 on October 3, 2011. I still haven't, I don't, I haven't
6 received any indication of any strategy from my
7 defense. I just want to address these issues with the
8 Court in the hopes of at least preserving some of my
9 civil rights and I can submit this to the Court is, uh,
10 these are just issues that I want on the record. I
11 have absolutely no idea of the direction my defense
12 is going...

13 COURT: Okay, what relief are you asking for?

14 MR. BREWINGTON: Uh, the biggest thing is to continue the hearing
15 because there's absolutely no way uh, some of the
16 charges, some of the alleged charges date back for
17 over four (4) years and uh, I have no idea of any
18 specifics, anything like that. I haven't been able to
19 speak to my public defender about these issues or
20 when these uh, when these things happened, any
21 kind of information from me, explanations, there's
22 uh, the prosecution submitted one thousand three
23 hundred sixty-eight (1,368) pages of discovery
24 answers and I have yet to go through that, any of
25 that or speak about any of that with my public

1 defender and also uh, the public defender, to my
2 knowledge, didn't make any attempt to get that
3 from the prosecution until uh, roughly August 2nd.
4 Mr. Watson, my former public defender, told the
5 Court that he would make every effort to get them
6 to Mr. Barrett but Mr. Watson failed to do that and
7 uh, and not I'm just, you know, I've been diligent in
8 organizing, organizing, uh, and documenting things
9 and I mean as you can see, I bring all of this
10 information to Court, yet uh, I haven't, I've been
11 prohibited from playing any role in my defense and
12 so that's, that's the key issue is that, in two (2)
13 weeks, especially with me just being allowed to
14 review the Grand Jury transcripts, there's no way to
15 properly prepare for the case or if the case, if my
16 defense has been properly prepared, I have no way
17 of knowing it because uh, there's been very little to
18 no communication between Mr. Barrett and myself.
19 So that's my main concern is just uh, to my
20 knowledge, I have absolutely no defense or I do not
21 know what the defense is.
22 COURT: So after that, your relief you're requesting a
23 continuance of the jury trial?
24 MR. BREWINGTON: Continue the jury trial until a date where I can, until
25 I have a date where to meet with you know, Mr.

1 Barrett or if Mr. Barrett's not interested in meeting
2 with me and preparing a defense and asking me if
3 there's any witnesses or any evidence that I may
4 have with another public defender. Essentially it
5 almost has to be an indefinite thing because I have
6 no idea what the Grand Jury transcripts consist of
7 and the evidence and without knowing that, I
8 wouldn't have any idea of what kind of evidence or
9 documentation needs to be provided or witnesses
10 that need to be called and so forth.

11 COURT: I thought when we were here last you were
12 complaining the trial hadn't happened yet. Am I
13 inaccurate in my...

14 MR. BREWINGTON: Excuse, I didn't...

15 COURT: I mean, I thought you had an issue last time because
16 your trial date kept getting continued for these
17 reasons and you were ready to get it started.

18 MR. BREWINGTON: Well that was under the assumption that there was
19 something, that there was a, there was a defense
20 being prepared and there, uh, uh, Mr. Barrett, when
21 Mr. Barrett, uh, was attending to a family issue, his
22 assistant, Justin Curry, left him in charge of
23 preparing my defense which I'm not sure that Justin
24 Curry is an attorney.

25 COURT: Justin Curry is not here. He's not representing your

1 or whoever his assistant, so.

2 MR. BREWINGTON: Yell, well okay, yes, Justin Curry...

3 COURT: Just because he may have fielded some phone calls

4 when Mr. Barrett was out of the office, doesn't

5 mean that he was preparing your defense I don't

6 think but...

7 MR. BREWINGTON: ...oh, okay, well he was just, he was giving legal

8 advice uh, I have evidence of that in here in an e-

9 mail, uh, but he informed uh, me and my family that

10 the trial would be ready to happen on August 16th

11 and uh since then, I haven't seen any evidence, there

12 just has been absolutely no discussion about uh, my

13 defense.

14 COURT: Okay. Does the State have a position, Mr.

15 Negangard?

16 MR. NEGANGARD: Your honor, um, the issue before was that the jury

17 trial was being continued because Mr. Barrett hadn't

18 had time to prepare a defense because he had only

19 been on the case a month and he was dealing with

20 some very important family issues. It is my

21 understanding that the Defendant objected to any

22 continuance at that time, um, and in the interest of

23 fairness and ensuring that Mr. Brewington got a

24 defense, um, a fair defense, the Court continued this

25 based on an emergency, found there was an

1 emergency and then continued the jury trial to this
2 setting. Defense wasn't concerned; I just don't
3 know that Mr. Brewington is being honest with the
4 Court. He wasn't concerned in August of this
5 month that his attorney had not had time to prepare
6 a defense. Now in October, now in September
7 where we are two (2) weeks from the jury trial, now
8 he's um mad that his attorney hasn't talked to him
9 enough as far as I can tell. Um, if the Defendant
10 wants a continuance, um, you know, I'm not going
11 to take a position one way or the other with regard
12 to that. I'm anxious and looking forward to trying
13 this case on October 3rd. We're ready on October
14 3rd. However, you know, whatever the Court deems
15 appropriate to address these issues raised by the
16 Defendant, but I also want to put on the record that
17 Mr. Brewington's integrity is at issue here and I
18 don't see that you know, just based on the
19 inconsistencies of what he had been complaining to
20 the Court before to and then now he's complaining,
21 it seems to me that the motivation is more about
22 um, complaining and seeing any way to keep this
23 case from a resolution than really getting a
24 resolution, almost like he's trying to sabotage his
25 own case. He's comfortable in August going

1 forward with the trial even though his defense
2 attorney hasn't had an opportunity to review one
3 document or anything else based on a family
4 emergency and then now today um, he wants more
5 time for his defense attorney to talk and meet with
6 him. Um, so you know, I do want to get that noted
7 for the record but as far as if the Defendant wants a
8 continuance so he can meet with his counsel further
9 and the Court feels that's appropriate, I don't have
10 any objection to that.

11 MR. BREWINGTON: If I may your honor?

12 COURT: Go ahead.

13 MR. BREWINGTON: In terms of Mr. Negangard's attempt to character
14 assassination on my integrity, the DCL...

15 COURT: Nothing he says is evidence.

16 MR. BREWINGTON: DCLEC records, phone records, which they've been
17 checking periodically and the visitation records,
18 both document that I have had little to no contact
19 with Mr. Barrett so in terms of uh, uh, and like the
20 allegation that I'm not being...

21 COURT: The point is though you were wanting trial a month
22 ago.

23 MR. BREWINGTON: Well also, there was another...

24 COURT:you didn't bring this up then. You were actually
25 pushing...

1 MR. BREWINGTON: ...well there was uh, well there was another...

2 COURT: ...you were affirmatively pushing for trial.

3 MR. BREWINGTON: ...issue of preserving my right to uh, uh, being tried

4 within six (6) months and that was weighed, you

5 know, over something that I weighed against uh,

6 you know proper defense which Mr. Curry ensured

7 me that was going to be available. Since then uh,

8 since then, my right has been inadvertently waived

9 and also I became more conscious that...

10 COURT: ...it wasn't waived; it was postponed. The rule

11 required me to reset it as soon as reasonably

12 possible.

13 MR. BREWINGTON: Yell, yell...

14 COURT: ...and I've done that.

15 MR. BREWINGTON: ...yes, yes, I understand that but my concerns are

16 that I've had absolutely no uh, participation in the

17 defense that includes not knowing what the Grand

18 Jury transcripts say and evidence consists of but

19 we're talking about two thousand (2,000)

20 documents that I haven't had an opportunity to go

21 over it with, with my lawyer and that uh, that raises

22 a big issue with me and that's one of the major,

23 major issues. Also I have no idea if there's been

24 any subpoenas, uh, witnesses, uh, witnesses to

25 testify, what have you and I still do not know an

1 exact, any specifics as to the crimes that I allegedly
2 committed that constitute the charges that have been
3 filed against me.

4 COURT: Okay. Based on what's happened so far since I've
5 been involved in this case, I'm going to deny your
6 motion for continuance. We've got two (2) weeks
7 until trial. Based on my understanding of things,
8 there isn't anything that the State's going to offer
9 that's not going to be available to you by the end of
10 this afternoon. So you've got two (2) weeks to
11 confer with counsel and we'll get started with the
12 jury trial on October 3rd at 9:00 a.m. Anything else
13 Mr. Negangard?

14 MR. NEGANGARD: No your honor.

15 COURT: Mr. Barrett?

16 MR. BARRETT: No your honor.

17 COURT: Alright, that's all for today.

18 MR. NEGANGARD: Thank you, your honor.

19 MR. BARRETT: Thank you, your honor.

20 MR. BREWINGTON: I'm sorry, your honor. Could I submit this?

21 MR. BARRETT: He would like to submit as part of the record your
22 honor.

23 MR. BREWINGTON: I want to make that part of the record – the uh, uh,
24 letter.

25 MR. BARRETT: I believe it was what he just read to you. Is it what

