STATE OF INDIANA	)	IN THE DEARBORN SUPERIOR COURT II
	)	
COUNTY OF DEARBORN	)	GENERAL TERM 2017
	)	
DANIEL P. BREWINGTON	)	CAUSE NO.____________________________
	)	
Petitioner, pro se	)	
	)	
V.	)	
	)	
STATE OF INDIANA	)	
	)	
Respondent.	)	

VERIFIED PETITION FOR POST-CONVICTION RELIEF

COMES NOW the Petitioner Daniel P. Brewington ("Brewington"), pro-se, and in support of this VERIFIED PETITION FOR POST-CONVICTION RELIEF, pursuant to Indiana Post-Conviction Remedies Rule 1§3, states as follows:

1) Brewington presently resides at [redacted]

2) Brewington was sentenced in Dearborn County Superior Court II by Special Judge Brian Hill ("Hill"), of the Rush County Superior Court.

3) Brewington was sentenced for the following offenses under the Cause No. 15D02-1103-FD-0841:

A) Intimidation (Ind. Code 35-45-2-1(a)(1)) (hereinafter, "Count 1");

[1] Hill allowed the trial jury to deliberate on Count 6, Releasing Grand Jury Information despite the prosecution's failure to present any evidence that Brewington released any grand jury information.

B) Intimidation of a Judge, (Dearborn County Circuit Judge James D. Humphrey (hereinafter "Humphrey")) (Ind. Code 35-45-2-1(a)(2)(b)(1)) (hereinafter, "Count 2");

C) Intimidation (Ind. Code 35-45-2-1(a)(1)) (hereinafter, "Count 3");

D) Attempt to Commit Obstruction of Justice (Ind. Code 35-44-3-4) (hereinafter, "Count 4");

E) Perjury (Ind. Code 35-44-2-1(a)(1)) (hereinafter, "Count 5").

4) Brewington was sentenced on October 24, 2011 to 5 years in the Indiana Department of Corrections. Brewington was released from Putnamville Correctional Facility on September 5, 2013.

5) Brewington was found guilty after a plea of not guilty.

6) Brewington, by counsel Rush County Chief Public Defender Bryan Barrett[2][3], filed a notice of appeal on October 24, 2011.

A) By appellate counsel Michael Sutherlin and Sam Adams, Brewington filed an appeal with the Indiana Court of Appeals and later a petition to transfer to the Indiana Supreme Court. Following the opinion in *Brewington v. State*, 7 N.E.3d 946 (2014), Brewington filed a pro se Petition for Rehearing in addition to

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[2] As of at least September 19, 2012, Barrett had been non-compliant for four (4) consecutive quarters as Rush County's only public defender.

[3] The Rush County Public Defender Office is roughly one hour, twenty minutes away from the Dearborn County Courthouse (per Google Maps).

Brewington's pro se Verified Motion for Judicial Disqualification of the Honorable Justice Loretta H. Rush[4] ("Rush").

B) On 1/17/2013, the Indiana Court of Appeals reversed Brewington's convictions on Count 1 and Count 3. On 5/01/2014 the Court granted transfer and affirmed Brewington's remaining convictions; rehearing denied on 7/31/2014. Also on 7/31/2014, Rush denied Motion for Recusal.

7) See ¶ 6 *supra*.

8) BREWINGTON FILES THIS PETITION FOR POST-CONVICTION RELIEF BASED ON THE FOLLOWING GROUNDS:

A) Dearborn Superior Court II altered grand jury transcripts thus violating Brewington's rights under the Fifth, Sixth, and Fourteenth Amendments of the United States Constitution.

B) The Dearborn Superior Court II altered grand jury audio thus violating Brewington's rights under the Fifth, Sixth, and Fourteenth Amendments of the United States Constitution.

C) Hill committed Judicial Misconduct by forcing Brewington to endure unconstitutional trial.

D) Brewington's indictments for intimidation violate Brewington's rights under the First Amendment of the United States Constitution.

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[4] It is noteworthy to mention Chief Justice Loretta H. Rush served on the Indiana Supreme Court Juvenile Justice Improvement Committee and attended meetings with victim Humphrey while Brewington's case was before the Indiana Supreme Court. In addition to serving on the Committee together for over eight years, Rush and Humphrey were members of the Indiana University Maurer School of Law graduating class of 1983.

E) The deprivation of charging information violates Brewington's rights under the Fifth, Sixth, and Fourteenth Amendments of the United States Constitution.

F) Negangard sought convictions against Brewington for violating the Indiana Rules of Professional Conduct for Attorneys, thus violating Brewington's rights under the First, Fifth, Sixth, and Fourteenth Amendments of the United States Constitution.

G) Negangard instructed the trial jury to convict Brewington for reasons other than Brewington's guilt thus violating Brewington's rights under the Fifth, Sixth, and Fourteenth Amendments of the United States Constitution.

H) Negangard abused the grand jury and criminal process to retaliate against Brewington's internet writings thus violating Brewington's rights under the First, Fourth, Fifth, Sixth, and Fourteenth Amendments of the United States Constitution.

I) Kisor argued Brewington's intent was not to threaten harm, thus violating Brewington's rights under the First, Sixth, and Fourteenth Amendments of the United States Constitution.

J) Kisor argued judges enjoy special protections from critical speech, thus violating Brewington's rights under the First, Sixth, and Fourteenth Amendments of the United States Constitution.

K) During trial, deputy prosecutor Kisor issued a warning that Brewington may have a gun in the courtroom and the jury should fear for their lives

thus violating Brewington's rights under the Fifth, Sixth, and Fourteenth Amendments of the United States Constitution.

L) Brewington received no assistance of counsel in violation of the Fifth, Sixth, and Fourteenth Amendments of the United States Constitution.

i) Barrett refused to discuss the criminal case with Brewington prior to trial.

ii) Barrett refused to challenge the unconstitutional indictments.

iii) Barrett made no attempt to subject the prosecution's case to any adversarial testing.

iv) Barrett allowed a non-attorney to file motions on Brewington's behalf.

v) Barrett forced Brewington to waive Brewington's Fifth Amendment protection against self-incrimination.

vi) Barrett tried to waive appealable issues even after Brewington voiced objection.

vii) Barrett sacrificed Brewington's defense to assist a separate investigation of Brewington.

viii) Barrett took no measures to defend or protect Brewington's mental health.

M) Brewington was unable to testify in his own defense, thus violating Brewington's rights under the Fifth, Sixth, and Fourteenth Amendments of the United States Constitution.

N) Brewington's perjury indictment was constitutionally vague, thus violating Brewington's rights under the Fifth, Sixth, and Fourteenth Amendments of the United States Constitution.

O) Brewington was denied a trial before an impartial judge, thus violating Brewington's rights under the Fifth, Sixth, and Fourteenth Amendments of the United States Constitution.

P) Brewington was denied appellate review before an impartial supreme court, thus violating Brewington's rights under the Fifth, Sixth, and Fourteenth Amendments of the Unite States Constitution.

Q) Barrett, Hill, and Negangard tried to rush Brewington to trial without any specific charging information thus violating Brewington's rights under the Fifth, Sixth, and Fourteenth Amendments of the United States Constitution.

R) Brewington received no assistance of counsel at bond reduction hearing thus violating Brewington's rights under the Fifth, Sixth, and Fourteenth Amendments of the United States Constitution.

S) Dearborn County Officials obstructed Brewington's access to Ohio Attorney Robert G. Kelly thus violating Brewington's rights under the Fifth, Sixth, and Fourteenth Amendments of the United States Constitution.

T) Brewington received ineffective assistance of appellate counsel thus violating Brewington's rights under the Fifth, Sixth, and Fourteenth Amendments of the United States Constitution.

9) FACTS IN SUPPORT OF GROUNDS MENTIONED IN ¶ 8 *SUPRA*.

A) DEARBORN SUPERIOR COURT II ALTERED GRAND JURY TRANSCRIPTS, THUS VIOLATING THE FIFTH, SIXTH, AND FOURTEENTH AMENDMENTS OF THE UNITED STATES CONSTITUTION

> "[W]hen the record reveals blatant violations of basic and elementary principles, and the harm or the potential for harm cannot be denied, we will review an issue which was not properly raised and preserved. *Webb v. State*, (1982) Ind., 437 N.E.2d 1330, 1332; *Nelson v. State*, (1980) Ind., 409 N.E.2d 637, 638. This case is one in which the error rises to what is known as fundamental error, one which, if not rectified, would deny the defendant fundamental due process. *Nelson v. State*, 409 N.E.2d at 638." *Smith v. State*, 459 N.E.2d 355 (1984).

Fundamental errors plague the record throughout Brewington's prosecution because Dearborn County Superior Court II altered records Brewington was instructed to rely on in order to prepare a defense. The Dearborn Superior Court II deprived Brewington of evidence/charging information when it arbitrarily omitted portions of the grand jury record from the transcripts. During a pretrial hearing on July 18, 2011, Chief Deputy Joeseph Kisor ("Kisor") instructed Brewington to rely on the entire transcription of the grand jury proceedings to determine which of Brewington's actions the State alleged to be unlawful. In a court filing dated 03/08/2011, Office of the Dearborn County Prosecutor F. Aaron Negangard ("Negangard") filed the State's Praecipe directing the Court Reporter of the Dearborn Superior Court II "to prepare and certify a full and complete transcript of the grand jury proceedings in this cause of action." On 6/15/2011, Barbara Ruwe ("Ruwe"), Chief Court Reporter for the Dearborn Superior Court II certified the transcription of the grand jury proceedings in Brewington's case to be "full, true, correct and complete." The transcripts, however, are not complete. Page one of the

grand jury transcripts begins with Negangard instructing the foreman of the grand jury to swear in the first witness rather than an introduction from Negangard and an explanation as to the nature of the grand jury investigation. Any preparation of an "abridged" version of an official record would first require an order from a court to do so, which is absent from the current case. Even if a court ordered the preparation of a shortened version of the official record of the grand jury, marked redactions and notations are required in place of omitted material and the page numbers would remain the same as the original record of the proceedings. Ruwe omitted portions of the grand jury proceedings from the official transcripts stripping Brewington of "a meaningful opportunity to present a complete defense." In *Wurster v. State*, the Indiana Supreme Court wrote:

> "Indiana Code § 35-34-1-7 provides that '[a]n indictment shall be dismissed upon motion when the grand jury proceeding which resulted in the indictment was conducted in violation of IC 35-34-2.' We agree that this does not require dismissal for immaterial irregularities. Here, however, because there are no transcripts of the conversations between the prosecutor and grand jurors, Turpin is foreclosed from establishing prejudice." Wurster v. State, 715 N.E.2d 341 (1999)

Ruwe omitted, at least, any instruction to the grand jury regarding the nature of the investigation thus depriving Brewington of Due Process protections guaranteed by the Sixth and Fourteenth Amendments. Not only was Ruwe and the Dearborn Superior Court II aware of the altered transcripts, Ruwe and the Dearborn Superior Court II altered the audio from the grand jury proceedings. The above is a blatant violation of basic and elementary principles in violation of the Constitution of the United States, and the harm suffered by Brewington

cannot be denied thus allowing the review of the issue(s) regardless of whether the issue was properly raised and preserved. The above rises to fundamental error and denies Brewington fundamental due process if not rectified. (See Smith v. State, 459 N.E.2d 355 (1984).)

B) THE DEARBORN SUPERIOR COURT II ALTERED GRAND JURY AUDIO THUS VIOLATING THE FIFTH, SIXTH, AND FOURTEENTH AMENDMENTS OF THE UNITED STATES CONSTITUTION

The Dearborn Superior Court II altered grand jury audio, thus obstructing Brewington's ability to challenge the official misconduct in this case. Hill and the Dearborn Superior Court II have obstructed the release of the grand jury audio for over five years. In orders dated 1/12/2012 and 1/24/2012 regarding two public record requests, Hill ordered the release of grand jury audio in Brewington. However, without warning, Hill issued the Court's AMENDED ORDER RELEASING AUDIO COPIES, filed 2/02/2012, finding the following,

1.) "Subsequent to the issuance of those two Orders, the Court has discovered that no audio recordings of the Grand Jury Proceedings for February 28, 2011, March 1, 2011, and March 2, 2011 were admitted into evidence in this cause, therefore, these audio recordings are not a record in these proceedings."
2.) The Final Pretrial Conference/Bond Reduction Hearing which had originally been set on July 18, 2011 was continued on the State's Motion and no hearing took place on that date. If a telephonic conference with counsel was held on that date, it was merely an effort to reschedule and find an agreeable date and no recordings were made. Therefore, no audio recording exists for July 18, 2011.
3.) For the above stated reasons, the recipients' request for audio recordings of the Grand Jury Proceedings for February 28, 2011, March 1, 2011 and March 2, 2011 and a Pretrial Hearing for July 18, 2011 are rendered moot because there are no such audio recordings

existing in this case."

Hill's order requires someone from Dearborn County contacting Hill in Rush County to argue against the release of the above-mentioned audio recordings as Hill serves as Superior Court Judge for Rush County, Indiana. The CCS entry dated 7/21/2011 of the case clearly states that final pretrial hearing took place on 7/18/2011 as the entry states who attended the hearing:

> "FINAL PRE-TRIAL HEARING; DEF W/ATTY B BARRETT; STATE BY J KISOR; COURT TO RESCHEDULE BOND REDUCTION HEARING TO AUGUST 3, 2011 AT 1: 30 PM; SPECIAL JUDGE HILL; COURT TO PREPARE ORDER"

Of significance is that it was during the 7/18/2011 hearing where Kisor informed Brewington a complete transcript of the grand jury proceedings was being prepared and that Brewington could rely on the transcript for specific indictment information. Hill also set 7/18/2011 as the original plea deadline despite the State's failure to provide Brewington with *ANY* examples of criminal activity for which Brewington was to defend. Hill only recalled the 7/18/2011 proceeding after being notified of Brewington's appellate counsel possessing affidavits from people who attended the 7/18/2011 hearing. Hill still refused to order the release of the grand jury audio by claiming the audio was not admitted into evidence. When Brewington requested the grand jury audio in January 2016, Hill issued an adversarial ruling specific to Brewington. In an order dated 2/4/2016, Hill stated:

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

set forth which would necessitate the release of said audio recordings."

Hill's declaration that Brewington alleged the audio recordings of the grand jury proceedings were admitted to the trial record is patently false and there is no evidence to support such a claim. Brewington simply maintained the record of the grand jury proceedings was admitted during trial in the form of the written transcript the audio recordings are simply another means to record proceedings as is the use of stenography and shorthand; thus, the grand jury *record* was part of the record and subject to public viewing. As for Hill's contention that Brewington failed to provide a sufficient reason for the release, Hill's excuse was exclusive to Brewington and was not used to deny prior requests, from the public, seeking the same information. Nevertheless, providing a reason to release public records is not required per Indiana statues regarding the release of public records. When Brewington filed a complaint with the Indiana Public Access Counselor ("PAC"), the PAC issued an opinion in Brewington's favor. In an opinion dated April 14, 2016, the PAC found that the excuses provided by Judge Brian Hill, in orders dating back to January 2012, for not releasing the grand jury audio in Brewington's case were not valid exceptions under Indiana law. The opinion also indicated that Hill told the PAC that Hill would issue an order releasing the grand jury audio. In Hill's ORDER ON REQUEST FOR RELEASING AUDIO COPIES {AS TO GRAND JURY PROCEEDINGS OF FEBRUARY 28, 2011, MARCH 1, 2011, AND MARCH 2, 2011), filed 4/20/16, Hill offered a new excuse as to why not to release an official copy of the grand jury audio:

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.

The release of the audio presents several problems. There is no question as to whether the Dearborn Superior Court II altered the grand jury audio because the audio contains less information than the transcription of the audio record. Also problematic is Hill's claim that "four to five" other grand jury proceedings were intertwined. This is false as the transcripts and audio are void of Negangard instructing the grand jury that the investigation was switching away from or returning to the investigation of Brewington. Regardless, if Ruwe or another employee of the Dearborn Superior Court II contacted Hill to make Hill aware of other grand jury investigations being intertwined with Brewington's, Hill's decision to release the grand jury audio is based on an ex parte argument that is contrary to Brewington's interests.

The release of the grand jury audio demonstrates the Dearborn Superior II Court staff converted the original file format of the grand jury audio and then proceeded to edit and rename audio files. Nevertheless, the audio is void of any true threat allegation by Negangard leaving Brewington without any opportunity to mount a defense against the "true threat" argument mentioned in *Brewington*. Either Ruwe omitted Negangard's true threat argument from the transcription of

the grand jury audio then later attempted to edit the audio to match the transcripts; *or* the State introduced a new ground for Brewington's conviction during trial. Either scenario constitutes fundamental error as both are due process violations stripping Brewington of any "meaningful opportunity to present a complete defense." *Kusch v. State*, 784 N.E.2d 905, 924-25 (Ind.2003) (quoting *Crane v. Kentucky*, 476 U.S. 683, 690, 106 S.Ct. 2142, 90 L.Ed.2d 636 (1986)). The above is a blatant violation of basic and elementary principles in violation of the Constitution of the United States, and the harm suffered by Brewington cannot be denied thus allowing the review of the issue(s) regardless of whether the issue was properly raised and preserved. The above rises to fundamental error and denies Brewington fundamental due process if not rectified. (See Smith v. State, 459 N.E.2d 355 (1984).)

C) HILL COMMITTED JUDICIAL MISCONDUCT BY FORCING BREWINGTON TO ENDURE UNCONSTITUTIONAL TRIAL

In *Brewington v. State*, 7 N.E.3d 946 (2014), the findings by the Indiana Supreme Court demonstrate Hill forced Brewington to endure an unconstitutional criminal trial and incarceration, despite Hill being aware that Negangard argued unconstitutional grounds for Brewington's convictions. The following points are statements of fact, as alleged by the Indiana Supreme Court, that appear in the opinion of *Brewington*:

i) The Office of the Dearborn County Prosecutor argued the trial jury should convict Brewington under a "plainly impermissible" and unconstitutional "criminal defamation" ground. at 973

ii) The Dearborn County Prosecutor failed to distinguish the difference "between threatening the targets' reputations under Indiana Code section 35-45-2-1(c)(6)-(7) and threatening their safety under subsections (c)(1)-(3)." at 975

iii) The jury instructions and general verdict were "fundamentally erroneous." at 972

iv) Barrett's alleged trial strategy "was constitutionally imprecise, but pragmatically solid--and nothing suggests that counsel blundered into it by ignorance, rather than consciously choosing it as well-informed strategy. It was an invited error, not fundamental error or ineffective assistance of trial counsel." at 954

v) If not for Hill's understanding that Barrett employed a trial strategy consisting of NOT objecting to the fundamentally erroneous jury instructions in an effort to take advantage of the prosecution's unconstitutional criminal defamation prosecution, Brewington's guilty verdicts would have been overturned. at 974

In *Brewington v. State*, Justice Loretta H. Rush addressed the similarities between fundament error and ineffective assistance of counsel, while introducing a new legal interpretation of the two principles never before addressed by the Indiana Supreme Court:

> "But the two principles overlap in a second way we have not previously discussed--because deficient performance by counsel, which is the express premise of an ineffective-assistance claim, is also implicit in fundamental error. A 'finding of fundamental error essentially means that the trial judge erred . . . by not acting when he or she should have,' even without being spurred to action by a timely objection. *Whiting v. State*, 969 N.E.2d 24, 34 (Ind. 2012). An error blatant enough to require a judge to take action sua sponte is necessarily blatant enough to draw any competent attorney's objection. But the reverse is also true: if the judge could recognize a viable reason why an effective attorney might not object, the error is not blatant enough to constitute fundamental error. And when a passive lack of objection (here, to the 'threat' instruction) is coupled with counsel's active requests (here, for other related instructions), it becomes a question of invited error."
>
> "And on that basis, we find invited error here." Id at 974

<u>CRIMINAL DEFAMATION = PROSECUTORIAL MISCONDUCT</u>

It should first be noted that any mention of "fundamental error" associated with the State's "plainly impermissible criminal defamation" ground for Brewington's prosecution should be deemed synonymous with malicious "prosecutorial misconduct." Negangard argued Brewington's right to criticize judges was stripped of First Amendment protections when Brewington acted as his own attorney in Brewington's divorce proceedings. Negangard knew the Indiana Supreme Court Disciplinary Commission investigates and enforces attorney discipline. Negangard was also fully aware that Brewington was not an Indiana attorney and that the Indiana Rules of Professional Conduct have no provisions that criminalize the criticizing of judges by Indiana attorneys.

<u>FATAL CONSTITUTIONAL FLAWS IN JUSTICE RUSH'S RATIONALE</u>

In authoring the opinion in Brewington, Rush acknowledged the existence of multiple fundamental errors in Brewington's trial that were caused by Negangard's "criminal defamation" argument. Rather than grant Brewington relief from the fundamental errors, Rush framed an invited error argument around a trial strategy theory, despite the trial record being void of Barrett's thoughts on trial strategy. Justice Rush then rationalized stripping Brewington's right to relief from fundamental error by speculating that Hill did not intervene into Negangard's unconstitutional trial because Hill somehow believed that Barrett's non-objection to the multiple fundamental errors was an attempt to take advantage of Negangard's unconstitutional prosecution against Brewington. For the record, Brewington does not entertain Rush's actions to be anything but egregious efforts to strip Brewington of constitutional freedoms in an attempt to protect the integrity of a fellow judge. Barrett did not have any plausible trial strategy because Barrett refused to ever meet with Brewington to investigate Brewington's case prior to trial. With that said, Brewington nor this Court need to consider the reasoning or logic behind Rush's contentions because Rush's alternative facts raised new constitutional errors not available to Brewington prior to the opinion in *Brewington*. For the purposes of this petition, Brewington assumes Rush's rationalizations, in denying Brewington relief from Negangard's unconstitutional prosecution, are based in reality. Brewington is not requesting this post-conviction court to overrule the opinion of the Indiana Supreme Court. This post-conviction court need only to review Rush's new finding of "facts" used in the Indiana Supreme Court's

rationalization of an invited error waiver. For Rush's invited error argument to be true, Rush's new findings require the following:

i) A "double assumption" by the Indiana Supreme Court regarding the mindsets of both Barrett and Hill because the trial record is void of Barrett's thoughts on trial strategy as well as Hill's thoughts on Barrett's thoughts on trial strategy.

ii) It would have been impossible for Hill to recognize that Barrett's trial strategy "sought to exploit the prosecutor's improper reliance on 'criminal defamation' to the defense's advantage," without Hill first having prior knowledge that Negangard's trial strategy consisted of telling a jury to convict Brewington for "criminal defamation."

iii) As the record is void of any thoughts relating to Barrett's trial strategy, Barrett and Hill had to discuss the prosecutorial misconduct and the alleged trial strategy off the record and outside the presence of the prosecution prior to trial.

iv) As the general indictments and record of the case prior to trial are void of any mention of specific criminal acts by Brewington, the only way Barrett could have known the prosecution was going to argue two separate grounds for Brewington's conviction was if the prosecution expressed its trial strategy to Barrett outside of the record. If, prior to trial, the prosecution told Barrett it planned to argue both a constitutional and unconstitutional ground for Brewington's convictions, then it would constitute both ineffective assistance of

counsel and fundamental error if Barrett failed to notify Brewington or the trial court that the Office of the Dearborn County Prosecutor was engaging in a conspiracy to deprive Brewington of civil rights.

v) If Negangard failed to tell Barrett about the prosecution's strategy to argue both a constitutionally permissible ground and a constitutionally impermissible ground for Brewington's prosecution, then it would have been impossible for Barrett to develop a trial strategy that sought to take advantage of the unconstitutional aspects of Negangard's prosecutorial arguments. It also demonstrates Negangard failed to provide Brewington with constitutionally sufficient indictment information required for Brewington's defense.

vi) Since Chief Justice Loretta H. Rush wrote about Hill's awareness of Barrett's trial strategy that sought to take advantage of Negangard's attempts to seek convictions against Brewington for criminal defamation; Barrett, Hill, and the Indiana Supreme Court knew Negangard sought and obtained indictments under the same argument, thus rendering Brewington's indictments unconstitutional. Indictments based on protected speech are fundamentally erroneous and such errors are impossible for Brewington to invite.

Brewington understands the absurdity of the above statements but the statements are firmly rooted in fact, or at least the facts as represented by Justice Loretta H. Rush and the Indiana Supreme Court. Rush had no evidence of anyone's thoughts on trial strategy because the record of the case is void of such. This opinion was not a product of haste as 232 days passed from the time of oral arguments to

the filing of the opinion in *Brewington v State*. Brewington's case spent a total of 403 days before the Indiana Supreme. Any question as to whether Hill was aware of Negangard's unconstitutional indictments and criminal arguments prior to trial, or if Rush fabricated the whole theory to justify denying relief from fundamental error, is inconsequential to Brewington because both scenarios constitute fundamental error. Brewington was unable to address Rush's new invited error claim prior to this post-conviction relief because the record is void of the thoughts of the parties involved in Brewington's case and Brewington is unable to read minds.[5] The two scenarios place this post-conviction court in a precarious situation because the new findings in the *Brewington* opinion forces this Court to decide whether Hill forced Brewington to participate in an unnecessary criminal trial, while knowing the prosecution obtained indictments by unconstitutional means; OR, that Chief Justice Loretta H. Rush invented the invited error waiver in order to rationalize stripping Brewington of constitutional safeguards. Either way constitutes fundamental error, thus requiring the vacating of Brewington's entire criminal case.

D) BREWINGTON'S INDICTMENTS FOR INTIMIDATION VIOLATE THE FIRST AMENDMENT OF THE UNITED STATES CONSTITUTION

[5] In *Weedman v. State*, 21 N.E.3d 873 (2014), the Indiana Court of Appeals declined to employ the same speculative standard used in *Brewington* to waive relief from fundamental error. "Despite the language in Brewington, we believe such a 'strategy' argument is more properly addressed in the context of an ineffective assistance of trial counsel issue in post-conviction proceedings. We simply have no information regarding Weedman's trial counsel's thoughts on his strategy." at 895

As mentioned above, in *Brewington v. State*, the Indiana Supreme Court explained the prosecution argued two grounds for convictions of intimidation; an unconstitutional "criminal defamation" ground and a permissible true threat ground. The transcripts and audio from the grand jury investigation demonstrate Negangard only sought indictments against Brewington under an unconstitutional criminal defamation argument:

> "I want to present to the Grand Jury Exhibit 231 which is a summary of blog postings that he made of his blog in Dan's Adventures in Taking on the Family Court and what it is, is we highlighted where he said um, what we felt was over the top, um, unsubstantiated statements against either Dr. Conner or Judge Humphrey. This is not every, and as you can read, it's not every negative thing he said about Dr. Conner, but it's a step that we felt, myself and my staff, crossed the lines between freedom of speech and intimidation and harassment." Trans 338

"Over the top" and "Unsubstantiated statements" are not constitutional grounds for convening a grand jury especially in the absence of any evidence that Brewington's opinions were unsubstantiated or false. As such, Negangard made Brewington a target of a grand jury investigation in retaliation for Brewington's free speech, just five days after the Indiana Supreme Court dismissed a complaint against Negangard that was filed by Brewington. Regardless of whether Brewington's statements were "over the top" or "unsubstantiated," the grand jury indictments are void of any "true threat" allegation mentioned in the *Brewington* opinion. The above is a blatant violation of basic and elementary principles in violation of the Constitution of the United States, and the harm suffered by Brewington cannot be denied thus allowing the review of the issue(s) regardless of whether the issue was properly raised and preserved. The above rises to

fundamental error and denies Brewington fundamental due process if not rectified. (See Smith v. State, 459 N.E.2d 355 (1984).)

E) THE DEPRIVATION OF CHARGING INFORMATION VIOLATES BREWINGTON'S RIGHTS UNDER THE FIFTH, SIXTH, AND FOURTEENTH AMENDMENTS OF THE UNITED STATES CONSTITUTION

As discussed above, Ruwe, Chief Court Reporter for the Dearborn Superior Court II, omitted portions of the grand jury transcripts and audio making it impossible for Brewington to subject the prosecution's case to any adversarial testing. The term "true threat" does not appear anywhere in the record prior to trial, making it impossible for Brewington to prepare a defense against such. Any contention Negangard did in fact argue a true threat ground for Brewington's indictments for intimidation requires acknowledging the fact employees within the Dearborn Superior Court II actively sabotaged Brewington's defense. As tampering with grand jury records with the intention to obstruct justice could not only cost Ruwe her job but also lead to criminal prosecution, the fact Ruwe did suggests that Negangard and Judge Hill were at least aware of Ruwe's illegal conduct, if not directly involved. The above is a blatant violation of basic and elementary principles in violation of the Constitution of the United States, and the harm suffered by Brewington cannot be denied thus allowing the review of the issue(s) regardless of whether the issue was properly raised and preserved. The above rises to fundamental error and denies Brewington fundamental due process if not rectified. (See Smith v. State, 459 N.E.2d 355 (1984).)

F) NEGANGARD SOUGHT CONVICTIONS AGAINST BREWINGTON FOR VIOLATING THE INDIANA RULES OF PROFESSIONAL CONDUCT FOR ATTORNEYS, THUS VIOLATING BREWINGTON'S RIGHTS UNDER THE FIRST, FIFTH, SIXTH, AND FOURTEENTH AMENDMENTS OF THE UNITED STATES CONSTITUTION

During closing, Negangard argued the jury should return guilty verdicts because Brewington violated the Indiana Rules of Professional Conduct for attorneys despite Brewington not being an attorney:

> "As to Count II, Intimidation of a Judge, that is more serious because it involves a Judge but because it involves a Judge, we do need to look at the first amendment issues because you are allowed to criticize judges. Right? I mean, I'm not. Defense counsel's not because we are attorneys. But remember he says he's acting like an attorney so we should treat it as he's acting like an attorney. Well if he's acting like an attorney, then he needs to accountable like an attorney. He could hire his own attorney but he didn't. So you know and he has to suffer the consequences." –Trial trans page 515

It should be first noted that neither Hill nor Barrett stepped in to offer any objection to Negangard advising the trial jury that Brewington's self-representation in a divorce proceeding, waived Brewington's First Amendment protections and criminalized Brewington's speech critical of Judge Humphrey. Both Barrett and Hill were aware that the Indiana Supreme Court Disciplinary Commission[6] maintains jurisdiction over attorney discipline, not county prosecutors. Barrett, Hill, and Negangard were also aware the Rules of Professional Conduct did not grant the

[6] Former Dearborn County Superior Court I Judge Michael Witte has served as the Executive Secretary of the Indiana Supreme Court Disciplinary Commission since 2010.

Indiana Supreme Court Disciplinary Commission the authority to prosecute attorneys for non-criminal violations of the Rules of Professional Conduct. In fact, paragraph [20] under Scope of the Rules of Professional Conduct gives warning of the Rules being misused as procedural weapons by antagonists:

> "[The Rules of Professional Conduct] are not designed to be a basis for civil liability, but these Rules may be used as non-conclusive evidence that a lawyer has breached a duty owed to a client. Furthermore, the purpose of the Rules can be subverted when they are invoked by opposing parties as procedural weapons. The fact that a rule is a just basis for a lawyer's self-assessment, or for sanctioning a lawyer under the administration of a disciplinary authority, does not imply that an antagonist in a collateral proceeding or transaction has standing to seek enforcement of the Rule."

Negangard invoked the Rules of Professional Conduct as a procedural weapon against Brewington despite the Rules not having any jurisdiction over Brewington in any capacity. The above is a blatant violation of basic and elementary principles in violation of the Constitution of the United States, and the harm suffered by Brewington cannot be denied thus allowing the review of the issue(s) regardless of whether the issue was properly raised and preserved. This issue rises to fundamental error and denies Brewington fundamental due process if not rectified. (See Smith v. State, 459 N.E.2d 355 (1984).)

G) NEGANGARD INSTRUCTED THE TRIAL JURY TO CONVICT BREWINGTON FOR REASONS OTHER THAN BREWINGTON'S GUILT THUS VIOLATING BREWINGTON'S RIGHTS UNDER THE FIFTH, SIXTH, AND FOURTEENTH AMENDMENTS OF THE UNITED STATES CONSTITUTION

"'It is misconduct for a prosecutor to request the jury to convict a defendant for any reason other than his guilt.' *Wisehart*, 693 N.E.2d at 59 (quoting *Maldonado v. State*, 265 Ind. 492, 500, 355 N.E.2d 843, 849 (1976))" *Coleman v. State*, 750 N.E.2d 370 (2001)

In addition to seeking convictions against Brewington for violating Rules of Professional Conduct for Indiana attorneys, Negangard requested the trial jury to return guilty verdicts for a number of reasons other than Brewington's guilt.

Negangard argued a conviction was necessary to protect the judicial system and the officials operating within the system.

> "This is an attempt to protect the people who serve us and the system they serve. That is why we're here today." -Negangard Tr. 507

Negangard even argued the failure to convict Brewington would cause our rule of law to fail and ultimately the United States of America.

> "He's held accountable by a verdict of guilty. That's how he's held accountable and that's what we're asking you to do. You cannot allow our system to be perverted that way. The rule of law will fail and ultimately our republic. I submit to you that that is not a result that we want to have happen. That is why we are here today." -Negangard Tr. 504-505

The above is a blatant violation of basic and elementary principles in violation of the Constitution of the United States, and the harm suffered by Brewington cannot be denied thus allowing the review of the issue(s) regardless of whether the issue was properly raised and preserved. The above rises to fundamental error and denies Brewington fundamental due process if not rectified. (See Smith v. State, 459 N.E.2d 355 (1984).)

H) NEGANGARD ABUSED THE GRAND JURY AND CRIMINAL PROCESS TO RETALIATE AGAINST BREWINGTON'S INTERNET WRITINGS THUS VIOLATING BREWINGTON'S RIGHTS UNDER THE FIRST, FOURTH, FIRST, FIFTH, SIXTH, AND FOURTEENTH AMENDMENTS OF THE UNITED STATES CONSTITUTION

Brewington realizes such a claim appears extremely subjective, however, this post-conviction court need only look at Negangard's closing arguments

> "That would become our system of justice if we accept the Defendant's premise that these are only opinions and he was only expressing his political thought. If we accept that premise, then that is the judicial system that we will have. That will be brought on by the invention of the internet. I submit to you that that is not a judicial system we want. That's what this case is about. It isn't about Judge Humphrey. It isn't about Dr. Connor. It is about our system of justice that was challenged by Dan Brewington and I submit to you that it is your duty, not to let him pervert it, not to let him take it away and it happens if he's not held accountable." Tr. 504-505

Negangard affirmatively states that Brewington's criminal proceedings were not about Judge Humphrey nor Dr. Connor. The obvious problem is Negangard's colloquy is another example of prosecutorial misconduct where Negangard sought convictions against Brewington for reasons other than Brewington's guilt. Negangard's outrageous claim also demonstrates neither Hill nor Barrett had any intention of protecting Brewington's constitutional rights to a fair trial. Most of all Negangard's statement has to be viewed as a statement of truth. Negangard's statement acknowledges Negangard used the federally funded Dearborn County Special Crime Unit to investigate Brewington's writings, made Brewington's writings a target of a grand jury investigation, and then prosecuted Brewington to

prevent people like Brewington from using the internet to "pervert" the Dearborn County Judicial System; a clear violation of the First, Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendments. Further evidence of the prosecution's First Amendment retaliation can be gleaned from the transcripts of Brewington's arraignment on 3/11/2011. During Brewington's arraignment, the prosecution offered no evidence that Brewington was a physical danger to anyone. Kisor made the following arguments why Brewington's bond should be high or what restrictions should be placed on Brewington's speech:

> "[W]e are asking that the Court consider making conditions of his bond that he not access the internet, uh, or if the Court would believe that to be too broad, which I'm not sure the State would not concede that but if that were to be considered too broad, we would ask the Court to make a condition of bond that Mr. Brewington not continue to blog about the substance, uh, at least his version of the substance of the case that is here before this Court." Tr. 18-19

> "I personally reviewed a uh, blog this morning on the Dearborn County public forum at 8:02 this morning, uh, there was a blog post that says, 'if I am detained in Dearborn County jail because I do not receive a hearing or if Negangard gets a ridiculously high bond placed on me, Facebook users can get updates from my family and friends from my Facebook group, 'Help Dan Brewington see his girls.' I will have someone posting information on this case that Negangard tries to lock me up or in the case that Negangard tries to lock me up and throw away the keys. All are welcome to join. Thanks for the support.' So we're asking that that order be made no direct or indirect postings regarding this case." -Kisor Tr. 19

> "So I think it's clear um, that he intends to try this case on his blog and I think that not only could be detrimental to the State. It might even be detrimental to him. But in any event, it's not appropriate" -Kisor Tr. 20

> "I'd like to show these exhibits to uh, have Mr. Brewington have an opportunity to review them but at this time I think the substance of them are that you will see, Mr. Brewington has disdain for any court; anybody that he sees as an enemy, including his own former attorneys,

> he will attack. He will attack them in his blog, he will attack them in himself and through other people and I don't think again, if that's the proper way for this case to proceed. So the State is asking to, your honor, admit State's Exhibits 1 through 5 in consideration of setting the bond and the conditions and again the State's request is for a high bond and with the prohibition that he not be permitted to use the internet." "Or discuss this case in any other form." -Kisor, Tr. 22

Deputy Prosecutor Brian Johnson explained that the big problem the Dearborn County Prosecutor's Office had was Brewington "does not follow instructions that need to be followed."

> "Your honor, the only, the only concern would be um, it was stated explicitly to Mr. Brewington in the grand jury proceedings that he was not to put anything on his blog concerning anything that happened in the grand jury and he proceeded to go and whether he put on his blog information, you know, regarding the proceedings and whether people, people would not know whether that occurred or not. The problem is, is that Mr. Brewington does not follow instructions that need to be followed. That is our big issue here." -Johnson, Tr. 29

Probably the most shocking thing Kisor said during Brewington's arraignment was when Kisor invited Dearborn Superior Court II Judge Sally McLaughlin (formerly Blankenship) to peruse the internet on her own and conduct the Court's own investigation of Brewington's internet writings:

> "You can go to that blog. I went to it this morning, um, but I think if you follow that through and I don't know if the Court really wants to do that or not but if you do, the postings he has, to me, show an absolute disdain for the Court and for the prosecution and certainly that's okay with the first amendment as long as it doesn't affect with everybody, affect everybody's right to a fair trial and that's why we've asked for those conditions your honor." -Kisor, Tr. 29

Despite Brewington reporting voluntarily to Dearborn Count officials and a lack of any evidence that Brewington presented a danger to anyone, McLaughlin (Blankenship) set Brewington's bond at $500,000 surety and $100,000 cash and

then quickly recused herself from the case on the Court's own motion. McLaughlin also required a condition of bond to be Brewington was not allowed to blog about the nature of the criminal proceedings, while allowing the prosecution to freely address the public about the matter. The above is a blatant violation of basic and elementary principles in violation of the Constitution of the United States, and the harm suffered by Brewington cannot be denied thus allowing the review of the issue(s) regardless of whether the issue was properly raised and preserved. The above rises to fundamental error and denies Brewington fundamental due process if not rectified. (See Smith v. State, 459 N.E.2d 355 (1984).)

I) KISOR ARGUED BREWINGTON'S INTENT WAS NOT TO THREATEN PHYSICAL HARM, THUS VIOLATING BREWINGTON'S RIGHTS UNDER THE FIRST, SIXTH, AND FOURTEENTH AMENDMENTS OF THE UNITED STATES CONSTITUTION

During closing arguments, Kisor argues the intent of Brewington's writings was NOT to threaten illegal harm:

> "Subsection C6, this is the one that if you had a paint brush, it would be all over the ceiling. It would be all over the windows, the floor, this podium, my face. This is the one he just could not stop doing — exposing the people that he was threatening through the hatred and contempt and disgrace and ridicule. That was his whole intent. That's his only intent." Tr. 455-456

If taken at face value, Kisor acknowledges Brewington's prosecution was unconstitutional because criminal defamation is not a constitutionally permissible ground for Brewington's conviction. Any other interpretation of Kisor's statement

acknowledges that Kisor made conflicting arguments to confuse the trial jury and the record of the case. The opinion in *Brewington* reinforces this notion as Rush wrote:

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

Kisor mentioned the above two grounds for Brewington's convictions but argued the only intent of Brewington's writings was constitutionally protected criminal defamation. Brewington need not speculate the damage inflicted by the prosecution's conflicting arguments because the inconsistencies confused even the Indiana Supreme Court. The opinion in *Brewington* stated Brewington's intent was to cause fear, when Kisor argued the opposite. The above is a blatant violation of basic and elementary principles in violation of the Constitution of the United States, and the harm suffered by Brewington cannot be denied thus allowing the review of the issue(s) regardless of whether the issue was properly raised and preserved. The above rises to fundamental error and denies Brewington fundamental due process if not rectified. (See Smith v. State, 459 N.E.2d 355 (1984).)

J) KISOR ARGUED JUDGES ENJOY SPECIAL PROTECTIONS FROM CRITICAL SPEECH, THUS VIOLATING BREWINGTON'S RIGHTS UNDER THE FIRST, SIXTH, AND FOURTEENTH AMENDMENTS OF THE UNITED STATES CONSTITUTION

Brewington's convictions violate the equal protection clause under the laws as guaranteed by the Fourteenth Amendment to the U.S. Constitution and article 1, Sec. 23 of the Indiana Constitution because Kisor argued judges enjoy special protections of law:

> "Now it's one thing, you know, look, Mr. Negangard, and there's some evidence here that there's been some things toward him and toward our office and whatever. That's, you know, we're big boys. You know, we're combatants, we're adversaries. We expect to be, take a few on the chin. But a Judge, he's not an advocate for anybody. He serves you. He doesn't deserve to be threatened"

Though Kisor's ongoing ramblings appear to be nothing more than disingenuous attempts at portraying Humphrey as a helpless victim, Kisor's statements require a more in depth analysis to demonstrate fundamental error. Kisor is prohibited from arguing that judges enjoy special protections against conduct that regular U.S. citizens must endure, because Kisor's contention is a farce. The obvious due process violation is Kisor lying to the trial jury to influence unconstitutional convictions. A second constitutional problem exists in Kisor alleging that Brewington committed a crime against Negangard and/or officials in the Office of the Dearborn County Prosecutor. A third constitutional error rests in the fact Kisor informed the trial jury that Brewington committed another crime unrelated to the criminal proceedings before them. Brewington's criminal actions, as alleged, are crimes regardless of whom the actions are against. If Kisor's statement is true, Negangard, as a "victim" of Brewington's criminal activity had a responsibility to seek a special prosecutor or at least disclose the potential conflict. The above is a blatant violation of basic and elementary principles in violation of

the Constitution of the United States, and the harm suffered by Brewington cannot be denied thus allowing the review of the issue(s) regardless of whether the issue was properly raised and preserved. The above rises to fundamental error and denies Brewington fundamental due process if not rectified. (See Smith v. State, 459 N.E.2d 355 (1984).)

K) DURING TRIAL, DEPUTY PROSECUTOR KISOR ISSUED A WARNING THAT BREWINGTON MAY HAVE A GUN IN THE COURTROOM AND THE JURY SHOULD FEAR FOR THEIR LIVES THUS VIOLATING BREWINGTON'S RIGHTS UNDER THE FIFTH, SIXTH, AND FOURTEENTH AMENDMENTS OF THE UNITED STATES CONSTITUTION

> "Would you be afraid if you knew right now, based on what you've seen and what you've heard, the distorted thinking, the almost maniacal attacks that he will go, the steps he will go to, to attack people. Would you be afraid if you knew and I hope to God he doesn't but if he had a .357 in his pocket right now, would you be in a little bit of fear? Man, I would." Tr. 451

The above statement by Deputy Prosecutor Joeseph Kisor epitomizes the egregious nature of Dearborn County's malicious prosecution of Brewington. Apart from the obvious prosecutorial misconduct in trying to convince a trial jury that Brewington could at any moment kill the jury members with a .357 Magnum, that Kisor said Brewington may possess at the defense table, Kisor knew it was impossible for Brewington to have smuggled a gun into the courtroom. Brewington had been escorted directly to the courthouse from the Dearborn County Law Enforcement Center where Brewington had been detained for over seven months.

Unfortunately, no one instructed the trial jury Brewington presented no immediate danger. Once again Hill and Barrett remained silent.

Making matters even worse is the fact the prosecution successfully petitioned the trial court for an anonymous jury. While the jurors might not have known the cause of the anonymous jury, Kisor's allegation that Brewington presented a risk of murdering someone in the courtroom during trial would likely lead jurors to believe the purpose of the anonymous jury was to protect the jurors' immediate safety. Fundamental error exists in both the actions of the prosecution and the non-actions of Barrett and Hill. Barrett and Hill's pattern of refusing to object to numerous examples of prosecutorial misconduct suggests extreme incompetence or a substantial bias against Brewington. The above is a blatant violation of basic and elementary principles in violation of the Constitution of the United States, and the harm suffered by Brewington cannot be denied thus allowing the review of the issue(s) regardless of whether the issue was properly raised and preserved. The above rises to fundamental error and denies Brewington fundamental due process if not rectified. (See Smith v. State, 459 N.E.2d 355 (1984).)

L) BREWINGTON RECEIVED NO ASSISTANCE OF COUNSEL IN VIOLATION OF THE FIFTH, SIXTH, AND FOURTEENTH AMENDMENTS OF THE UNITED STATES CONSTITUTION

In *Jenkins v. State*, 41 N.E.3d 306 (2015), the Indiana Supreme Court offered the following discussion regarding *United States v. Cronic*, 104 S.Ct. 2039, 466 U.S. 648, 80 L.Ed.2d 657 (1984):

> "In *Cronic*, the United States Supreme Court held that there are three scenarios in which the defendant need not satisfy the Strickland test, because prejudice is presumed: (1) where there is a complete denial of counsel; (2) where counsel entirely fails to subject the prosecution's case to meaningful adversarial testing; and (3) where counsel is asked to provide assistance in circumstances where competent counsel likely could not. *Cronic*, 466 U.S. at 659-60.
>
> The *Cronic* Court further explained that 'only when surrounding circumstances justify a presumption of ineffectiveness can a Sixth Amendment claim be sufficient without inquiry into counsel's actual performance at trial.' Id. at 662. United States Supreme Court Justice Powell explained that, under the circumstances described in the third situation, 'the defendant is in effect deprived of counsel altogether, and thereby deprived of any meaningful opportunity to subject the State's evidence to adversarial testing.' *Kimmelman v. Morrison*, 477 U.S. 365, 395 n.2, 106 S.Ct. 2574, 91 L.Ed.2d 305 (1986) (Powell, J., concurring)."

Even a competent attorney would have been unable to subject Negangard's case to any adversarial testing, because Negangard argued during trial that the criminal proceedings were not about Dr. Connor and Judge Humphrey. Negangard argued the purpose of the proceedings was to protect the Dearborn County Court System from being perverted by the Internet. Despite the fact Negangard affirmatively stated the already unconstitutional grand jury investigation for criminal defamation was just a façade to protect the integrity of the court system, Barrett made no attempt to have the indictments dismissed or guilty verdicts set aside. Barrett failed to object to any of the prosecution's outrageous conduct because Barrett never had any intention of providing Brewington with any legal assistance because Barrett never met with Brewington prior to trial to discuss the case with Brewington.

i) BARRETT REFUSED TO DISCUSS THE CRIMINAL CASE WITH BREWINGTON PRIOR TO TRIAL

Barrett filed an appearance to represent Brewington on July 18, 2011. Barrett's only meeting with Brewington occurred prior to the pretrial hearing on July 18, 2011, where Barrett acknowledged he was unaware of what conduct the State alleged to be unlawful. Barrett never met with Brewington again outside of a court room setting. Barrett refused to speak with Brewington about Brewington's case on the phone as well. No discussion of defense strategy, nature of indictments, evidence, witnesses, events of the alleged crimes, etc. Nothing.

ii) BARRETT REFUSED TO CHALLENGE THE UNCONSTITUTIONAL INDICTMENTS

> "[T]he prosecutor argued two grounds for Defendant's convictions, one entirely permissible (true threat) and one plainly impermissible (" criminal defamation" without actual malice). See Tr. 455-56" *Brewington v. State*, 7 N.E.3d at 973

Despite the contention of the Indiana Supreme Court that the prosecution argued two grounds for Brewington's convictions, the grand jury transcripts demonstrate Negangard argued only one ground for Brewington's indictments; Brewington's "over the top" and "unsubstantiated statements" about officials within the Dearborn County Court. Barrett failed to challenge the unconstitutional "criminal defamation" indictments. There is no question the error was fundamental as any challenge would have led the trial court to dismiss the indictments.

iii) BARRETT MADE NO ATTEMPT TO SUBJECT THE PROSECUTION'S CASE TO ANY ADVERSARIAL TESTING

Barrett did not receive a copy of the grand jury transcripts until after the final pretrial hearing September 19, 2011 (Tr. 66-67). Brewington did not receive a copy of the grand jury transcripts until receiving the transcripts in the Dearborn County Law Enforcement Center via USPS on September 24, 2011. Barrett failed to meet with Brewington prior to the first day of Brewington's trial, October 3, 2011. Barrett refused to discuss the grand jury transcripts, which formed the basis of the general indictments and the State's case against Brewington.

> "Allegations that counsel failed adequately to consult with the appellant or failed to investigate issues and interview witnesses do not amount to ineffective assistance absent a showing of what additional information may have been garnered from further consultation or investigation and how that additional information would have aided in the preparation of the case. *Brown v. State*, 691 N.E.2d 438, 446-47 (Ind.1998)" *Coleman v. State*, 694 N.E.2d 269 (1998)

In representing Brewington, Barrett made no attempt to consult with Brewington or investigate any matter relating to Brewington's case because Barrett refused to speak with Brewington about Brewington's criminal proceedings prior to trial. Barrett did not review any specific indictment information or evidence with Brewington. Barrett did not gather or present any evidence. Barrett did not contact or present any witnesses. Barrett did not release any discovery of potential evidence or witnesses. The decision in *Brewington* further alleges Barrett's "trial strategy" invited the fundamental error in Brewington's trial despite the fact Barrett never developed a trial strategy.[7] Barrett's hypothetical trial strategy, as alleged by the

[7] The trial record is void of any information regarding Barrett's thoughts on trial strategy. Barrett had no trial strategy because Barrett never investigated Brewington's case.

Indiana Supreme Court, still requires Brewington's convictions to be vacated. As Negangard failed to introduce a true threat ground for Brewington's indictments during the grand jury investigation, any alleged trial strategy was unnecessary because the grand jury investigation and indictments were unconstitutional. Barrett refused to object to the constitutionally impermissible "criminal defamation" argument that formed the basis of the grand jury indictments and forced Brewington to remain incarcerated and undergo an unnecessary trial. Brewington could never subject Negangard's "case" to any adversarial testing because Negangard disclosed during trial that Brewington's prosecution was not about Humphrey or Connor but an attempt to protect the judicial system from Brewington and the Internet. Brewington filed a pro se motion challenging the constitutionality of Negangard's criminal defamation argument but Hill would not consider it because Brewington had representation.

iv) BARRETT ALLOWED A NON-ATTORNEY TO FILE MOTIONS ON BREWINGTON'S BEHALF

At minimum, Barrett's assistant, non-attorney Kerr, filed a Motion to Vacate Hearing on Brewington's behalf. Kerr filed the motion while signing Barrett's name and affixing the initials "JK" next to the signature. The CCS shows the motion filed on August 4, 2011.

v) BARRETT FORCED BREWINGTON TO WAIVE FIFTH AMENDMENT PROTECTION AGAINST SELF-INCRIMINATION.

Barrett's persistence in not objecting to the anonymous jury gives rise to Brewington's Cronic claim. The record demonstrates Barrett failed to discuss the State's motion for confidentiality of juror's names and identities with Brewington despite the motion being filed over a month earlier. The record also demonstrates Barrett forcing Brewington to answer Hill's questions on law because Barrett refused to object. Not only was Brewington stripped of legal representation in addressing the matter, Barrett and Hill forced Brewington to explain any objections to the motion despite being represented by counsel; thus subjecting Brewington to potential self-incrimination.

vi) BARRETT TRIED TO WAIVE APPEALABLE ISSUES EVEN AFTER BREWINGTON VOICED OBJECTION

During the September 19, 2011 hearing, Hill asked if there was any response from the defendant regarding the State's motion for confidentiality of juror's names and identities, filed August 9, 2011. Barrett's response appears in the transcripts as follows:

> "I don't object as long as we uh, or if something should come up during the process. I'm sorry? (Mr. Brewington conversing with Mr. Barrett) I do not object. My client does object apparently your honor." Tr. 67

Hill responded:

"And what's the nature of your objection Mr. Brewington?"

Barrett failed to object to the confidentiality of jurors' names and remained adamant about not representing Brewington's interest in objection to the State's motion. Barrett's decision was not part of a defense strategy because Barrett still

had no idea what actions of Brewington's Barrett was required to defend because during the same hearing Hill said there was a discussion in chambers about getting Barrett a copy of the grand jury transcripts. As such, the only explanation for Barrett remaining defiant in not objecting on Brewington's behalf is that Barrett took an adversarial position against Brewington. Barrett's adversarial role offers insight into why Barrett failed to object to egregious conduct by the prosecution like Kisor instructing the trial jury that the possibility exists that Brewington may murder someone in the courtroom, with a .357 Magnum handgun, during the criminal trial.

vii) BARRETT SACRIFICED BREWINGTON'S DEFENSE TO ASSIST A SEPARATE INVESTIGATION OF BREWINGTON

Barrett changed his line of questioning during trial cross-examination of Sheriff Michael Kreinhop to prevent Brewington from knowing there was another pending investigation of Brewington. This investigation entailed Dearborn County law enforcement placing a recording device on Brewington's cell mate in an attempt to obtain incriminating evidence against Brewington. During a meeting at the bench, Negangard stated:

> "I think the question would be better worded to the time frame and would probably be a good idea that Mr. Brewington not be specifically advised about that." Tr. 419

Barrett cooperated with Dearborn County officials in an ongoing investigation of Brewington at the same time Barrett was representing Brewington. Hill allowed Barrett to continue representing Brewington, while Barrett assisted

Dearborn County Law Enforcement with a separate investigation of Brewington. Hill made no attempt to prevent Negangard and Barrett from withholding potential evidence from Brewington. Brewington was never questioned about the matter and no charges were ever filed.

viii) BARRETT TOOK NO MEASURES TO DEFEND OR PROTECT BREWINGTON'S MENTAL HEALTH.

The Indiana Supreme Court cited "the victims' knowledge of [Brewington's] psychological disturbance and dangerousness" as a component in determining when Brewington's protected speech crossed over to an implied threat. Barrett refused to seek Brewington's mental health records or have Brewington evaluated. The only "professional" finding that Brewington was potentially dangerous came from Dr. Connor, who was a victim in Brewington's criminal defamation trial. Rush wrote Brewington's numerous writings alleging ex parte communication between Connor and Ripley Circuit Judge Carl H. Taul, the original judge in Brewington's divorce, "had led the Doctor to the professional opinion that Defendant was 'potentially dangerous,' Tr. 131-32". *Brewington* at 956. If Barrett would have made any effort to acquaint himself with Brewington's case, Barrett would have not only known that the ex parte communication occurred, but Barrett would have known evidence of the ex parte communication existed in State's Exhibit 123. State's Exhibit 123, which was referenced by Rush in *Brewington* at 956, includes a letter from Connor dated February 25, 2008. Connor's letter stated:

> "With this letter please be advised that Hon. Judge Carl Taul contacted me on 2/22/08 to convey his agreement for the review of the above-

captioned case."

No such communication appears in the record of Brewington's divorce proceedings and Brewington was not a party to the communication. Even though Connor's letter regarding the ex parte communication was an attachment of State's Exhibit 123, during closing arguments Kisor went above and beyond to explain how Brewington lied about the ex parte communication to make Brewington appear untrustworthy, obsessive, and dangerous.

> "I would call it obsessing. Any way you call it, it's dangerous. [Brewington] lied and he lied and he lied and he lied. [Brewington] called Dr. Connor a pervert, a crooked psychologist, a child abuser. [Brewington] said [Connor] was dangerous. [Brewington] said he made ex-parte communications with the Judge and just on that one alone, the Court of Appeals says, Dan, you lied. Okay, all of these complaints, there were no ex-parte, there was no improper actions between him and any judge. [Brewington] called Ed Connor a liar. [Brewington] called him unethical

Not only did Kisor ignore Connor's admission of ex parte communication, the opinion in *Brewington v. Brewington*, 930 N.E.2d 87 (2010) makes no finding of fact regarding whether the ex parte communication occurred; implicating Kisor in another gross example of prosecutorial misconduct. Addressing the issue would have demonstrated Brewington's allegations were not false and would have eviscerated any potential danger argument because Brewington's allegations of ex parte between Connor and Taul[8] were true. There was no objection from Barrett.

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[8] It is worthy to note for the record that Judge Carl H. Taul also served with Humphrey and Rush on the Indiana Supreme Court Juvenile Justice Committee for several years and, like Humphrey, attended meetings with Rush while Brewington's case sat before the Indiana Supreme Court.

Barrett let Kisor run wild with accounts of false Appellate Court findings, fictitious citations of law, and allegations of potential gun violence by Brewington in the courtroom. Not only did Barrett fail to object, in following Kisor's closing arguments, Barrett stated "I agree with much of what Mr. Kisor said and I applaud his sincerity." Tr. 484. Barrett's complete failure to provide Brewington with any meaningful legal assistance is a blatant violation of basic and elementary principles in violation of the Constitution of the United States, and the harm suffered by Brewington cannot be denied thus allowing the review of the issue(s) regardless of whether the issue was properly raised and preserved. The above rises to fundamental error and denies Brewington fundamental due process if not rectified. (See Smith v. State, 459 N.E.2d 355 (1984).)

M) BREWINGTON WAS UNABLE TO TESTIFY IN HIS OWN DEFENSE THUS VIOLATING BREWINGTON'S RIGHTS UNDER THE FIFTH, SIXTH, AND FOURTEENTH AMENDMENTS OF THE UNITED STATES CONSTITUTION

Brewington was unable to testify in his own defense because Barrett had no understanding of Brewington's reasoning behind his writings or the facts of Brewington's case. Barrett gathered no evidence to support Brewington's defense. Barrett did not contact witnesses. Barrett did not conduct depositions. Barrett did not review all the State's evidence. Brewington taking the stand with Barrett as a public defender would have been akin to a sheep wandering to slaughter. Barrett failed to provide Brewington with any insight into the criminal trial process, not to

mention the procedures associated with taking the stand in Brewington's defense. Barrett failed to address the matter with Brewington until the last day of the State's case against Brewington. Even then Barrett told Brewington that Brewington would have to decide if Brewington wanted to take the stand without any prior explanation of the procedures for direct and cross-examination of a defendant. The Indiana Supreme Court stated Brewington's decision not to testify was consistent with Barrett's "all or nothing" trial strategy when Barrett's trial strategy consisted of "nothing;" which is exactly why Brewington was afraid to testify. Brewington's only defense at trial would have been Brewington's own accounts of events. Barrett offered no discovery prior to trial, further demonstrating that Barrett's only trial strategy consisted of showing up to Brewington's jury trial with "appropriate" amount of binders and paperwork necessary to give the appearance that Brewington had legal representation. The above is a blatant violation of basic and elementary principles in violation of the Constitution of the United States, and the harm suffered by Brewington cannot be denied thus allowing the review of the issue(s) regardless of whether the issue was properly raised and preserved. The above rises to fundamental error and denies Brewington fundamental due process if not rectified. (See Smith v. State, 459 N.E.2d 355 (1984).)

N) BREWINGTON'S PERJURY INDICTMENT WAS CONSTITUTIONALLY VAGUE, THUS VIOLATING BREWINGTON'S RIGHTS

UNDER THE FIFTH, SIXTH, AND FOURTEENTH AMENDMENTS OF THE UNITED STATES CONSTITUTION

The opinion in *Brewington* solidifies the fact that the prosecution failed to provide Brewington a clear understanding of which of Brewington's statements were responsible for Count 5 because even the Indiana Supreme Court was confused as to what formed the basis of Brewington's conviction for perjury. The Indiana Supreme Court stated the trial jury's guilty verdict for perjury rested on three different alleged statements:

> "And the jury's perjury verdict implicitly recognized that intent, finding that Defendant lied to the grand jury about his true motives for posting the Judge's address." *Brewington*, at 958
>
> "Defendant's perjury to the grand jury about his purpose in doing so implies that truthful testimony on that point would have been incriminating." *Brewington*, at 965
>
> "And again, the jury apparently reached the same conclusion, convicting Defendant of perjury for feigning ignorance in his grand-jury testimony of whether Heidi Humphrey was the Judge's wife, and that her address was his address." *Brewington*, at 966

During closing arguments, Barrett acknowledged that he was uncertain as to which of Brewington's statements the State alleged to be responsible for the perjury indictment:

> "Count V is perjury alleging that Mr. Brewington who voluntarily testified before the Grand Jury perjured himself, lied, under oath and as near as I can tell what they're referring to is the address issue with the Humphrey's." Tr 498-99
>
> "But apparently their contention is that he lied about how whether he knew that Mrs. Humphrey, Heidi Humphrey, was Judge Humphrey's wife as near as I can tell." Tr. 499

Barrett's statement, "As near as I can tell," demonstrates the State failed to provide constitutionally sufficient indictment information and that Barrett failed to challenge the unconstitutionally vague indictment. The above is a blatant violation of basic and elementary principles in violation of the Constitution of the United States, and the harm suffered by Brewington cannot be denied thus allowing the review of the issue(s) regardless of whether the issue was properly raised and preserved. The above rises to fundamental error and denies Brewington fundamental due process if not rectified. (See Smith v. State, 459 N.E.2d 355 (1984).)

O) BREWINGTON WAS DENIED A TRIAL BEFORE AN IMPARTIAL JUDGE, THUS VIOLATING BREWINGTON'S RIGHTS UNDER THE FIFTH, SIXTH, AND FOURTEENTH AMENDMENTS OF THE UNITED STATES CONSTITUTION

> "Bias and prejudice places a defendant in jeopardy 'only where there is an undisputed claim or where the judge expressed an opinion of the controversy over which the judge was presiding.' Id. Adverse rulings are not sufficient to show bias or prejudice on the part of the judge. *Flowers v. State*, 738 N.E.2d 1051, 1060 n. 4 (Ind.2000), reh'g denied." *Tharpe v. State*, 955 N.E.2d 836 (2011)

There may be no other examples in modern law where a judge has completely ignored a defendant's pleas for charging information, evidence, and counsel. A simple review of the Chronological Case Summary demonstrates Hill never had any intention of allowing Brewington to have a fair trial. On June 17, 2011, Hill set the final pre-trial hearing and plea deadline for July 18, 2011, knowing Brewington did not have legal counsel because it was during the June 17, 2011 hearing that Hill

granted a motion to withdraw filed by Brewington's first public defender. Hill refused to explain charging information to Brewington. Hill never made any attempt to ensure Brewington had the appropriate evidence. Hill refused to address any of the issues alleged by Brewington on the record. Since Barrett refused to communicate with Brewington, prepare a defense, or challenge the unconstitutional indictments, Brewington filed three pro se motions just prior to the beginning of the jury trial on October 3, 2011. Brewington filed his Motion to Dismiss, Motion to Disqualify F. Aaron Negangard and appoint Special Prosecutor, and Motion to Dismiss for Ineffective Assistive of Counsel. Brewington's filings, among other things, explained how Brewington had yet to receive any assistance from counsel and Brewington still did not know what actions the state alleged to be in violation of Indiana law. Brewington's motions explained how the State and/or Barrett failed to provide Brewington with all the State's evidence. During the opening moments of trial, Brewington reiterated all his concerns to Hill. Tr. 3-5. Hill's remedy to Brewington's last minute filings, concerning issues like Brewington not understanding the indictments against him, was to bait Brewington into self-representation. Hill's response to Brewington's filings was as follows:

> "I think uh by filing this, tells me you don't want counsel. You're filing motions by yourself. So you're ready to go..."

In Seniours v. State, the Indiana Court of Appeals addressed voluntary waiver of trial counsel:

> "[T]he trial court should inquire into the educational background of the defendant, the defendant's familiarity with legal procedures and rules of evidence, and additionally, into the defendant's mental capacity if

> there is any question as to the defendant's mental state." Seniours v. State, 634 N.E.2d 803 (5 Dist. 1994)

Accepting Hill's invitation to represent himself would have raised questions about Brewington's mental state as only a person of diminished capacity would act as his own lawyer without copies of the State's evidence and an understanding of charging information. Hill's reasoning left Brewington with quite a conundrum. The only way Hill would address Brewington's pro se motions regarding Barrett's failure to provide Brewington with any legal assistance was if Brewington waived his right to legal counsel.

Hill's adversarial demeanor towards Brewington is further demonstrated by Hill's statements during the final pretrial hearing on September 19, 2011, regarding Brewington's request to continue the October 3, 2011 jury trial. Hill stated:

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

There is no record of Brewington expressing any "issues" regarding his trial being continued. Brewington never spoke with Barrett about continuing the original trial set for August 16, 2011 because Barrett was out of town dealing with a family matter. The above is a blatant violation of basic and elementary principles in violation of the Constitution of the United States, and the harm suffered by Brewington cannot be denied thus allowing the review of the issue(s) regardless of whether the issue was properly raised and preserved. The above rises to fundamental error and denies Brewington fundamental due process if not rectified. (See Smith v. State, 459 N.E.2d 355 (1984).)

P) BREWINGTON WAS DENIED APPELLATE REVIEW BEFORE AN IMPARTIAL SUPREME COURT, THUS VIOLATING BREWINGTON'S RIGHTS UNDER THE FIFTH, SIXTH, AND FOURTEENTH AMENDMENTS OF THE UNITED STATES CONSTITUTION

> "[Brewington's] decision not to testify, thus letting the case hinge solely on the sufficiency of the State's proof, was also consistent with an 'all or nothing' defense rather than the actual-malice defense he now says he should have had." *Brewington* v. State, 7 N.E.3d at 978

The above is not an adverse ruling against Brewington. Rush's statement is an unsupported adverse opinion regarding Brewington's reasoning in not testifying in his own defense. Rush used the opinion to further rationalize the Supreme Court's invited error argument that waived Brewington's relief from fundamental error. The record is void of any evidence to support Rush's speculation as to why Brewington decided not to testify. Rush cherry-picked excerpts from the record of Brewington's case to give Rush's invited error waiver argument a false sense of legitimacy.

> "Defendant demonstrated significant sophistication about free-speech principles long before trial in a motion to dismiss these charges, Supp. App. 1-4, and confirmed it by his post-verdict, pre-sentencing blog posts, Sent. Ex. 1 at 2-3." Brewington v. State, 7 N.E.3d at 978

The motion that allegedly demonstrated Brewington's "significant sophistication about free-speech principles" was filed the morning of Brewington's trial as indicated by the clerk's file stamp, record of the chronological case summary, and trial transcripts. Hill began to address the filing of Brewington's motion exactly forty-nine (49) words into Brewington's trial.

"We are here in case number 15D02-1103-FD-84, the State of Indiana

> vs. Daniel Brewington. Let the record reflect that the State appears by Prosecuting Attorney, Aaron Negangard and the Defendant appears in person and by counsel, Bryan Barrett and this matter is scheduled for jury trial this morning and about twenty (20) or thirty (30) minutes ago I received a file marked Motion to Dismiss, Motion to Disqualify F. Aaron Negangard and appoint Special Prosecutor and Motion to Dismiss for Ineffective Assistive of Counsel. Those are pro se motions filed by the Defendant." Tr. 3. (Page 1 of the trial transcripts consist of the title page. Page 2 consists only of appearance information for the parties. Hill began addressing Brewington's motion on Line 9 appearing on Page 3 of the 531-page trial transcript.)

It is impossible for Brewington to have shown significant sophistication about free speech principles in a motion filed "long before trial" because the only motions challenging the State's case were filed the day of trial. Other relevant facts glossed over by Rush regarding Brewington's motion to dismiss are as followed:

i) As indicated by Hill's opening statements in trial, Brewington filed two motions to dismiss in addition to one motion to disqualify the prosecution.

ii) Brewington's motions explain why Brewington filed the motions on his own behalf. Brewington filed the motions because Barrett refused to meet with Brewington prior to trial and Brewington had no idea about the direction of Brewington's defense. All of this was detailed in Brewington's Motion to Dismiss for Ineffective Assistance of Counsel.

iii) Hill denied Brewington's motions, including Motion to Dismiss for Ineffective Assistance of Counsel, stating Brewington had legal representation. Hill placed the burden on Brewington to have Barrett file the Motion to Dismiss for Ineffective Assistance of Counsel, when it was Barrett who refused to meet

with Brewington in the first place. The trial record is void of Hill ever questioning Barrett about Brewington's claims.

iv) Brewington's motions detail how Brewington did not have access to evidence, any specific charging information, or legal assistance prior to trial.

Justice Loretta H. Rush followed in the footsteps of Hill and refused to address the purpose of Brewington's three motions prior to trial. Rush carefully plucked information from Brewington's motions to build a case that Barrett's trial strategy somehow stripped Brewington of the right to relief from fundamental error, while ignoring Brewington's motions that thoroughly explain how Barrett refused to allow Brewington to play any role in the preparation of Brewington's own defense. Rush's argument for denying Brewington relief from numerous fundamental errors in Brewington's case are not premised on interpretations of fact and law. Rush constructed her own facts, premised on Rush's ability to read the minds of Barrett and Hill, and then Rush proceeded to introduce a new interpretation of the relationship between fundamental error and ineffective assistance of counsel and argued that relationship somehow waived Brewington's right to relief from fundamental error. Rush waived Brewington's right to relief while ignoring the cause of the fundamental error; the fact Dearborn County Prosecutor F. Aaron Negangard sought indictments and convictions against Brewington under an unconstitutional criminal defamation theory. The fact that Rush did not verbalize her intentions in meticulously crafting the trial strategy/invited error waiver, while glossing over Negangard's trial strategy consisting of prosecuting Brewington for a

non-crime, does not reduce the significance of the bias or partiality demonstrated by Rush in this case.

Q) BARRETT, HILL, AND NEGANGARD TRIED TO RUSH BREWINGTON TO TRIAL WITHOUT ANY SPECIFIC CHARGING INFORMATION THUS VIOLATING BREWINGTON'S RIGHTS UNDER THE FIFTH, SIXTH, AND FOURTEENTH AMENDMENTS OF THE UNITED STATES CONSTITUTION[9]

During the final pretrial hearing on September 19, 2011, Hill asked for the State's position on Brewington's pro se request to continue the jury trial. Negangard's response was as follows:

> "Your honor, um, the issue before was that the jury trial was being continued because Mr. Barrett hadn't had time to prepare a defense because he had only been on the case a month and he was dealing with some very important family issues. It is my understanding that the Defendant objected to any continuance at that time, um, and in the interest of fairness and ensuring that Mr. Brewington got a defense, um, a fair defense, the Court continued this based on an emergency, found there was an emergency and then continued the jury trial to this setting….Now in October, now in September where we are two (2) weeks from the jury trial, now [Brewington's] um mad that his attorney hasn't talked to him enough as far as I can tell….He's comfortable in August going forward with the trial even though his defense attorney hasn't had an opportunity to review one document or anything else."

Both Negangard and Hill alleged that Brewington objected to continuing the original jury trial, despite there being no record of such, and then relied on that

[9] The prosecution instructed Brewington to rely on the grand jury transcripts for a pseudo-bill of particulars, however, Hill did not order the release of the transcripts until after the originally scheduled jury trial.

contention as an excuse not to grant Brewington's request to continue the October 3, 2011 trial date. Negangard and Hill knew Barrett's family emergency had little to do with Barrett's failure to review any documents because Negangard did not file the State's MOTION TO RELEASE GRAND JURY EXHIBITS until Thursday August 11, 2011, just five days prior to the original trial scheduled for August 16, 2011. The grand jury exhibits included the grand jury transcripts, which the prosecution claimed to contain an explanation of the non-specific general indictments. Hill's ORDER TO RELEASE GRAND JURY EXHIBITS was not filed until August 23, 2011; seven days AFTER Brewington's original trial date. Hill and Negangard attacked Brewington by claiming Brewington was adamantly against continuing the August 16, 2011 trial when it was Negangard and Hill that obstructed Brewington's access to evidence and indictment information. During the hearing on September 19, 2011, Hill acknowledged Barrett still had not reviewed any specific indictment information in Brewington's case despite Brewington's trial being two weeks away yet Hill still denied Brewington's request to continue the October 3, 2011 trial. Hill punished Brewington when it was Hill and Negangard who were responsible for delaying Brewington's access to critical documents. If not for Barrett's family emergency, Brewington would have likely faced a criminal trial without any charging information. The above is a blatant violation of basic and elementary principles in violation of the Constitution of the United States, and the harm suffered by Brewington cannot be denied thus allowing the review of the issue(s) regardless of whether the issue was properly raised and preserved. The

above rises to fundamental error and denies Brewington fundamental due process if not rectified. (See Smith v. State, 459 N.E.2d 355 (1984).)

R) BREWINGTON RECEIVED NO ASSISTANCE OF COUNSEL AT BOND REDUCTION HEARING THUS VIOLATING BREWINGTON'S RIGHTS UNDER THE FOURTH, FIFTH, SIXTH, AND FOURTEENTH AMENDMENTS OF THE UNITED STATES CONSTITUTION

As discussed previously, Negangard said Barrett had yet to "review one document or anything else" prior to the original scheduled trial date of August 16, 2011. Any specific indictment information within the grand jury transcripts was not released by Hill until August 23, 2011. Even though no one outside of the Dearborn County Prosecutor's Office had any understanding as to what actions led to Brewington's indictments and detention, Hill still forced Brewington to face a bond reduction hearing on August 17, 2011. Barrett had no understanding which of Brewington's actions the state alleged to be unlawful nor did Barrett have any understanding of Brewington's case, resulting in a complete denial of counsel. During the hearing the State still failed to give any indication to Brewington what conduct was responsible for Brewington's indictments and confinement. Hill refused to lower Brewington's $500,000 surety/$100,000 cash bond knowing Brewington received no assistance of counsel. The above is a blatant violation of basic and elementary principles in violation of the Constitution of the United States, and the harm suffered by Brewington cannot be denied thus allowing the review of the issue(s) regardless of whether the issue was properly raised and preserved. The

above rises to fundamental error and denies Brewington fundamental due process if not rectified. (See Smith v. State, 459 N.E.2d 355 (1984).)

S) DEARBORN COUNTY OFFICIALS OBSTRUCTED BREWINGTON'S ACCESS TO OHIO ATTORNEY ROBERT G. KELLY THUS VIOLATING BREWINGTON'S RIGHTS UNDER THE FIFTH, SIXTH, AND FOURTEENTH AMENDMENTS OF THE UNITED STATES CONSTITUTION

Following Brewington's arrest in Cincinnati, Ohio relating to the indictments in this case, Ohio attorney Robert G. Kelly ("Kelly") arranged for Brewington to bond out of the Hamilton County Justice Center on 3/09/2011 and voluntarily report to Dearborn County officials on 3/11/2011. During Brewington's arraignment on 3/11/2011, McLaughlin permitted Mr. Kelly to speak, where Kelly stated he "anticipate[d] filing the necessary paperwork with Indiana to get appointed to appear on his behalf pro bono to assist whoever the court appointed counsel is." Tr. 25 Kelly also expressed concerns about the vague indictments stating "some of these charges that are alleged in the indictment, even reviewing them, you can't identify what, the actual facts, the dates, the times, any of these things occurred." Tr. 27 Kelly informed the court Kelly would be filing a petition in federal court regarding the charges against Brewington. Tr. 27 Dearborn County officials promptly barred Kelly and Brewington from any attorney/client visits. The only thing gained in not allowing Brewington and Kelly to have attorney/client visits in a confidential setting is Dearborn County had the ability to record conversation by forcing Brewington and Kelly to discuss confidential matters via the phones in the

Dearborn County Law Enforcement Center or during non-contact visits. It was not until Kelly became admitted to practice in the Southern District Court of Indiana that Dearborn County Officials were forced to allow Brewington to have attorney visits with Kelly. The above is a blatant violation of basic and elementary principles in violation of the Constitution of the United States, and the harm suffered by Brewington cannot be denied thus allowing the review of the issue(s) regardless of whether the issue was properly raised and preserved. The above rises to fundamental error and denies Brewington fundamental due process if not rectified. (See Smith v. State, 459 N.E.2d 355 (1984).)

T) BREWINGTON RECEIVED INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL THUS VIOLATING BREWINGTON'S RIGHTS UNDER THE FIFTH, SIXTH, AND FOURTEENTH AMENDMENTS OF THE UNITED STATES CONSTITUTION

Prior to the filing of Brewington's appeal, Brewington met or spoke with appellate attorney Michael Sutherlin on several occasions. Brewington's mother, Sue Brewington, and Brewington's Ohio attorney, Robert G. Kelly, also met or spoke with Sutherlin on several occasions. Sutherlin was aware Barrett refused to discuss the case with Brewington prior to trial. Sutherlin knew that Brewington did not understand the charges against him prior to trial. Sutherlin knew Barrett refused to provide some evidence to Brewington. Sutherlin was informed of the three motions Brewington filed prior to trial to preserve issues ignored by Barrett. Sutherlin had a copy of the incomplete grand jury transcripts showing witness

testimony as the beginning of the proceedings. Sutherlin knew the Office of the Dearborn County Prosecutor sought indictments for constitutionally impermissible criminal defamation. Sutherlin also knew that Hill refused to ensure Brewington had an explanation of the vague criminal indictments while also refusing to provide Brewington with legal counsel willing to prepare any defense. Sutherlin's appellate performance passes the two-part test described in *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). There is no strategy in pursuing a First Amendment argument when Brewington's convictions required reversal due to the denial of charging information, evidence and legal counsel prior to trial. The same is true in not challenging the fact the Dearborn County Superior Court II altered grand jury transcripts to the State's advantage.

Sutherlin refused to raise the issue regarding Barrett's failure to develop any trial strategy. By refusing to meet with Brewington to discuss any details of Brewington's case prior to trial, it was impossible to defend Brewington's speech because Barrett had no understanding of Brewington's intentions, timeframes, or context behind Brewington's speech. Raising the issues would have resulted in the reversal of Brewington's convictions by the Indiana Supreme Court because the Indiana Supreme Court claimed Barrett's trial strategy is what waived Brewington's right to relief from fundamental errors in Brewington's trial. Sutherlin was erroneous in even filing a direct appeal because any post-conviction court would have vacated Brewington's verdicts. The Seventh Circuit recently

emphasized the elementary principle should deeply refrain from raising ineffective assistance of counsel on direct appeal:

> "Like the Texas bar in *Trevino*, the Indiana criminal defense bar 'has taken this strong judicial advice seriously.' See *Trevino*, 133 S.Ct. at 1920. In its annual training, amicus Indiana Public Defender Council 'consistently advises against appellate counsel presenting ineffective assistance claims on direct appeal.' When a public defender handling a direct appeal asked the Council if she should raise a claim for ineffective assistance of trial counsel in the direct appeal, the responses were best summarized by one that began, 'NOOOOOOH!' Amicus Br. of Ind. Pub. Def. at 21a." *Brown v. Brown*, 16-1014, (February 1, 2017)

The only rationale in not filing a petition to stay direct appeal and pursuing post-conviction relief is the belief that Hill, as the post-conviction judge, would refuse to withdraw and would continue to preside over Brewington's proceedings while further ignoring Brewington's rights to evidence, charging information, and trial counsel. This was the reasoning Sutherlin gave for not pursuing post-conviction relief.

The above is a blatant violation of basic and elementary principles in violation of the Constitution of the United States, and the harm suffered by Brewington cannot be denied thus allowing the review of the issue(s) regardless of whether the issue was properly raised and preserved. The above rises to fundamental error and denies Brewington fundamental due process if not rectified. (See Smith v. State, 459 N.E.2d 355 (1984).)

CONCLUSION

Brewington's case has the makings of a Netflix documentary as Public Defender Bryan Barrett, Judge Brian Hill, the Indiana Court of Appeals and the

Indiana Supreme Court turned a blind eye to the fact Dearborn County Prosecutor F. Aaron Negangard and his office initiated a grand jury investigation of Brewington under an unconstitutional "criminal defamation" premise. Negangard worked with the staff of the Dearborn Superior Court II, Judge Hill and Brewington's public defender, Bryan Barrett, to ensure that Brewington had no opportunity to mount any kind of defense. Negangard convened a grand jury seeking indictments against protected speech then introduced a new criminal argument during trial, or in the alternative, Negangard argued different grounds for Brewington's indictments and then instructed Court Reporter Barbara Ruwe to omit the different grounds from the transcription, stripping Brewington of any opportunity to mount a defense. The facts as presented above demonstrate a conspiracy against Brewington's civil rights to a degree that extinguished any glimmer of constitutional legitimacy throughout the course of the grand jury investigation, Brewington's criminal proceedings, as well as Brewington's appeals.

10) Prior to this petition, Brewington:

A) HAS NOT filed any petition for post-conviction relief pursuant to Rule PC 1 or PC 2.

B) HAS filed a petition in federal court.

C) HAS filed a Petition for Writ of Certiorari with the United States Supreme Court.

D) HAS filed petitions to both Indiana Court of Appeals and Indiana Supreme Court.

11) In re: to above (10), list with respect to each petition, motion, or application:

A) ACTION AND SPECIFIC NATURE:

i) *Daniel P. Brewington vs. Sheriff Michael Kreinhop*; Habeas Corpus 1:11-cv-1086-twp-mjd, supplement filed 09/16/2011. (See *Appendix i* for specific elements argued.)

ii) Appeal to the Indiana Court of Appeals, *Brewington v. State* No. 15A01-1110-CR-550 (See *Appendix ii* for specific elements argued.)

iii) Petition to transfer to the Indiana Supreme Court, *Brewington v. State* No. No. 15S01-1405-CR-309 (See *Appendix iii* for specific elements argued.)

iv) Petition for writ of certiorari to the United States Supreme Court. No. 14-505. (See *Appendix iv* for specific elements argued.)

B) NAME AND LOCATION OF COURT PETITIONED

i) United States District Court Southern District of Indiana, Birch Bayh Federal Building & U.S. Courthouse, 46 East Ohio Street, Indianapolis, IN 46204.

ii) Indiana Court of Appeals, 115 W Washington St # 1080, Indianapolis, IN 46204.

iii) Indiana Supreme Court, 315 Indiana State House, 200 W. Washington Street, Indianapolis, IN 46204.

iv) Supreme Court of the United States, 1 First Street, NE, Washington, DC 20543

C) DISPOSITION OF THE ACTION AND DATE OF DISPOSITION

i) Entry Discussing Amended Petition for Writ of Habeas Corpus, filed: 10/14/2011The Southern District Court wrote, “Because the petitioner is not entitled to the relief he seeks at this time and in this forum, the action is dismissed. The dismissal shall be without prejudice.”

ii) The Court of Appeals issued a ruling on January 17, 2013. The Court vacated Count I, intimidation of Dr. Connor, and Count III, intimidation of Heidi Humphrey. The Court affirmed Counts II, IV, and V.

iii) The Indiana Supreme Court accepted transfer and issued an opinion on May 1, 2014. (See *Appendix iii* for disposition.)

iv) The United States Supreme Court denied transfer on January 15, 2015

D) CITATIONS OF ANY WRITTEN OPINIONS OR ORDERS ENTERED PURSUANT TO EACH DISPOSITION

i) N/A

ii) *Brewington v. State*, 981 N.E.2d 585 (2013)

iii) *Brewington v. State*, 7 N.E.3d 946 (2014)

iv) *Brewington v. Indiana*, 135 S.Ct. 970, __ U.S. __, 190 L.Ed.2d 834, 83 U.S.L.W. 3579 (2015)

12) NO. Though some issues addressed in (8) may appear similar to those raised in previous petitions and appeals, all the issues were raised after:

A) Brewington discovered that the Dearborn Superior Court II altered grand jury transcripts and audio;

B) Brewington discovered Negangard made Brewington a target of an unconstitutional grand jury proceeding;

C) Brewington discovered public defender Bryan Barrett altered a line of questioning during trial in order to assist law enforcement in another investigation of Brewington;

D) Brewington discovered Negangard tried to prosecute Brewington for violating the Indiana Rules of Professional Conduct;

E) Brewington discovered that Hill forced Brewington to endure an unconstitutional trial.

13) N/A.

14) Were you represented by an attorney at any time during:

A) Preliminary hearing – YES

B) .Arraignment – NO

C) Trial – YES, but the attorney failed to prepare any defense prior to trial

D) Sentencing – YES

E) Appeal – YES

F) Preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? – YES

15) If answered "yes to (14), list:

A) Names and addresses of each representing attorney:

i) Robert G. Kelly, 4353 Montgomery Rd, Norwood, OH 45212

ii) John Watson, 201 S Meridian St, Sunman, IN 47041

iii) Bryan Barrett, Rush County Courthouse, 101 East Second Street, Room 315, Rushville Indiana 46173

iv) Michael Sutherlin, 1027 N Alabama St, Indianapolis, IN 46202

B) The proceedings at which each such attorney provided representation:

i) Filed Habeas Corpus

ii) Served as Brewington's public defender in Brewington's criminal case for approximately two months before withdrawing.

iii) Brewington's second public defender. Barrett only appeared during hearings and never met with Brewington outside of a courtroom setting to discuss or share information about Brewington's criminal case.

iv) Represented Brewington in appeals to the Indiana Court of Appeals and the Indiana Supreme Court.

C) Robert Kelly volunteered his legal services. Both Watson and Barrett were Court appointed. Sutherlin was a hired attorney.

16) Brewington completed his 2.5 year prison sentence on September 5, 2013.

17) No attorney has been retained for this proceeding.

18) Brewington is not currently incarcerated and is not eligible for representation by a public defender.

Daniel P. Brewington, pro se

Appendix i

BREWINGTON ARGUED HIS DENTENION VIOLATED:

Brewington's First Amendment Right to Speech.

Brewington's arrest resulted from Brewington's public writings criticizing officials operating within the Dearborn County Court System. The State alleged Brewington's "criminal" writings occurred over the period of forty-one (41) months. At the time of the filing of the Habeas Corpus and supplement, the State failed to provide Brewington with any statement it considered to be a threat to personal safety.

Brewington's right to assistance of counsel

Brewington was refused a public defender at arraignment. No public defender met with Brewington in preparation for trial. Seven days prior to trial, there were still no witnesses subpoenaed, no one had been deposed, no experts had been obtained, and Brewington was denied the ability to review any discovery provided by the prosecutor with Brewington's attorney

Brewington's liberty without due process as he was not permitted to defend public postings during the grand jury proceedings

At the date of habeas filing and supplement, the only mention of Brewington's writings that caused any alleged fear was mentioned in the Dearborn County Special Crimes Unit report dated October 30, 2009. The Dearborn County Special Crimes Unit report alleged that on August 24, 2009, Humphrey claimed

Brewington's comments caused Humphrey to fear for the personal safety of his entire family but made no mention of whether fear was a personal fear of Brewington or fear of public outrage. However, despite the alleged fear about the safety of his family, Humphrey continued to rule on petitions and set and vacate hearings in Brewington's child custody proceedings until, on or about, June 9, 2010. Dearborn County Prosecutor F. Aaron Negangard did not make Brewington the target of a grand jury investigation until February 15, 2011, just five days after the State of Indiana dismissed a complaint Brewington filed against Negangard. Brewington had no idea what statements required defending because there was no specific claim or example of a threat to personal safety.

Brewington's rights guaranteed by the constitution

Judge Sally McLaughlin set Brewington's bond at $500,000 surety and $100,000 cash in the complete absence of any evidence that a crime had been committed, then appointed Brewington's first public defender then recused herself citing a conflict. No victim, nor any other official made any attempt to take action against Brewington until Negangard made Brewington a target of a grand jury investigation on February 15, 2011. No party sought any protective measures against Brewington until the State sought protective orders to protect the alleged victims from Brewington on March 11, 2011; after Brewington's arrest. Even if Brewington could have posted the $500,000 surety and $100,000 cash bond, McLaughlin imposed a restriction that Brewington could not post anything about

the case on the internet, while leaving the prosecutor's office with the freedom to publicly express its own views and opinions on the case.

Appendix ii

ISSUES RAISED ON APPEAL

AS TO COUNTS I-VI

i) Constitutional Limitations on Intimidation Prosecutions.

ii) The Trial Court's Final Instructions Failed to Define These Constitutional Limitations.

iii) Constitutional Limitations on Intimidation Prosecutions.

iv) The Court Should Reverse Brewington's Convictions Due to Erroneous Instructions Despite Trial Counsel's Insufficient Contemporaneous Objections.

v) There Was Insufficient Evidence to Support the Convictions on Counts I-IV.

AS TO COUNT V

i) There was insufficient evidence for Brewington's perjury conviction.

CONVICTIONS UNDER COUNTS I AND IV VIOLATE DOUBLE JEOPARDY

i) The substantial step supporting Count IV was intimidating and/or harassing Dr. Connor. Brewington's conviction for both counts violates the Double Jeopardy Clause of the Indiana Constitution.

OTHER TRIAL ERRORS

i) The Use of an Anonymous Jury Was Improper

ii) The custody evaluation and final decree should have been excluded

iii) Constitutional Limitations on Intimidation Prosecutions.

iv) Trial counsel's failure to object to the above was ineffective assistance of counsel.

Appendix iii

SPECIFIC NATURE PETITION TO TRANSFER

i) Whether Indiana Code § 35-45-2-1(a)(2), which defines criminal intimidation to include harsh criticism of a prior lawful act, must be interpreted narrowly to avoid criminalizing speech protected by the First Amendment,

ii) Whether convictions for intimidation and attempted obstruction of justice must be reversed under Street v. New York, 394 U.S. 576 (1969), when (1) the indictments charged conduct that is protected under the First Amendment as well as conduct that is potentially unprotected; and (2) the jury returned general verdicts.

iii) Whether Article I, § 9 of the Indiana Constitution, as interpreted in Price v. State, 622 N.E.2d 954 (Ind. 1993), limits prosecutions for crimes other than disorderly conduct, including intimidation and obstruction of justice.

iv) Whether a grand jury witness may be convicted for perjury for a statement that was (1) not false; and (2) cut short by the prosecutor before the witness could fully explain his answer.

DISPOSITION OF CASE

i) The Indiana Supreme Court stated prosecution argued a constitutionally impermissible "criminal defamation" ground for Brewington's conviction.

ii) The Indiana Supreme Court wrote the State repeatedly failed to distinguish the difference "between threatening the targets' reputations under Indiana Code section 35-45-2-1(c)(6)-(7) and threatening their safety under subsections (c)(1)-(3)."

iii) The Indiana Supreme Court found the jury instructions and general verdict were fundamentally erroneous

iv) The Indiana Supreme Court stated Hill failed to take any measures to prevent the above errors.

v) The Indiana Supreme Court upheld Brewington's convictions claiming Barrett's "constitutionally imprecise" trial strategy either invited the fundamental errors or sought to take advantage of the unconstitutional aspects of the State's case against Brewington, thus waiving Brewington's right to relief.

vi) The Indiana Supreme Court found Hill's non-intervention in protecting Brewington from fundamental error to be a conscience decision by Hill not to intervene. Justice Loretta Rush wrote that Hill did not intervene to correct the unconstitutional flaws plaguing Brewington's trial. Rush claimed Hill secretly realized that Barrett employed a strategy that neither objected to the unconstitutional jury instructions nor objected to Negangard's failure to define the nature of Brewington's crime. Rush ruled Hill's knowledge of Barrett's "constitutionally imprecise" strategy also waived Brewington's right to relieve from Negangard's unconstitutional criminal defamation argument.

vii) For the record of this petition for post-conviction relief, Brewington is oblivious as to how Rush and the Indiana Supreme Court were aware of any strategy by Barrett because Barrett never met with Brewington to investigate the case or explain trial strategy to Brewington. Equally puzzling is how Rush determined Hill's thoughts on Barrett's thoughts on trial strategy because there is no record of Hill's or Barrett's thoughts on Barrett's trial strategy. Brewington was unable to address any of these issues prior to the ruling of the Indiana Supreme Court because Rush was the first party to raise the new issues.

Appendix iv

QUESTIONS PRESENTED:

The Indiana Supreme Court opinion, authored by Justice Loretta H. Rush, stated Petitioner's indictments of Intimidation of a Judge and Attempted Obstruction of Justice of a divorce proceeding, were based on unspecified general conduct over the course of 18-43 months; the prosecution made a "plainly impermissible" criminal defamation argument; the jury instructions on the First Amendment and Article I, Section 9 of the Indiana Constitution were "constitutionally incomplete" ; the State failed to make a distinction between threats to safety and threats to reputation, that it was "quite possible that the impermissible criminal-defamation theory formed at least part of the basis for the jury's guilty verdicts, and the general verdict cannot indicate otherwise," thus compelling the Court to find a "general-verdict error," while at no point claiming any error was harmless; however the Court denied Brewington relief by asserting the errors were not fundamental because the errors were invited by what the Court deemed to be Brewington's trial strategy. The Indiana Supreme Court deemed the following actions as trial strategy that invited the error; defendant exercising his Fifth Amendment Right not to testify, defense counsel's decision not to offer lesser harassment jury instructions, and defense counsel's attempt to "exploit the prosecutor's improper reliance on 'criminal defamation.'" All of the above arguments

against granting Brewington relief from the fundamental/plain errors were not raised by the State but were made sua sponte by the Indiana Supreme Court.

State of Ohio)
) SS
County of Delaware)

I, ________________________, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing petition; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this motion; and that the matters and allegations therein set forth are true.

____
Signature of Affiant

Subscribed and sworn to before me this ____ day of February, 2017.

____
Notary Public

My Commission Expires:

____
(month) (day) (year)

State of Ohio)
) SS
County of [redacted])

I, Dan Brewington, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing petition; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this motion; and that the matters and allegations therein set forth are true.

Signature of Affiant

Subscribed and sworn to before me this 21 day of February, 2017.

My Commission Expires:

(month) (day) (year)

NOTARY PUBLIC
FOR THE
STATE OF OHIO
My Commission Expires