IN THE
INDIANA COURT OF APPEALS

Case No. 15A04-1712-PC-02889

DANIEL BREWINGTON, _____ Appellant,	)	Appeal from Dearborn County Superior Court II
v.	)	Case No. 15D02-1702-PC-0003
STATE OF INDIANA _____ Appellee.	)	Hon. W. Gregory Coy, Special Judge

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APPELLANT'S BRIEF

Daniel P. Brewington
[redacted]
Pro Se Filing Party

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STATEMENT OF ISSUES

1) Did the post-conviction court err in not granting summary judgment/disposition in favor of Brewington and should this Court vacate Brewington's convictions?

2) Did the post-conviction court err in awarding sua sponte summary judgment in favor of the State and summarily denying Brewington's Verified Petition for Post-Conviction Relief without holding a hearing or providing any specific findings of fact?

3) Did the actions of the post-conviction court rise to the level of judicial bias and does a pattern of judicial bias make it impossible for Brewington to enjoy constitutionally protected rights in the Indiana court system.

STATEMENT OF CASE

The present case is one of first impression as Indiana case law is void of any precedent like the current case. The post-conviction court summarily denied a petition for post-conviction relief without a hearing despite the trial record demonstrating that Daniel Brewington (hereinafter "Brewington") had no assistance of counsel. On the court's own motion, the post-conviction court granted summary judgment to the non-movant State, despite the State's arguments that issues of material fact prohibited summary judgment and necessitated a hearing under Ind. P-C.R. 1(4)(g). The post-conviction judge, Special Judge W. Gregory Coy (hereinafter "Judge Coy") summarily dismissed Brewington's entire post-conviction action based on Judge Coy's finding that "there is no factual basis to support any of Brewington's claims." To ensure that the reader of this appellant brief does not dismiss Brewington's claims as excessive rhetoric or bravado, one of the grounds raised in Brewington's petition for relief includes a variety of misconduct by the prosecution that is neither accidental nor harmless. One example of egregious misconduct can be found in the closing arguments by Deputy Dearborn County Prosecutor Joeseph Kisor. During closing arguments, Kisor alleged Brewington possessed the potential Brewington to *murder* the jury members during trial:

> "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 (App. 38)

Brewington includes the above example in the Statement of Case to prevent another Indiana court from accidently overlooking the unimaginable misconduct in a prosecution led by current Chief Deputy Attorney General F. Aaron Negangard, and the fundamental error associated with Brewington's public defender and the trial judge looking the other way. Because the post-conviction court failed to hold a hearing on this matter or provide any specific details or findings of fact, the record of Brewington's post-conviction action is limited to the CCS, pleadings filed by the parties, and the orders filed by the post-conviction court that are included in the attached appendices.

On February 22, 2017, Brewington filed his Verified Petition for Post-Conviction Relief (hereinafter "PCR"), pertaining to Cause No. 15D02-1103-FD-000084. In total, Brewington argued twenty grounds for relief from his convictions including ineffective assistance of trial counsel under *Cronic* and ineffective assistance of appellate counsel under a *Strickland* review. On April 3, 2017, Brewington filed his Motion for Summary Judgment. Despite the State being a non-moving party, in an order dated October 4, 2017, the post-conviction court granted summary judgment in favor of the State and dismissed Brewington's Verified Petition for Post-Conviction Relief without a hearing. The post-conviction court made no findings of fact or conclusions of law on any issues raised by Brewington as required by P-C.R. (6). Brewington filed a timely Motion to Correct Error on October

25, 2017. The post-conviction court denied the motion without explanation on November 6, 2017. Brewington timely filed his notice of appeal on December 4, 2017.

STATEMENT OF FACTS

1. CRIMINAL PROCEEDINGS

Appellant Brewington was indicted on March 7, 2011 by a Grand Jury in the Dearborn Superior Court II with three (3) counts of lntimidation, one (1) count of Attempt to Commit Obstruction of Justice, one (1) count of Perjury, and one (1) count of Unlawful Disclosure of Grand Jury Proceedings (App. 168). Dearborn Superior Court II held an Initial Hearing in this matter on March 11, 2011. (App. 168). Judge Sally Blankenship set Brewington's bond at $500,000 surety/$100,000 cash (App. 224) then disqualified herself from presiding in this matter on the basis that one of the victims in this matter, Judge James D. Humphrey, was the sitting judge of Dearborn Circuit Court (App. 168). The Indiana Supreme Court initially appointed Judge John A. Westhafer as Special Judge pursuant to Ind. Criminal Rule 13(E) on April 14, 2011. Judge Westhafer recused himself, and the Court appointed Judge Brian Hill on May 27, 2011 (App. 168). Brewington was appointed Bryan Barrett (hereinafter "Barrett") as counsel on June 20, 2011 after prior counsel, John Watson, had withdrawn from representation to remedy a conflict on the basis that he was an attorney under contract as a public defender in the Dearborn Circuit Court as hired by alleged victim Judge Humphrey (App. 168). Barrett did not file an appearance in the case until July 18, 2011 (App. 158). During a pretrial hearing on July 18, 2011, Barrett told Judge Hill he and Brewington were unsure of "what the specific things the government is saying that [Brewington] did

that constituted intimidation and the various other offenses." (App. 128 and 154). During the same hearing the State told Brewington to rely on the "complete transcript of the grand jury proceedings" to determine what actions the State alleged to constitute "intimidation and the various other offenses" (App. 129 and 155). Brewington's jury trial was initially set for jury trial on August 16, 2011. (App. 168) The State waited until August 11, 2011 to file a motion to release grand jury exhibits/transcript (App. 159). On the court's own motion, Judge Hill vacated the August 16, 2011 jury trial date on the basis that Barrett had a family emergency that would render him unable to be prepared for trial by August 16, 2011 and reset the matter for jury trial starting on October 3, 2011 (App. 168-69). On August 17, 2011, Judge Hill held Brewington's bond reduction hearing (App. 159). Judge Hill's order releasing the grand jury transcript was not issued until August 23, 2011; a week after Brewington's originally scheduled jury trial. (App. 159) Brewington remained incarcerated on a $500,000 surety and $100,000 cash bond for approximately at least 164 days prior to Judge Hill authorizing the release of the any specific indictment information to defense counsel. Brewington was convicted on Counts I-V on October 6, 2011, while being acquitted at trial of Count VI. Brewington was sentenced by Judge Hill to an aggregate term of five (5) years executed on October 24, 2011. (App. 169) Appellate counsel, Michael Sutherlin, entered his appearance in the appeal of Brewington's criminal convictions on January 18, 2012 (App. 169). On January 17, 2013, the Indiana Court of Appeals

issued its ruling which vacated Brewington's convictions with respects to Counts I and III, Intimidation as Class A Misdemeanors, but affirmed the conviction in all other respects (App. 169) *Brewington v. State*, 981 N.E.2d 585 (2013). The Court entered an order vacating those convictions on January 29, 2013 (App. 177). The Indiana Supreme Court granted Brewington's Petition for Transfer on May 1, 2014. In an opinion written by current Chief Justice Loretta H. Rush, the Indiana Supreme Court issued a unanimous decision in *Brewington v. State*, 7 N.E.3d 946, (2014), affirming Brewington's convictions of Intimidation as indicted in Count II, Attempted Obstruction of Justice in Count IV, and Perjury in Count V (App. 178). Though a unanimous decision, the opinion in *Brewington* gave conflicting accounts as to which of Brewington's actions were responsible for the perjury indictment. *Id.*at 958, 965, 966. The Indiana Supreme Court also held that Negangard argued a "plainly impermissible ('criminal defamation' without actual malice)" and unconstitutional ground for Brewington's convictions. *Id.* 974. The Indiana Supreme Court also found it was "quite possible that the impermissible criminal-defamation theory formed at least part of the basis for the jury's guilty verdicts." *Id.* at 974-75. Ultimately the Indiana Supreme Court refused to grant relief from the fundamental errors claiming the unconstitutional errors were invited "by what all indications was a deliberate and eminently reasonable strategic choice" of trial strategy employed by Barrett. Brewington filed a pro se Petition for Rehearing on June 2, 2014 (App. 169). Brewington also filed a pro se Petition for Judicial Disqualification

of Justice Rush on June 4, 2014 (App. 169). The Court denied Brewington's Petition for Rehearing and certified the opinion on July 31, 2014 (App. 169). Justice Rush denied Brewington's Petition for Judicial Disqualification on the same date (App. 169). Brewington then filed a prose Petition for Writ of Certiorari in the Supreme Court of the United States on October 29, 2014 (App. 169). The Supreme Court of the United States denied Brewington's Petition for Writ of Certiorari on January 12, 2015 (App. 170). Brewington then filed a prose Petition for Rehearing, which was denied by the Supreme Court of the United States on March 2, 2015 (App. 170).

2. POST-CONVICTION RELIEF PROCEEDINGS

Brewington filed his Verified Petition for Post-Conviction Relief in this matter on February 22, 2017 and raised the following grounds for relief (App. 8):

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

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

D. Brewington filed his Motion for Summary Judgment on April 4, 2017.

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.

Brewington timely filed a Motion for Change of Judge on March 3, 2017 (App.

5). On March 21, 2017, the State filed its Answer to Brewington's petition entering a general denial to all material allegations (App. 6). On March 21, 2017 the Clerk of Courts filed Appointment of Special, naming Switzerland Circuit Judge W. Gregory Coy (hereinafter "Judge Coy") (App. 6). Acceptance of Appointment filed March 29, 2017 (App. 6). Brewington filed his Motion for Summary Judgment pursuant to Ind. R. Trial P. 56 on April 3, 2017 (App. 6). On May 3, 2017, State filed Motion for Extension of Time to Respond to Petition's Motion for Summary Judgment, which was subsequently granted on May 12, 2017 (App. 6). On May 31, 2017, Brewington filed a Request for Order Compelling Production of Grand Jury Record (App. 6). The record is void of any response from the post-conviction court. June 8, 2017, State filed its Response to Brewington's Motion for Summary Judgment (App. 6). On June 9, 2017, Brewington filed his Request for Names of Grand Jurors (App. 6). The CCS is void of any response to Brewington's request from the post-conviction court. June 21, 2017 Brewington filed Petitioner's Reply to State's Response to Petitioner's Motion for Summary Judgment (App. 6). Brewington's Reply requested the post-conviction court to consider Brewington's request for summary judgment under T.R. 56 as a request for summary disposition under P-C.R. 1(4)(g). Judge Coy's summary denial of Brewington's post-conviction action failed to address Brewington's request for consideration under P-C.R. 1(4)(g). The CCS shows Brewington's Request for Ruling on Summary Judgment as being filed on October 2, 2017 (App. 6), but the date of the attached Certificate of Service shows September 23, 2017 (App. 287). In

the Order filed October 4, 2017, Judge Coy alleged to have made an independent investigation of the record and determined there was "no factual basis to support any of Brewington's claims and/or allegations" in all twenty (20) grounds raised in Brewington's petition (App. 291). Judge Coy summarily dismissed Brewington's entire post-conviction action without a hearing by granting summary judgment to the non-movant State. Judge Coy's order shows as being signed on September 25, 2017 (App. 291) but the order was not filed until October 4, 2017 (App. 7). Brewington filed a Motion to Correct Error on October 25, 2017 (App. 7), which Judge Coy subsequently denied on November 7, 2017. Brewington filed his timely notice of appeal on December 4, 2017.

SUMMARY OF ARGUMENT

Reversal is necessary as the post-conviction court erred by denying Brewington procedural due process in the court's sua sponte order granting summary judgment in favor of the State. The post conviction court granted summary judgment to the State, while claiming Brewington was procedurally barred from using the summary judgment procedure in a post-conviction relief action.

Reversal is necessary as the actions of the post-conviction court demonstrate a judicial bias against Brewington's case and that bias raises the question of whether Brewington can enjoy fair access to the Indiana court system.

This Court should grant summary judgment in favor of Brewington and vacate Brewington's convictions based upon the pleadings in the case.

ARGUMENT

INTRODUCTION

No wrangling of procedure or law by the State of Indiana can change the facts of this case: Brewington was denied his rights to constitutionally sufficient indictment information and his right to legal counsel. This case also involves altered grand jury records and rampant misconduct by former Dearborn County Prosecutor, current Chief Deputy to Indiana Attorney General Curtis Hill, and Indiana Courts continue to take extreme measures in refusing to address the official

misconduct.

This appeal does not debate whether the content of Brewington's inflammatory statements about Indiana court officials enjoyed First Amendment protections. This appeal focuses on the fact that Brewington was forced to trial without an understanding of the indictments or assistance of counsel. Brewington faced indictments stemming from an unconstitutional grand jury investigation, where Negangard sought and obtained indictments against Brewington for criminal defamation. Negangard also withheld evidence and indictment information by providing Brewington with records that were altered by the staff of the trial court, or otherwise incomplete. Brewington raised many of the issues before trial but Judge Brian Hill refused to take any actions. Negangard remained silent on Brewington's claims and sought to take full advantage of Brewington's lack of counsel. The post-conviction court avoided a hearing on the matter by granting summary judgment to the State after the State argued summary judgment was not available. Forcing a defendant to trial without legal assistance and charging information mirrors what a person would expect to see in a movie dealing with racism in an Alabama courtroom from the early 1900's. The post-conviction court's summary denial of Brewington's Verified Petition for Post-Conviction Relief does little to bolster confidence in the Indiana judiciary.

The case of *Tyson v. State*, 622 N.E.2d 457, (1993) deals with the recusal of Chief Justice Randall T. Shepard and the "Indiana way" of administering justice.

While attending a social engagement, the wife of the Chief Justice of the Indiana Supreme Court told Alan M. Dershowitz, attorney for Mike Tyson, "that [Dershowitz] needed to be better attuned to the Indiana way of approaching things as this appeal progressed." *Id* at 458. Indiana appears to be the only state with case law suggesting Indiana courts administer justice in their own manner. The "Indiana way" in Brewington's case equates to Indiana courts searching for absurd rationalizations as to why the courts should ignore the fact Negangard sought indictments and criminal convictions in retaliation for Brewington's protected speech. If not for Brewington's persistence, the misconduct would have been swept under the rug. Fortunately, this appeal gives this Court the opportunity to determine whether "the Indiana way of doing things" consists of administering additional retribution or administering fair justice.

1. SUMMARY DISMISSAL IS ERRONEOUS

Though only three (3) pages long, the October 4, 2017 order of the post-conviction court is riddled with errors contrary to fact, law, and standard court procedure.

SUMMARY "JUDGMENT" AND "DISPOSITION" ARE THE SAME

Judge Coy drew a non-existent distinction between summary judgment under Ind. Trial Rule 56 and summary disposition under Ind. Post-Conviction Rule 1(4)(g)

> 14. The State argues that summary judgment is not available in a post-conviction relief claim; this court agrees but does find that summary disposition is still available pursuant to Indiana Rule PC 1 Sec. 4(g).

Both Judge Coy and the State are erroneous in their contentions. Indiana Rules of Post-Conviction Relief make no mention of summary judgment under T.R. 56 being barred from the procedures normally available in civil proceedings. P-C.R. 1(5) states in part:

> All rules and statutes applicable in civil proceedings including pre-trial and discovery procedures are available to the parties, except as provided above in Section 4(b).

The Court in *State v. Gonzalez-Vazquez*, 984 N.E.2d 704, (2013) directly addresses how T.R. 56 is available in post-conviction proceedings:

> In *Hough v. State*, 690 N.E.2d 267, 269 (Ind.1997), an appeal from a grant of summary judgment to the State in post-conviction proceedings, our Supreme Court has stated: "The summary judgment procedure that is available under Indiana Post-Conviction Rule 1(4)(g) is the same as under Trial Rule 56(C)." Under both rules, summary judgment is to be granted when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Id. (citing Ind. Post-Conviction Rule 1(4)(g); Ind. Trial Rule 56(C)). *Id* at 708

After the State erroneously claimed summary judgment under T.R. 56 was not available in post-conviction proceedings, Brewington made the following request in Brewington's Reply to the State's response to Brewington's motion for summary judgment (App. 240):

> Brewington first notes that he accidently cited Summary Judgment under Indiana R. Trial P 56 rather than request the appropriate relief for Summary Disposition under Ind. R. P. 4(g). Brewington would request that the Honorable Special Judge Coy excuse the oversight and treat Brewington's original filing for Summary Judgment as the appropriate Summary Disposition.

After drawing a non-existent distinction between T.R. 56 and P-C.R. 1(4)(g), Judge Coy refused to accept Brewington's request to consider Brewington's motion for summary judgment as a motion for summary disposition under the "correct" P-C.R. 1(4)(g).

SUMMARY JUDGMENT UNAVAILBLE TO THE STATE

Gonzalez-Vazquez not only verifies T.R. 56(C) applies to post-conviction proceedings but a plain reading of the case also demonstrates judgment is only available to a moving party. The State never petitioned the court for summary judgment. In fact, the State argued summary judgment was not available in its Response to Petitioner's Motion for Summary Judgment (App. 175-76).

JUDGE COY HELPED THE STATE

Judge Coy's summary dismissal of Brewington's post-conviction action was a systematic effort to deprive Brewington's right to due process and equal protection of the law. Judge Coy's order lacks any foundation in reason or law. To rationalize granting sua sponte summary judgment to the non-movant State, Coy first had to ignore the State's arguments that summary judgment was not available in the case (App. 175). Judge Coy then had to dispose of the State's issues of material fact argument because an issue of material fact mandated a hearing. After drawing a non-existent distinction between summary judgment and summary disposition, Coy attached the State's issue of material fact to Brewington's "failed" motion for summary judgment then labeled the State's issue of material fact arguments

"moot." Even though the State entered a general denial and failed to directly address a majority of Brewington's claims, Judge Coy summarily dismissed Brewington's entire post-conviction action claiming, Brewington's petition lacked any "factual basis to support any of Brewington's claims and/or allegations." (App. 290-91). This required a sua sponte independent review of the record with the intent to deny Brewington's petition prior to a hearing to obtain evidence. As the State did not move for summary judgment, Judge Coy had to disregard the plain language of both T.R.56(c) and P-C.R. 1(4)(g) that limits summary judgment to a moving party. Brewington was stripped of rights to due process and equal protection because in the absence of a moving party, Brewington was denied an opportunity to contest a claim by the State or raise an issue of material fact:

> Therefore the court finds that the issue of whether there is a genuine issue of material fact relative to a summary judgment finding as sought by Brewington is moot, but that summary disposition can still be entered. (App. 290-91)

Judge Coy never contested the existence of issues of material fact, Judge Coy simply rendered the issues of material fact "moot" by attaching the issues to Brewington's motion for summary judgment that Judge Coy erroneously set aside.

JUDGE COY SOUGHT OUT TO DISMISS BREWINGTON'S CASE

The mistakes in Judge Coy's order were not a series of poor legal interpretations nor were the rulings based on arguments raised by the State. Judge Coy took the path of *most* resistance that had no foundation in Indiana case law,

just to bury Brewington's petition for post-conviction relief. Any search of Indiana case law using the terms "post conviction" and "summary judgment" returns a plethora of cases demonstrating the interchangeability of T.R.56 and P-C.R. 1(4)(g). Coy's actions were malicious and sought to take advantage of a pro se litigant. Ind. Judicial Conduct Rule 2.2 states:

> A judge shall uphold and apply the law, and shall perform all duties of judicial office fairly and impartially.

Comment [4] of the same rule state:

> It is not a violation of this Rule for a judge to make reasonable accommodations to ensure pro se litigants the opportunity to have their matters fairly heard.

Judge Coy did just the opposite in granting summary judgment to the State:

> 14. The State argues that summary judgment is not available in a post conviction relief claim; this court agrees, but does find that summary disposition is still available pursuant to Indiana Rule PC 1 Sec. 4(g). (App. 290)

Neither the State nor Judge Coy cited any case law to support the separation of T.R. 56 and P-C.R. 1(4)(g). Both the State and Judge Coy knew there was no such thing. If Brewington's petition for post-conviction relief or motion for summary judgment lacked merit or standing, there would have been no need for the State nor Judge Coy to make such a ridiculous contention. Any questions as to the motives behind the baseless argument are answered in Judge Coy's order:

> 13. Brewington alleges that various parties involved in his prosecution acted conspiratorially, that is, they acted together to alter grand jury transcripts; that the special judge and the prosecutors committed various acts of

> misconduct; that he was denied effective assistance of counsel, that the trial judge was not impartial, and that his, appellate counsel was also ineffective. (App. 290)
>
> 16. There is no factual basis to support any of Brewington's claims and/or allegations against the judges and attorneys involved in his case.

Judge Coy's ladder of "errors" in rationalizing the summary dismissal of Brewington's post-conviction action only adds weight to Brewington's factual allegations against the Indiana courts.

2. BREWINGTON IS ENTITLED TO SUMMARY JUDGMENT

Judge Coy erred in not awarding summary judgment to Brewington. Brewington is eligible for summary judgment because, unlike the State, Brewington is a moving party under T.R. 56. Evidence of fundamental error in the pleadings of both parties provide grounds for summary judgment. First, Judge Brian Hill forced Brewington to trial without an understanding of the indictments and while being deprived assistance of counsel. Second, the court staff of the Dearborn Superior Court II altered the record of the grand jury. Third, the grand jury indictments are unconstitutional. Fourth, Negangard and the Office of the Dearborn County Prosecutor engaged in a variety of malicious and outrageous acts of prosecutorial misconduct that placed Brewington in grave peril. All the above are blatant violations of basic principles that deprived Brewington of fundamental due process and are reviewable under the standard explained in *Ben-Yisrayl v. State*, 738 N.E.2d 253, (2000)

> An otherwise forfeited claim may be reviewed when we find blatant violations of basic principles, the harm or potential for harm is substantial, and the resulting error denied the defendant fundamental due process. *Baird v. State*, 688 N.E.2d 911, 917 (Ind.1997).

RIGHT TO LEGAL COUNSEL AND INDICTMENT INFORMATION

Brewington received no legitimate assistance of counsel in his criminal proceedings. Brewington's petition for post-conviction relief refers to the record of the case for irrefutable evidence that Brewington was denied any assistance of trial counsel under the standard discussed in *United States v. Cronic,* 466 U.S. 648, 104 S.Ct. 2039, 80 L.Ed.2d 657 (1984). *Ward v. State*, 969 N.E.2d 46, (2012) explains:

> In *Cronic*, the Supreme Court recognized that in certain limited circumstances of extreme magnitude, prejudice to a criminal defendant is so likely that an inquiry into counsel's actual performance is not required. Id. at 658-62, 104 S.Ct. 2039. Stated differently, a presumption of ineffectiveness arises in certain extreme circumstances without resort to the traditional two-prong *Strickland* analysis. Id.; see also *Florida v. Nixon*, 543 U.S. 175, 190, 125 S.Ct. 551, 160 L.Ed.2d 565 (2004) (explaining that *Cronic* is a narrow exception to *Strickland*). The Court in *Cronic* identified three circumstances justifying such a presumption: (1) the complete denial of counsel; (2) situations where counsel entirely fails to subject the prosecution's case to meaningful adversarial testing; and (3) situations where surrounding circumstances are such that, " although counsel is available to assist the accused during trial, the likelihood that any lawyer, even a fully competent one, could provide effective assistance is so small that a presumption of prejudice is appropriate without inquiry into the actual conduct of the trial." 466 U.S. at 659-60, 104 S.Ct. 2039.

Brewington meets all three circumstances explained in *Cronic*. Brewington

fell victim to the complete denial of counsel as addressed in *Avery v. Alabama*, 60 S.Ct. 321, 308 U.S. 444, 84 L.Ed. 377, (1940):

> [T]he denial of opportunity for appointed counsel to confer, to consult with the accused, and to prepare his defense could convert the appointment of counsel into a sham, and nothing more than a formal compliance with the Constitution's requirement that an accused be given the assistance of counsel. [6] The Constitution's guarantee of assistance of counsel cannot be satisfied by mere formal appointment.

Barrett's appointment as Brewington's public defender was nothing more than a "sham" appointment as described in in *Avery*. As in *Powell v. Alabama*, 53 S.Ct. 55, 287 U.S. 45, 77 L.Ed. 158, (1932) Judge Hill's failure to "make an effective appointment of counsel was likewise a denial of due process within the meaning of the Fourteenth Amendment." Though Judge Coy denied Brewington the opportunity to construct a record through a post-conviction hearing, evidence supporting the reversal of Brewington's convictions lie squarely in both Brewington's and the State's pleadings in this case.

The CCS in criminal trial shows Brewington filed three pro se motions at the beginning of Brewington's criminal trial; Motion to Dismiss for Ineffective Assistance of Counsel (App. 160), Motion to Disqualify F. Aaron Negangard an Appointment of a Special Prosecutor (App. 160), and Motion to Dismiss (App. 160 and 220). Brewington included the following dialog between Judge Hill and Brewington in Brewington's Motion for Change of Judge (App. 80), Brewington's Reply to State's Response to Petitioner's Motion for Summary Judgment (App. 238),

and Brewington's Request for Ruling on Summary Disposition (App. 266). The motions address how Judge Hill refused to directly address Brewington's claims of receiving no assistance of counsel. On October 3, 2011, during the opening moments of Brewington's criminal trial, Judge Hill inquired as to why Brewington filed the three pro se motions:

> "Mr. Brewington, you have legal counsel and I'm not inclined to contemplate pro se motions. I guess, what's your uh, what are you going for here? You've got counsel to represent you to give you legal advice and make these filings. Are you're uh, indicating to me that you're wanting to represent yourself or do you want to clarify that for me please?" Tr. 3 (App. 88)
>
> Brewington responded,
>
> "No, your honor. Uh, I just, Mr. Barrett hasn't met with me since July, I believe the 17th of this year ... I still don't have some of the evidence. I don't have copies of the Grand Jury evidence. There's documents from Detective Kreinhop's investigation that are not included ... I just don't know the direction of my defense and he hasn't been able to meet with me, tell me anything, explain to me anything. I also do not have my medication. I take Ritalin for attention deficit disorder ... I have absolutely no idea what's going on in my case." Tr. 4 (App. 88)
>
> Hill interpreted Brewington pleas for evidence, charging information, ADHD medication, and legal counsel as a request by Brewington to represent himself in the matter. Hill gave the following response to Brewington's pleas for help:
>
> Okay, I've listened for about three (3) or four (4) minutes 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 ... Tr. 5 (App. 88)
>
> Brewington responded:

> "No, no, no, I want [competent] counsel. I want to know what's going on. I can't and even if I were to make a decision to do it on my own, I don't have, I haven't been given the medication that I need that is prescribed by a doctor to do this sort of stuff, I mean to read, to process, to question and everything like that. I just, I would have raised the issue earlier except Mr. Barrett at the September 19th hearing, said that he would be in to discuss the case with me and he never appeared. He said the same thing at the hearing before that. He said that he would be in to see me and he never appeared. He said over the phone that he would be in to see me when he had the chance and he never appeared. So I haven't had the opportunity to have effective counsel. It's not that I want to do it on my own. It was a last resort effort." Tr. 5 (App. 88-89)
>
> Hill gave only the following reply to Brewington's numerous pleas:
>
> "Okay that was the answer to my question. Uh, Mr. Barrett, are you ready to proceed with this case today?" (App. 89)
>
> Bryan Barrett replied, "Yes your honor" (App. 89)

The most egregious fundamental error from the above colloquy is drawn from what does not appear on the record. The first prong of *Cronic* is satisfied by Barrett's refusal to ensure Brewington had even a basic understanding of the proceedings. Aside from the perspective of a review for judicial misconduct, Hill's failure to question Barrett about Brewington's claims is unnecessary to prove that Barrett failed to provide even a basic level of legal assistance to Brewington. This falls at the heart of the fact that Brewington is entitled to summary judgment. The record in Brewington's trial is simple. Brewington told the trial court Brewington had no understanding of the case and Barrett allowed Brewington to face a criminal

trial immediately after Brewington claimed to have no understanding of the case. Brewington did everything possible to meet his burden of raising the constitution deficiencies concerning unconstitutional indictments and receiving no assistance of counsel, both verbally and through written motions. Barrett, Judge Hill, and Negangard had the ability to explain themselves before trial but remained silent. Any opportunity for Barrett, Negangard, and Judge Hill to explain their conduct would be better served in a disciplinary action.

There may never be a more glaring example of the sham representation described in *Avery* than the current case. Indiana case law is void of an attorney refusing a client's on-record plea for an explanation of charging information and evidence. If this Court has any doubt as to Barrett's incompetence and/or indifference as Brewington's appointed public defender, Brewington directs the Court to Barrett's statements during closing arguments where even Barrett admitted he was unsure about what statement was responsible for Brewington's Perjury indictment, Count V:

> "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 (App. 50 and 272)

The Indiana Supreme Court had similar problems understanding the nature of Brewington's perjury indictment as the Supreme Court claimed two different statements were responsible for Brewington's single perjury indictment:

> [T}he 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
>
> 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

This meets the second prong in *Cronic.* If the both the Indiana Supreme Court and Barrett were unsure what statement formed the basis of Brewington's perjury conviction, then it was impossible for Barrett to subject the State's case to any adversarial testing. Any argument by the State that Brewington's trial was anything but a constitutional travesty dies here. The State cannot argue Brewington had both competent legal counsel *and* constitutionally sufficient indictment information because the two arguments cannot co-exist. If Barrett was unsure what conduct caused the perjury indictment, then the indictment information was unconstitutionally vague and/or Barrett made no attempt to obtain an understanding of the alleged criminal conduct Barrett was appointed to defend.

The only proactive measures taken by Barrett, while serving as Brewington's public defender, actually harmed Brewington. Near the end of Brewington's trial, Barrett attempted to put a positive face on Barrett's relationship with Brewington to Brewington's own detriment. The *Brewington* Court wrote,

> Yet he nevertheless agreed under oath (in connection with waiving his right to testify) that even though he and trial counsel "to put it charitably,…had a bit of a rocky

> relationship at times," it was " better now," Tr. 432-33
> *Brewington v. State*, 7 N.E.3d at 978

Barrett placed Brewington in great peril in making Brewington agree or disagree with Barrett's analysis of their relationship near the end of trial. First, a cordial relationship near the end of trial does not remedy Barrett's on-record refusal to explain indictment information to Brewington nor does it correct Barrett's admission during closing arguments that Barrett was still unsure what actions formed the basis of some indictments. It should be questioned why, while pointing out the relationship had improved, the Indiana Supreme Court failed to comment on what it had improved from or why the relationship was "to put it charitably…a bit rocky at times." Second, the dialogue formed part of the reasoning the Supreme Court used to construct what the Court believed to be Barrett's "trial strategy" that the Court claimed to invite the errors associated with the unconstitutional aspects of Negangard's prosecution. Barrett made the statement despite knowing that making such a statement on record would hinder any later ineffective assistance claim under the standard of *Strickland v. Washington*, 466 U.S. 668, 687, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). Barrett's statement can only be viewed as a self-serving attempt at damage control because everyone in the courtroom knew Barrett refused to reply to Brewington's requests for legal assistance at the beginning of trial. [1] This could very well be a result of Barrett's continued "non-compliance with

[1] Source: http://in.gov/publicdefender/files/pdc-minutes-2012.pdf

caseload maximums," as Rush County's only public defender, in the four quarters leading to the September 19, 2012 meeting of the Indiana Public Defender Commission Meeting. (App. 9)

Brewington directs this Court to *Seniours v. State*, 634 N.E.2d 803, (5 Dist. 1994) for perspective:

> 'The right to counsel can only be relinquished by a knowing, voluntary, and intelligent waiver of the right.' *Dowell v. State* (1990), Ind. App., 557 N.E.2d 1063. Whenever a defendant proceeds pro se, it is incumbent upon the trial court to determine if the waiver of the right to counsel is made knowingly and voluntarily. *Kirkham v. State* (1987), Ind. App., 509 N.E.2d 890, 892. To make such a determination, the trial court must conduct a hearing to determine the defendant's competency to represent himself and also to establish a record of the waiver. *Dowell*, supra. The record must show that the defendant was made aware of the 'nature, extent, and importance' of the right to counsel and the necessary consequences of waiving such a right. *Kirkham*, supra. 'Merely making the defendant aware of his constitutional right is insufficient.' Id. [T]he trial court [634 N.E.2d 805] 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.' *Dowell*, supra. However, the trial court need not specifically inquire into each of the guidelines enunciated in *Dowell*. It is sufficient if the record reveals that, after being apprised of the advantages of representation by counsel and the pitfalls of self-representation, a defendant voluntarily, knowingly, and intelligently chooses self-representation. *Leonard v. State* (1991), Ind., 579 N.E.2d 1294." *Martin v. State* (1992), Ind.App., 588 N.E.2d 1291, 1293.

Seniours shows us a few things. First, Judge Hill asked Brewington if Brewington wanted to represent himself *after* Brewington said he did not have all

the evidence against him, any understanding of the indictments, lacked the proper medication for Attention Deficit Disorder, and after Brewington requested legal representation from an attorney willing to speak with Brewington about the case. Brewington's requests greatly resemble the questions mention in *Seniours* that Judge Hill was required to ask if Brewington made a request to represent himself. If Brewington accepted a plea agreement under similar circumstances, Indiana law would require the conviction to be overturned. In applying the standard of IC § 35-35-1-2 Brewington's convictions require reversal. The Court in wrote *Oliver v. State*, 843 N.E.2d 581, (2006):

> Ind.Code § 35-35-1-2(a) provides in relevant part:
>
> The court shall not accept a plea of guilty without first determining that the defendant:
>
> (1) understands the nature of the charge against him;

Negangard and Judge Hill forced Brewington to trial despite knowing a plea deal under the same circumstances would have been unconstitutional. Per *Seniours,* the failure to raise Barrett's non-existent legal representation under *Cronic* on direct appeal does not waive Brewington's right to counsel. Brewington's claim of ineffective assistance of appellate counsel under *Strickland* also preserves Brewington's right to relief. If appellate counsel Michael Sutherlin would have argued Barrett had no plausible trial strategy, the Indiana Supreme Court would have been unable to rationalize Barrett inviting the constitutional errors.

"But even constitutional errors may be invited. E.g., *United States v.*

Jernigan, 341 F.3d 1273, 1289 (11th Cir. 2003)" *Brewington* at 977. For the benefit of this Court of Appeals and/or any future reviewing state or federal courts, Brewington wishes to place some context on the Indiana Supreme Court electing to travel to the Eleventh Circuit to find a rationale to support the Indiana Supreme Court's argument on the ability to invite constitutional error. In *Jernigan*, the Eleventh Circuit stated:

> "Simply put, by affirmatively agreeing to the playing of the tapes, Jernigan effectively caused, i.e., invited, any error that resulted from the jury's hearing them. *Jernigan* at 1290

Both the U.S. Assistant Attorney General and counsels for both Jernigan and a co-defendant listened to the tapes in question. The judge confirmed that all parties were in agreement to play the tapes to the jury. *Id.* at 1290. When Jernigan later sought relief for constitutional errors associated with the content in the tapes, the Eleventh circuit denied relief because Jernigan actively welcomed the introduction of the tapes into the trial record. In Brewington's case, the constitutional error is firmly rooted in the State's decision to indict and convict Brewington for criminal defamation under the intimidation statute, an error impossible for Brewington to invite. As there was no record of Barrett's thoughts on trial strategy, the Indiana Supreme Court constructed what the Court believed to be Barrett's thoughts on trial strategy and then claimed that perceived trial strategy invited the constitutional error, which waived Brewington's right to relief. Unlike *Jernigan*, Brewington had no understanding that a trial strategy could invite the

constitutional errors associated with Negangard's unconstitutional criminal defamation trial; especially as the record of Brewington's case demonstrates Barrett's only known "strategy" was to ignore Brewington's pleas for an explanation of the indictments during the opening moments of trial. Similar to the opinion in *Brewington* Judge Coy's order summarily dismissing Brewington's post-conviction also leaped far outside of the box to rationalize not granting Brewington relief from the obvious constitutional errors in Brewington's case.

***BREWINGTON V. STATE*, 7 N.E.3d 946, (2014) MANDATES REVERSAL**

Brewington's *Cronic* claim and claim of ineffective assistance of appellate counsel under *Strickland* saddles this Court with a constitutional conundrum. In *Weedman v. State,* 21 N.E.3d 873, (2014), this Court declined to take up review of trial strategy under the standard in *Brewington*:

> [3]Relying on *Brewington*, 7 N.E.3d 946, the State argues that Weedman's failure to object to any of the evidence at issue was a matter of defense strategy. 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. *Weedman* at 895

Since Judge Coy summarily denied Brewington's post-conviction relief action without a hearing, there is no information regarding Barrett's thoughts on his trial strategy. The Indiana Supreme Court cannot waive Brewington's federal and state rights to legal counsel just because the Indiana Supreme Court guessed wrong on

Barrett's trial strategy that served as the foundation of the Supreme Court's rational in denying Brewington relief from the constitutional errors:

> That makes it 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. Accordingly, Bachellar compels us to find a general-verdict error here--but as discussed below, Defendant invited that error as part of a reasonable defense strategy, and therefore may not raise it as grounds for relief. *Brewington* at 973

> Defendant here chose to withdraw a proposed final jury instruction on harassment as a lesser included offense of intimidation, Tr. 441; 2d Supp. App. at 18, arguing instead that all his statements were intended only as protected opinions on an issue of public concern, or petitions for redress of grievances, and not to cause fear or for any other threatening purpose, Tr. 488-89. In effect, that approach sought to exploit the prosecutor's improper reliance on "criminal defamation" to the defense's advantage--focusing the jury on the clearly protected aspects of Defendant's speech, and on that basis to find the ambiguous aspects of his conduct to be protected as well. *Brewington* at 975

Brewington finds it appropriate to address the above. In the above rationale by Chief Justice Loretta Rush, compared Brewington to the case of *Conner v. State*, 711 N.E.2d 1238, 1250 (Ind. 1999)

> One common example of such a defense arises in murder cases, when a defendant chooses not to have the jury instructed on the lesser included offense of voluntary manslaughter, so that any shortfall in the State's proof of mens rea will result in complete acquittal, rather than merely a lesser conviction. *Id.* at 975

Kevin Conner was convicted for "the murders of Steven Wentland, Tony Moore, and Bruce Voge." *Conner* at 1244. In *Conner*, there was no disputing a crime had

occurred. There were three dead bodies. In Brewington's case, there was no crime because Negangard made ridiculous arguments like the following:

> That's the law and you can't go so far as to lie. He just didn't say he's a bad judge, he's not a fair judge, he didn't listen to me. That's fine. He could have even called him a son-of-a-bitch if he wanted, alright? That's probably okay. Not smart but probably okay. Not smart when you got cases in front of him. But he can say that. But what he can't say, he's a child abuser because it's not true and it's a fighting word and it's designed to get a, invoke a response, it's designed to get people mad at him." [Trial Tr. 515]

Brewington provides the following:

> Instructing the jury on the text of the federal and state constitutional free-speech protections, but not actual malice, appears to have been a strategic calculation to that end--not an ignorant blunder. Counsel obviously recognized the free-speech implications of this case, and asked for the jury to be instructed verbatim on the language of the First Amendment and Article I, Section 9 of the Indiana Constitution, both of which were given without objection. App. 14-15, Tr. 439-40. *Brewington* at 975
>
> Reciting those provisions, without discussing the additional protections of the actual malice standard, yields a decidedly broad-brush view of free-speech principles--but his free-speech defense strategy depended on that broad brush. Requesting instructions on actual malice would have called the State's attention to the distinction it repeatedly overlooked 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). Defense counsel could reasonably have anticipated that an actual-malice challenge could lead the State either to withdraw (c)(6) and (7) from the instructions, or at least to draw sharper focus onto the statements and conduct that crossed the line and implied a true threat. And because true threats have no free-

> speech protection, Defendant's free-speech defense would then have been all but eviscerated. *Brewington* at 975

Regardless of how much effort the Indiana Supreme Court put into rationalizing a trial strategy/invited error waiver, Brewington's convictions for intimidation and attempted obstruction of justice must be vacated for two reasons. One, Barrett had no trial strategy. Two, the State argued all of Brewington's "threats" fell under subsection C6:

> 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 (App. 35)

Even if the Court of Appeals wishes to gloss over the fact that Barrett's representation was non-existent, the Court cannot dispute the State's own argument that the "only intent" of Brewington's writings was constitutionally protected. The State's own argument is also an admission that Chief Deputy Attorney General F. Aaron Negangard made Brewington a target of an unconstitutional grand jury investigation.

ALTERED GRAND JURY RECORD

The grand jury records in Brewington's case are incomplete. On March 7, 2011, Negangard filed the State's Praecipe directing the court reporter of the Dearborn Superior Court II to prepare a complete transcription of the grand jury proceedings (App. 122). During a hearing on July 18, 2011, the State instructed

Brewington to rely on a "complete transcript" of the grand jury proceedings for any questions about the general indictments (App.129). The transcripts released to Brewington begin at witness testimony and are void of Negangard's opening arguments and introduction to the grand jury (App. 132-34). There is no record of a motion or order directing the court reporter to provide anything less than the entire transcript. As such, any directive to omit portions of the grand jury record were ex parte in nature. In *Wurster v. State*, 715 N.E.2d 341, (1999) the Court found:

> We do not agree that a showing of prejudice is required for a failure to keep a record to warrant dismissal. 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."

The State told Brewington to rely on the grand jury transcript for evidence and indictment information and then the State withheld evidence and indictment information when the State produced a less than complete transcription.

The State claimed Brewington's contention that "Negangard switched playbooks on Brewington" was "nonsensical" but it is quite the opposite. The State instructed Brewington to rely on the complete transcription of the record and then provided Brewington with an incomplete record. *Ajabu v. State*, 677 N.E.2d 1035, (1997) demonstrates the importance of a complete record:

> [L]ike petit jurors, grand jurors rely on the judge's instructions for direction in reaching their decision, and an erroneous charge given to the grand jury may constitute reversible error. *Id.* at 1040

As explained later in this brief, Negangard told the petit jury Brewington's

self-representation in a divorce proceeding was the line Brewington crossed that stripped Brewington's speech of First Amendment protections. Negangard also told the trial jury that the failure to return guilty verdicts against Brewington would cause the following:

> 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. (App. 31)

At the time of the filing of this brief, Brewington has a pending public records lawsuit seeking the official audio from the grand jury proceedings. Daniel *Brewington v. Dearborn Superior Court II .Etl*, 15D01-1702-PL-000013. The Defendants currently claim there is no record of Brewington's grand jury proceedings prior to witness testimony (App. 231-32). Without a record of the grand jury proceedings occurring prior to witness testimony, Brewington is without means to determine if Negangard presented the same arguments to the grand jury. Negangard's absurd arguments made during closing arguments would have rendered the grand jury indictments defective, which gives some insight as to why Negangard failed to provide any record of the grand jury occurring prior to witness testimony. Just as Brewington could not rely on Barrett for an explanation of indictment information, Barrett also refused to challenge the defective indictments. Failure to seek dismissal due to a violation of IC § 35-34-2 is fundamental error and is reviewable by this Court.

UNCONSTITUTIONAL INDICTMENTS

The State's own arguments in the current action only worsen the unconstitutionality of Brewington's indictments:

> Brewington's claim rests entirely on the premise that without an explicit statement or argument that Brewington's actions constituted a "true threat" he could not have prepared a defense, and that he is therefore entitled to relief. This argument is without merit. Brewington now seeks to argue that he was indicted only for intimidation on the basis of "criminal defamation". However, the transcript and audio of the grand jury proceedings are also void of any such explicit reference to "criminal defamation". (App. 172)

Brewington reminds this Court that it was the State that instructed Brewington to rely on the transcription of the grand jury record as a pseudo-bill of particulars to determine what actions required defending (App 129). Now the State argues the grand jury transcript made no specific mention to either "criminal defamation" nor "true threat." "Exhibit C" in the same pleading of the State includes copies of Brewington's indictments; none of which provide any specific examples of conduct, while the State also failed to present to the grand jury any of the eight individual grounds under the intimidation statute for which the grand jury could return indictments. The Indiana Supreme Court introduced a new threat analysis in *Brewington*:

> Besides the speaker's intent to threaten, the other necessary element of a "true threat" is whether the communications at issue would be likely to cause a reasonable person, similarly situated to the victims, to fear for the safety of themselves or someone close to them. *Id.* at 969

The State failed to provide the above standard of review to the trial jury or

the grand jury. In the absence of such instruction to the grand jury, it was impossible for Brewington to have subjected a "reasonable person, similarly situated to the victims" analysis to any adversarial testing. Further complicating matters is the fact the State did not accuse Brewington of making a specific threat on a specific day. The Supreme Court only adds to the confusion of Brewington's indictments:

> But because many of Defendant's statements, in isolation, were protected--and even his true threats were carefully veiled--we will discuss " all of the contextual factors" of his statements in considerable detail. *Id.* at 955

To mount a defense against the State's case, Brewington also had to guess what combination of protected statements and "carefully veiled" "true threats" became unlawful, when viewed with "all the contextual factors." This was virtually impossible because terms like "carefully veiled," "true threats," and "all the contextual factors" do not appear in the record of the grand jury nor Brewington's criminal trial. This meets the third prong of *Cronic* as even the most competent attorney would have been unable to mount a defense against the State's case. Not only did the State force Brewington to guess which actions required defending, but Brewington also had to guess which actions *did not* require defending, as with the unconstitutional criminal defamation ground Negangard argued before the grand jury and trial jury. Another one of the State's arguments suggest further misconduct.

> Even if one is to assume that Brewington's baseless assertion that the grand jury transcripts were altered or

> otherwise incomplete, the evidence contained therein is more than enough for even a layperson to discern a "true threat". (App. 174)

The State is, to put it bluntly, lying. The grand jury transcript begins at witness testimony. Also disturbing is the fact the transcript contains more information than the audio from which it was transcribed. (App 139-65)

The State's filings provide even more perspective into Negangard's malicious prosecution:

> And while Brewington may think it unfair that the State could advance multiple theories of the crime at trial, there is in fact no such prohibition, and it is common place for litigants in the criminal justice system to do so. (App. 175)

The State does not hide the fact Negangard and his office advanced multiple theories of the crimes. The State simply failed to mention Negangard's multiple theories were unconstitutional and were intended to place Brewington in grave peril. The record proves Barrett was unwilling to explain indictment information to Brewington, so it was doubtful Barrett was interested in preserving appealable issues, hence the purpose of Brewington's pro se filings. Appellate Counsel Michael Sutherlin also refused to raise the issues on appeal as Sutherlin did not want to get involved in what Sutherlin referred to as Brewington's "running fight with Negangard." Though Judge Coy denied Brewington the opportunity for Brewington to develop a record of misconduct in a hearing, Brewington's pleadings contain some of the arguments made by Negangard and his staff. The State's multiple theory argument further emphasizes how Negangard's malicious conduct made a fair trial

impossible.

Any defense strategy argument is almost immaterial because no defense strategy could have invited the unconstitutional grand jury indictments. Even holding that Negangard argued both a true threat ground and criminal defamation ground for Brewington's indictments, not only would the indictments have been premised upon some constitutionally protected activity, but also prosecutorial misconduct; however, the record of the grand jury demonstrates Negangard failed to present a true threat ground for Brewington's indictments.

PROSECUTORIAL MISCONDUCT

This Court can look to the Indiana Supreme Court for perspective on Negangard's misconduct:

> sought to exploit the prosecutor's improper reliance on "criminal defamation" to the defense's advantage *Brewington v. State*, 7 N.E.3d at 975

The Court also 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. Then, the jury was instructed on all eight alternative forms of "threat" under Indiana Code section 35-45-2-1(c), App. 16, without any instruction that for these particular victims, threats of "criminal defamation" under (c)(6) and (7) also require "actual malice." That makes it 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. *Id.* at 975

Indiana Attorney General Curtis Hill is unable to contest the plain fact that

his Chief Deputy, F. Aaron Negangard retaliated against Brewington's speech on behalf of Dr. Connor and Judge Humphrey. Negangard boldly stated he brought the criminal action against Brewington to save Dr. Connor and Judge Humphrey from any burden concerning a civil suit:

> Now as a practical matter, I mean, Judge Humphrey and Dr. Connor aren't interested in engaging Dan Brewington. They just want to be left alone. Judge Humphrey and Dr. Connor aren't interested in a pay date, they just want justice. They don't get to decide whether a criminal remedy. If they want a civil remedy, they're allowed to pursue it. But let's look from a practical matter as why they would want to do that ... Were you really expecting Judge Humphrey, are we going to say not here, not here, we don't want your justice? You spend thousands of dollars of your own money which you'll never recover to get a piece of paper that says he owes you money. What's that worth? That's not accountability. Accountability, they're not going to do that because all they want is to be left alone. (App. 254)

The State and this Court must assume the current Indiana Chief Deputy Attorney General F. Aaron Negangard shared, at least, the "same significant sophistication about free-speech principles" as Brewington. As such Negangard strategically placed Brewington in grave peril when Negangard maliciously prosecuted Brewington for constitutionally protected activity on behalf of Dearborn County court officials. This is not a "chicken or the egg" scenario. In the absence of Negangard's efforts to prosecute Brewington for criminal defamation, a defense against such would be unnecessary. The Indiana Supreme Court's opinion essentially makes the following contention, *The Indiana Supreme Court acknowledges Prosecutor Negangard tried to prosecute Brewington under a plainly*

unconstitutional premise, but we think Brewington's defense counsel, who refused to explain the nature of the indictments to Brewington before trial, may have employed a defense strategy to take advantage of Negangard's unconstitutional strategy, which in turn relieves Negangard of responsibility for his malicious conduct.

Brewington cannot stress enough that we are talking about the current Chief Deputy to Indiana Attorney General Curtis Hill. The Indiana courts cannot continue to hold Brewington to the most outrageous legal standards, while passing off Chief Deputy Negangard's statements as bumbling incompetence:

> "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 (App. 27)

Negangard provided no guidance to the grand jury to determine the parameters of free speech, only an instruction that Brewington crossed the undefined parameters.

During closing arguments, Negangard introduced another new unconstitutional reason to convict Brewington

> "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 (App. 22)

The above is part of closing argument were Chief Deputy Negangard argues that Brewington's self-representation in a divorce somehow strips Brewington of his equal protection under the First Amendment that allows the public to criticize judges. In *Coleman v. State*, 750 N.E.2d 370 (2001) the Court wrote:

> "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))

Other than for purposes of disciplinary action against Chief Deputy Negangard, there really is no need for a hearing to address the above statement. Negangard argued Brewington's actions violated what appears to be the Indiana Code of Professional Conduct for Attorneys. Negangard's trial strategy was to convict Brewington at any cost, even in the absence of a crime. This only goes to the weight of a larger conspiracy because neither Judge Hill nor Barrett objected to Negangard trying to prosecute Brewington for violating ethical guidelines for attorneys despite Brewington never being an attorney. Negangard's statement also lends weight to the severity of Judge Coy's egregious claim that "There is no factual basis to support any of Brewington's claims and/or allegations against the judges and attorneys involved in his case."

For the convenience of the Indiana Court of Appeals, Brewington includes

several examples of misconduct by the Chief Deputy Attorney General in his brief. Negangard did not mince words when explaining to the trial jury that the purpose of Negangard's prosecution was to protect the judicial system from Brewington:

> 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 (App. 31)

Negangard also argued to the trial jury it was necessary to convict Brewington to prevent the fall of the rule of law as well as 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 (App. 31)

Negangard affirmatively stated that Brewington's criminal trial was not about the victims:

> "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 (App. 32)

Even after Negangard admitted in open court that the criminal trial was not about the victims, and argued it was the duty of the jury not to let Brewington pervert the

system of justice, there were no objections from Judge Hill nor Brewington's public defender Bryan Barrett.

Any argument that Brewington's prosecution was anything but first amendment retaliation can be gleaned from the closing arguments of Deputy Prosecutor Joeseph Kisor:

> 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 (App. 35)

The subsection Deputy Kisor refers to is the one the Indiana Supreme Court ruled was protected activity:

> Requesting instructions on actual malice would have called the State's attention to the distinction it repeatedly overlooked 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). *Brewington* at 975

As mentioned earlier, the State did not overlook a distinction between the two subsections because Kisor said Brewington's "whole" and "only" intent was to expose the alleged victims to "hatred and contempt and disgrace and ridicule." Per Kisor's own words, there was no "intent" left to prosecute Brewington under another subsection of the Indiana intimidation statute, so there were no "true threats" to personal safety. Kisor also points out that Brewington's convictions violate Brewington's equal protection 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" Tr. 469-470 (App. 37)

Taken at face value, Brewington's convictions cannot stand because the State argues that Brewington's speech is only criminal when applied to judges and not prosecutors. The review does not end there. If the actions against Humphrey are criminal, then the action against the prosecutor are criminal. It was erroneous for Negangard to prosecute Brewington while claiming to be a victim of one of Brewington's "crimes"

If by now this Court is not convinced that the Office of the Dearborn County Prosecutor did not enjoy free reign to convict Brewington by any means necessary, it need only review Deputy Kisor's allegation that Brewington might possess a .357 Magnum handgun in the courtroom:

> "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 (App. 38)

"…and I hope to God he doesn't" translates to "Defendant Brewington may have a gun in his pocket." This is the most extraordinary of circumstances in law. In *Ryan v. State*, 992 N.E.2d 776 (2013) the Court held:

> "[I]t is misconduct for a prosecutor to request the jury to convict a defendant for any reason other than his guilt or to phrase final argument in a manner calculated to inflame the passions or prejudice of the jury." *Neville*, 976 N.E.2d at 1264 (citation and quotation marks omitted). *Id*. at 787

Nothing inflames the passions or prejudice of the jury than the prosecution warning the jury that the defendant may have a .357 Magnum handgun on his possession and they should fear for their lives. Kisor's comments are far more egregious when placed in context with the fact that Judge Hill granted the State's request for an anonymous jury. Neither Barrett nor Judge Hill made any attempt to object or admonish the situation. The Court found the following in *Tucker v. State*, 646 N.E.2d 972, (5 Dist. 1995):

> In determining whether trial counsel was ineffective for failing to object or move to strike and to admonish the jury, we must determine (1) whether trial counsel performed deficiently, and (2), whether counsel's deficient performance prejudiced Tucker. *Clark v. State* (1990), Ind., 561 N.E.2d 759, 762. To prevail on a claim that counsel was ineffective for failing to make a proper objection, it must be shown that a proper objection would have been sustained by the trial court. Id. at 763. Defense counsel's failure to prevent admission of inadmissible, prejudicial evidence demonstrates deficient performance. *Messer v. State* (1987), Ind.App., 509 N.E.2d 249, 251, trans. denied.

There is no trial strategy associated with allowing a prosecutor to tell a jury that the defendant may kill them. Brewington was most certainly prejudiced by Kisor's inflammatory statements because fear is a key component of the intimidation statute. Without question, any fair trial court would sustain an objection to the

prosecution hinting that the defendant is capable of murdering the jury during or after the trial.

JUDICIAL BIAS

The Supreme Court addressed judicial bias in *Massey v. State, 803 N.E.2d 1133, (2004)*

> The law presumes that a judge is unbiased and unprejudiced. *Smith v. State*, 770 N.E.2d 818, 823 (Ind.2002). To rebut that presumption, a defendant must establish from the judge's conduct actual bias or prejudice that places the defendant in jeopardy. Id. Such bias and prejudice exists only where there is an undisputed claim or where the judge expressed an opinion of the controversy over which the judge was presiding. Id. An adverse ruling alone is insufficient to show bias or prejudice. *Flowers v. State*, 738 N.E.2d 1051, 1060 n. 4 (Ind.2000), reh'g denied. Rather, the record must show actual bias and prejudice against the defendant before a conviction will be reversed on the ground that the trial judge should have been disqualified. Id. at 1061.

In revisiting the rationalization used by the Indiana Supreme Court to deny Brewington relief from ineffective assistance and fundament error, judicial misconduct becomes apparent:

> But the [fundamental error and ineffective assistance of counsel] 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. -*Brewington v. State*, 7 N.E.3d at 974

The above rationalization is also a definitive example of conspiratorial conduct Judge Coy argued did not exist. The Indiana Supreme Court asserts that Judge Hill and Barrett essentially agreed not to object to the unconstitutional portions of Negangard's prosecution to allow Barrett to "exploit the prosecutor's improper reliance on 'criminal defamation' to the defense's advantage." There are many constitutional harms in the above contention. As preposterous as it may sound, when taking the Indiana Supreme Court's findings at face value, Judge Hill and Barrett conspired against the State in an attempt to *help* Brewington during trial. Chief Justice Rush determined that Judge Hill allowed Barrett to proceed with an unorthodox defense strategy that sought to take advantage of the State's unconstitutional criminal defamation arguments to gain an advantage in defeating the constitutional grounds argued by Negangard. Illogical judicial findings like the above plague the entire history of Brewington's experiences with the Indiana Court System. Anytime Brewington raises a question of misconduct, Indiana Courts strive to side step addressing the issues raised by Brewington, while issuing orders riddled with legal smokescreens. The judicial bias against Brewington is prevalent at all levels of Brewington's criminal trial. The Indiana Supreme Court introduced a new analysis of fundamental error and ineffective of assistance "not previously discussed" to rationalize not granting Brewington relief from the obvious

constitutional errors that plagued Brewington's criminal trial. However, the Supreme Court's own inane rationalization cannot exist without fundamental error. A finding that Judge Hill and Barrett came to a spoken or unspoken agreement to allow Barrett to "exploit [Negangard's] improper reliance on 'criminal defamation' to the defense's advantage" cannot exist without an understanding that Negangard made the same unconstitutional arguments to the grand jury, thus making the indictments unconstitutional. It then requires Judge Hill to have an understanding that at least, some components of criminal grounds argued by Negangard were clearly unconstitutional. If Judge Hill was aware of the unconstitutional aspects prior to trial, then it was fundamentally erroneous for Hill to subject Brewington to the unconstitutional trial. If Judge Hill failed to discover the unconstitutionality of Negangard's arguments until after the trial began, then Hill erred in taking a "wait and see" approach to see if Barrett would somehow use Negangard's unconstitutional arguments to defeat Negangard's sufficient arguments that were allegedly constitutional. The argument cannot exist without accepting Brewington had a far superior understanding of first amendment principles than Negangard. By no means would any rational person contend that Brewington's legal abilities are anywhere near the skills and knowledge that Negangard has acquired in the years between law school and Negangard's current position of Chief Deputy to Attorney General Curtis Hill; that is, no one except the Indiana Supreme Court. To support its argument that Brewington's trial strategy invited the errors relating to

Negangard's unconstitutional criminal defamation arguments, the Indiana Supreme Court stated, "[Brewington] demonstrated significant sophistication about free-speech principles long before trial in a motion to dismiss these charges." *Id.* at 978. This is the clearest example of the Supreme Court's bias against Brewington. To rationalize the Court's above contention supporting the Supreme Court's finding that Brewington invited the error associated with Negangard's improper criminal defamation argument, Justice Rush first had to "dumb down" Negangard. Any acknowledgement that Negangard shared the same "sophistication" in principles concerning first amendment law is an acknowledgment that Negangard's actions were malicious. But the bias does not end there. To reinforce the Court's "sophistication" in free speech principles, Justice Rush points to Brewington's motion to dismiss. Brewington's motion to dismiss was not filed "long before trial" as alleged by Justice Rush. The filing date was the same as Brewington's Motion to Disqualify R. Aaron Negangard and Appointment of a Special Prosecutor and Motion to Dismiss for Ineffective Assistance of Counsel. Brewington filed all three pro se motions on the morning of Brewington's trial. (App. 160). The Indiana Supreme Court overlooked Brewington's claims in his pro se motion regarding ineffective assistance of counsel, while rationalizing how Brewington's Motion to Dismiss added weight to the Supreme Court's perceived trial strategy of Barrett's that eventually waived Brewington's rights to fundamental error.

This is not an exaggeration. The facts of Brewington's case are clear.

Brewington had no assistance of counsel outside of Barrett's formal courtroom appearance. The grand jury indictments were based on, at least some, constitutionally protected behavior. The Indiana courts continue to sidestep the issue at hand; Chief Deputy Attorney General F. Aaron Negangard made Brewington a target of a grand jury investigation in retaliation of Brewington's constitutionally protected speech. Regardless of how much Justice Rush believes it to be true, there was simply no reason for the Indiana Supreme Court to assume Judge Hill and Barrett's refusal to object to the lunacy of the prosecution's arguments was anything but incompetence or collusion. Unless Indiana Attorney General Curtis Hill would like to argue to the contrary, Chief Deputy Negangard's criminal defamation arguments for Brewington's indictments and convictions were malicious and not a product of ignorance. The Court spent an extraordinary amount of time excusing and ignoring the misconduct relating to Negangard's unconstitutional criminal defamation prosecution while creating a new true threat argument and searching the United States for case law to rationalize upholding Brewington's convictions. Brewington's action never had the intent to cause fear in the alleged victims because chief deputy prosecutor Joeseph Kisor said the "whole" and "only" intent of Brewington's writings fell under the constitutionally protected subsection C(6) of the intimidation statute. If a true threat existed, it would have been unnecessary for Negangard to make outrageous arguments for Brewington's convictions, i.e., claiming Brewington violated the Indiana Code of Professional

Conduct and arguing Brewington violated Indiana laws by calling a judge a "son-of-a-bitch," while telling jurors if they fail to convict Brewington, "the rule of law will fail and ultimately our republic."

EQUAL PROTECTION AND DUE PROCESS VIOLATIONS

The Court in *Helton v. State*, 624 N.E.2d 499, (1 Dist. 1993) stated:

> When there is a violation of the equal protection clause of the Fourteenth Amendment of the U.S. Constitution, there is also a violation of the equal privileges clause of the Indiana Constitution. *Indiana High School Athletic Ass'n v. Raike* (1975), 164 Ind.App. 169, 176, 329 N.E.2d 66, 71 n. 2.

On a basic level, Judge Coy's summary dismissal of Brewington post-conviction proceedings were clearly erroneous. Judge Coy's actions are part of a disturbing pattern by Indiana courts in depriving Brewington's rights to due process and equal protection:

> It is well-settled that a trial before an impartial judge is an essential element of due process. *Ruggieri v. State*, 804 N.E.2d 859, 863 (Ind.Ct.App. 2003)

Any contention that Judge Hill and Barrett were aware of the unconstitutionality of Brewington's indictments further demonstrates Brewington was a victim of a broader conspiracy. Any controversy as to what conduct was responsible for Brewington's indictments and/or criminal convictions adds to the weight of Brewington's unconstitutional incarceration as Brewington was held on a $500,000 surety/$100,000 cash bond when neither Brewington, Barrett, nor the trial court had any understanding of Brewington's indictments. The State of Indiana trampled

on Brewington's rights guaranteed by the Fourth, Fifth, Sixth and Fourteenth Amendments just to punish Brewington for exercising his First Amendment right.

CONCLUSION

The facts as alleged by Brewington draw support from evidence and affidavits. At minimum, this Court should remand the case back to the post-conviction court; however, this leaves still leaves Brewington's constitutional rights in limbo as Judge Coy summarily dismissed Brewington's proceeding claiming the grounds lacked any factual basis. Judge Coy found the following conduct in Brewington's petition to be acceptable conduct by a prosecuting attorney:

> "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 (App. 38)

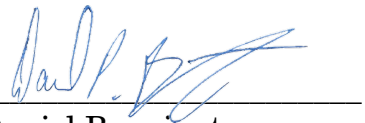
These were the warnings that Dearborn County Chief Deputy Prosecutor Joeseph Kisor delivered to the anonymous jury during the closing arguments in Brewington's trial. This is no accidental mincing of words. Kisor wanted the jury to believe Brewington may kill them at any moment. Rather than grant Brewington relief for the misconduct, Judge Coy rewarded the bad behavior from a no holds barred prosecution, where Negangard secured a judge and public defender that did nothing to protect Brewington. Former Dearborn County Prosecutor F. Aaron Negangard and his staff dragged Brewington through an unconstitutional cesspool

of a trial while Negangard arrogantly claimed the State sought to punish Brewington under the pretense of criminal indictments to punish Brewington for challenging the "Indiana way" administering justice:

> 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.

Negangard admitted the criminal proceedings were a farce, Judge Hill and public defender Bryan Barrett did nothing to protect Brewington's rights guaranteed by the First, Fourth, Fifth, Sixth, and Fourteenth Amendments of the United States Constitution. As Negangard admitted that Brewington was punished under the façade of a legitimate criminal proceeding, this Court should vacate Brewington's convictions. Any argument or rationalization to deny Brewington relief from Negangard's unconstitutional grand jury proceedings and criminal prosecution is simply an excuse to shelter the misconduct of Chief Deputy Attorney General F. Aaron Negangard and to continue upholding the "Indiana way" of administering justice.

Respectfully submitted,



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WORD COUNT CERTIFICATE

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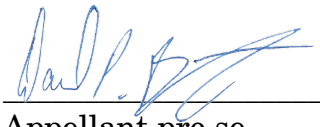

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CERTIFICATE OF SERVICE

I certify that on February 5, 2018, I electronically filed the foregoing document using the Indiana E-Filing System (IEFS).

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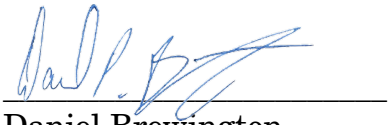

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