

Request for copies of public records from Grand Jury

April 10, 2017

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

Dearborn Superior Court II

Pursuant to the Access to Public Records Act (Ind. Code 5-14-3), this is a request pertaining to the grand jury investigation re: Kathy Hess. Said grand jury investigation convened on, or about, March 13, 2015 and issued three indictments against Hess, Neglect of a Dependent Resulting in Serious Bodily Injury (Class B felony), Reckless Homicide (Class C felony), and Battery Resulting in Serious Bodily Injury of an Endangered Adult (Class C felony).

Providing an explanation as to the reasoning for the release of a public record under the APRA is normally not required, but this request is an exception to the rule. Public access to grand jury audio information is extraordinarily rare and unauthorized disclosure of grand jury information is subject to criminal penalty under I.C. § 35-34-2-10(a). Public disclosure of the grand jury audio in the investigation of Kathy Hess is necessary to protect the public from further abuses of the grand jury process by the Office of the Dearborn County Prosecutor.

This request for grand jury audio is premised upon the fact the Office of the Dearborn County Prosecutor conducted part of the grand jury investigation outside of the official record of the investigation pertaining to State of Indiana v. Brewington, cause no. 15D02-1103-FD-084. The Dearborn County Prosecutor at the time, now Chief Deputy Attorney General F. Aaron Negangard, omitted, at least, the entire content of the grand jury proceedings prior to witness testimony, or instructed the court reporter of the Dearborn Superior Court II to omit portions of the proceedings. The audio released by the Dearborn Superior Court II in the Brewington grand jury investigation also contains *LESS* information than the transcription of the same audio. The Court charged Brewington \$300.00 for the incomplete audio.

THE FOLLOWING APPEARS IN THE PROBABLE CAUSE AFFIDAVIT, FILED  
FEBRUARY 4, 2014 IN CAUSE NO. 15D01-1402-FB-005:

1. Affiant Jacob Jump was employed as an officer with the Lawrenceburg Police Department assigned to the Dearborn County Special Crimes Unit (SCU), in Dearborn County, State of Indiana.<sup>1</sup>

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<sup>1</sup> At that time, Chief Deputy Attorney General F. Aaron Negangard served as head of the SCU.

2. “[A]n Order issued by Judge James Humphrey and dated September 30, 2013, the Court found ‘Ms. Dione(sic) Scalf is an incapacitated person, and an endangered adult in need of protective services.’”

3. Dionne Scalf, 77, had no family.

4. The events surrounding the death of Dionne Scalf occurred on December 20, 2013, at the Woodland Hills Care Center in Lawrenceburg, Indiana.

5. An allegation that Hess “did hyper-extend Dionne Scalf’s back, resulting in serious bodily injury, to-wit: fractured vertebra.”

6. Neither the Woodland Hills Care Center nor any witnesses contacted law enforcement about Scalf’s death.

7. Jump was “advised” of the Scalf incident by Jump’s aunt on Christmas Eve, December 24, 2013. The aunt of Jump was Connie Pope. Connie Pope told nephew Jump that Pope’s niece, Traci Vowell, advised Pope of the Scalf incident. Pope alleged Vowell witnessed part of the incident while visiting Vowell’s mother, Helen (Cheri) Lewis.

8. Traci Vowell was interviewed by law enforcement on December 31, 2013 and January 3, 2014.

9. On January 2, 2014, Detective Nick Beetz and [Jump] observed the autopsy of Dionne J. Scalf at Dearborn County Hospital. Present for the autopsy were Pathologist Steven Eliason, morgue assistant Emily Bradley and Phlebotomist Amber Case. During the autopsy, Dr. Eliason observed that Scalf’s back was broken. Dr. Eliason removed a section of Scalf’s vertebrae to preserve evidence of the fracture.

10. On January 3, 2014, Det. Beetz, Det. Schneider and your affiant interviewed Kathy Hess at her residence.

11. On January 3, Jump and Det. Schneider interviewed Helen (Cheri) Lewis at Woodland Hills Care Center.

12. On January 10, 2014, Detectives McKay, Beetz and Schneider, CSI Wally Lewis, and [Jump] met with Dr. Dean Hawley at Indiana University Health Pathology Laboratory in Indianapolis with the section of Dionne’s backbone that Dr. Eliason had removed during the autopsy.

13. On January 26, 2014, [Jump] received the completed final report from pathologist Dean Hawley.

14. On February 3, 2014, [Jump] received the completed final report from Dearborn County Pathologist, Dr. Stephen Eliason in regards to the autopsy of Dionne Scalf.

15. February 4, 2014, PROBABLE CAUSE AFFIDAVIT filed.

It is important to note that Scalf’s body was cremated shortly after the State’s investigation thus hampering the defense’s opportunity to obtain a thorough examination.

HESS CASE AS REPORTED BY EAGLECOUNTRYONLINE.COM 10/28/14<sup>2</sup>

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<sup>2</sup> Reporting by Mike Perleberg found at <http://eaglecountryonline.com/local-article/case-dismissed-nurse-accused-patient-death-new-charges-likely/>

16. “To clarify, once we get the information we are seeking we will either re-file or present it to a grand jury.” Prosecutor Negangard.

17. “Kathy Hess’ attorney, Robert Ewbank, calls the prosecution’s motion to dismiss without prejudice ‘disingenuous.’”

18. “Ewbank tells Eagle 99.3 that he filed a motion to produce evidence in May seeking tissue slides from Dione Scalf’s autopsy. For reasons that Ewbank does not know, that evidence was not made available to him until October 1. By Indiana law, the State is required to share evidence requested by an accused person’s defense.”

19. “According to Ewbank, once the slides were in-hand, they were given to a pathologist for further analysis. That doctor issued a report October 20 showing a completely different cause of death for Scalf – failure of the heart caused by a vasovagal response.”

20. “The case was scheduled to go to trial on November 3. The prosecution had sought a continuance of the trial on October 14, but the request was denied by Judge Jonathan Cleary.”

21. “With the information having come to light, Scalf’s body underwent an autopsy shortly before it was scheduled for cremation. The coroner’s report revealed a broken vertebra attributed to physical abuse.”

#### HESS CASE AS REPORTED BY EAGLECOUNTRYONLINE.COM 03/20/15<sup>3</sup>

22. “Dearborn-Ohio County Prosecutor Aaron Negangard dismissed without prejudice the charges against Hess in October. However, dismissing without prejudice left open the possibility for prosecutors to bring the case to a grand jury.”

23. “At the time of the dismissal, Negangard said that he would refile the charges or take the case to a grand jury ‘once we get the information we are seeking.’”

24. “A grand jury convened on March 13 and after hearing evidence issued three new indictments against Hess”

25. “What new information or evidence may have prompted the new indictment is not known. Grand jury hearings are closed to the public and their activities are secret.”

26. “The indictments were unsealed by the court and provided to Eagle 99.3 by the prosecutor’s office on Friday.”

#### HESS CASE AS REPORTED BY EAGLECOUNTRYONLINE.COM 06/02/15<sup>4</sup>

27. “Prosecutors and Kathy Hess’ defense attorneys, Robert Ewbank and Anthony Smart, made their arguments to Judge Sally McLaughlin in Dearborn Superior Court II on Monday. Ewbank and Smart motioned May 21 for Hess’ case to be discharged

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<sup>3</sup> Reporting by Mike Perleberg found at <http://eaglecountryonline.com/local-article/nurse-indicted-new-charges-relating-nursing-home-residents-death/>

<sup>4</sup> Reporting by Mike Perleberg found at <http://eaglecountryonline.com/local-article/attorneys-want-nurses-drawn-reckless-homicide-case-dropped/>

because she has not been granted a speedy trial as is guaranteed by the Sixth Amendment of the U.S. Constitution.”

28. “Originally, the defendant would have been tried within 283 days of being arrested, now the state wishes to try the defendant 497 days after her original arrest,’ [the defense] wrote in the motion.”

29. “[Hess’s attorneys] claim the prosecution used the dismissal as a de facto continuance after another judge had denied a continuance about two weeks before the first trial was to begin. Also, that prosecutors delayed the grand jury proceedings so that the new charges would be filed in Dearborn Superior Court II, an improper change of venue the attorneys allege.”

30. “A ‘key witness’ for the defense that was available to testify at the first trial date may now be unavailable to testify due to the onset of dementia, the motion states.”

31. “Hess requested the first continuance in her criminal case on May 21. Ewbank said she has not had adequate time to prepare for trial, partly because she has not been provided transcripts of the grand jury proceedings.”

32. “The State has forced the Defendant to choose between being prepared for trial or her speedy trial rights and she should receive a discharge,’ the lawyers argue.”

#### HESS CASE AS REPORTED BY EAGLECOUNTRYONLINE.COM 02/10/16<sup>5</sup>

33. “Kathy Hess, 60, of Bright, was in Dearborn Superior Court II on Monday to plead guilty to a charge of Neglect of a Dependent (class D felony)”

34. “Dearborn County Prosecutor Aaron Negangard says that as part of a plea agreement he agreed to dismiss the original charges of Battery Resulting in the Death of an Endangered Adult (class B felony), Neglect of a Dependent Resulting in Serious Bodily Injury (class B felony), and Reckless Homicide (class C felony).”

35. “Hess received a three-year sentence from Judge Sally McLaughlin the same day in court. However, she won’t spend any further time behind bars because she already served the past two years in jail or on in-home incarceration.”

36. “We didn’t see any advantage to insisting on any sort of a prison sentence. It seems she’s been punished enough for her actions,’ Negangard said, adding that Scalf’s family is satisfied with the result.”

37. “The original charges carried a potential six year prison sentence. The judge ordered Hess to serve 18 months on non-reporting probation.”

38. “They backed me up against a wall so many times. I never got my day in court. The prosecutor gave me a good plea bargain so I took it. This case has gone on for 26 months, essentially,’ Kathy Hess said.”

39. “Hess said her grandkids were ages three and one when the case started. Now at ages five and three, they are beginning to ask their grandmother questions. Alan became disabled around the same time the charges were filed and he requires her care.”

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<sup>5</sup> Reporting by Mike Perleberg can be found at <http://eaglecountryonline.com/local-article/plea-deal-reached-in-nursing-home-death-former-nurse-speaks-out/>

40. “Alan Hess explained that the case against his wife was based on a layman’s understanding of nursing. He said what may have appeared as shaking to the woman who witnessed Kathy shaking Scalf, was actually a technique nurses use to help weak patients walk.”

41. “She claims to have had a good record as a nurse of 40 years – 28 of those years at Woodland Hills. The only mark on her record, the couple claims, was a minor medication error.”

42. “As he said previously, Alan Hess repeated that his wife was ready to take the case to trial in October of 2014 before prosecutors temporarily dismissed the charges. After weeks of asking for the grand jury documents, Kathy Hess’ attorney requested a judge to order the state to share the documents with the defense. The judge granted that order, but it wasn’t until just days before the trial date that the documents were provided to the defense, Hess said. The document contained changed key details which forced the defense to request and receive a continuance, dragging the case on further.”

43. “It was delay after delay after delay,’ Alan Hess said.”

44. “Outside of the emotional toll, the case became a huge financial burden on the couple. They have paid around \$100,000 in bail and legal expenses, the husband shared. The plea agreement was taken out of convenience, [Alan Hess] added.”

45. “This whole thing stinks. The court system stinks. You have no recourse. Nowhere you can go. There’s nothing you can do except live with it,’ Kathy said.”

## REASONING FOR PUBLIC DISCLOSURE OF GRAND JURY AUDIO

### Negangard’s role as investigator, judge, jury, and executioner

One of the more troubling aspects of the Hess criminal proceedings is how the prosecution obstructed the defense’s access to both physical evidence as well as evidence within the grand jury record. Per the reporting by Mike Perleberg of EagleCountryOnline.com, Negangard delayed releasing the grand jury transcripts and the when the documents where finally released, the transcripts “changed key details which forced the defense to request and receive a continuance, dragging the case on further.” This is like the grand jury records altered in the case of State v. Brewington, cause no. 15D02-1103-FD-084, where the transcripts provided to Brewington were void of any portions of the grand jury proceedings occurring prior to witness testimony.<sup>6</sup> Speculation as to why Negangard delayed the release is hardly necessary as Negangard admitted to essentially serving as the judge, jury, and executioner by stating, “We didn’t see any advantage to insisting on any sort of a prison sentence. It seems she’s been punished enough for her actions.” Hess’s “punishment” was a direct result of Negangard dragging the case on to squeeze Kathy Hess into a plea deal, which is exactly what Kathy and Alan Hess explained was done. This is in addition to Negangard overseeing the entire investigation as the head of the Dearborn Special Crimes Unit. Every letter, phone call, and motion, filed by Hess’s attorneys in attempts to obtain the grand jury transcripts cost Hess more money. The

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<sup>6</sup> Transcripts from Brewington’s case can be viewed at [http://www.dadsfamilycourtxperience.com/Transcript\\_of\\_Entire\\_Grand\\_Jury.pdf](http://www.dadsfamilycourtxperience.com/Transcript_of_Entire_Grand_Jury.pdf)

longer Negangard could delay Hess's proceedings, the more expenses were incurred by Hess. Negangard knew all of this while withholding tissue samples and grand jury transcripts; information that was allegedly different than expected when the documents were finally released.

#### Negangard's attempts to manipulate the criminal court and media

Negangard has the remarkable ability to make conflicting statements without being subjected to any scrutiny. Mike Perleberg wrote that Negangard reported "Scalf's family is satisfied with the result" of the Hess plea deal. Per the PROBABLE CAUSE AFFIDAVIT filed by Special Crimes Unit Detective Jacob Jump, Scalf had no family.

Just a week before Hess's first trial, originally scheduled for November 3, 2014, Negangard requested the dismissal of the trial without prejudice because Hess' legal counsel had "not provided discovery in a timely manner and the prosecutor's wish to conduct additional investigation." Eubank stated the defense could not obtain a report from an independent pathologist until October 20, 2014, because Negangard withheld the medical evidence from Hess's defense until October 1, 2014. The obvious problem is Negangard caused the delay in the defense's inability to provide the prosecution with a report from an expert of the defense and then Negangard later attempted to seek relief from the delay caused by the prosecution. Logical analysis of the situation casts doubt why Negangard would request to continue or dismiss a case where the prosecution withheld medical evidence from the defense for well over six months, because it put the defense at a disadvantage. Negangard's delay also served to weaken the reliability of the State's eyewitness' accounts of the events, especially as the witness were, at least, relatives of the aunt of the State's lead detective in the case if not direct relatives of detective Jump. Aside from the possibility that the new findings by the pathologist debunked the State's case, the only reason to continue or dismiss the case was to drag out the criminal process so the prosecution could unilaterally impose and enforce a criminal "sentence" on Hess, outside of a judge and jury.

#### The Suspicious Nature of the Grand Jury Investigation of Hess

The only purpose in empaneling a grand jury was to search for a rationalization as to why Scalf's death was not an accident or a result of Scalf's medical condition. Such a contention would offer a possible explanation why Negangard requested the first trial to be dismissed. Negangard would have been forced to argue that the death of a frail 77-year-old woman was a result of a momentary lapse of judgment by a career nurse with a near flawless reputation and not a result of a medical condition or unavoidable accident. Making such an argument to the trial jury would be arguing the existence of reasonable doubt, thus requiring the jury to find Hess "not guilty." As the indictment was sealed, Hess had no participation in the matter. Scalf's body had been long since been cremated so there was no new medical evidence to investigate. Negangard already had the opinions of two medical professionals worthy of bringing the original charges. Per the PROBABLE CAUSE AFFIDAVIT, only two people witnessed the events leading to the charges. On the surface, it appears that there was little more to investigate. Given the allegations by defense attorney Eubank, it appears Negangard convened the grand jury and misused the procedural

process of releasing grand jury information to gain an unconstitutional advantage over Hess, or at least, cause further delay to squeeze Hess financially and force a plea agreement.

As stated previously, Brewington understands grand jury information is usually excepted from public release in the absence of a public interest that outweighs the need for privacy. This is one of those cases. Eubank's claim that Negangard withheld grand jury information and then released documents that changed key details should alone necessitate the release of the grand jury audio to protect the public from unconstitutional grand jury proceedings in Dearborn County, Indiana; especially considering the incomplete grand jury record in the case of State v Brewington. The release of the grand jury audio does not cause any harm to the parties involved. The investigation of Scalf's death was not an undercover operation and the release does not compromise the identities or safety of law enforcement officials. Court records document Scalf is deceased and has no surviving family. There is no danger to witnesses testifying before the grand jury. Hess already obtained a transcription of the grand jury audio and is aware of any witness testimony and the names of the only eyewitnesses are already public record. Hess is not harmed by the release of the grand jury audio as the existence of any grand jury misconduct would only serve as grounds for Hess to challenge her plea agreement. The only persons negatively impacted by the release of the grand jury audio would be any official who engaged in unethical and/or illegal conduct in convening a grand jury to indict and prosecute Hess in the absence of criminal conduct. Please note that the transcription of the grand jury audio would normally suffice but given the altered grand jury transcripts of the Brewington grand jury investigation by Dearborn Superior Court II Chief Court Reporter Barbara Ruwe, Brewington is seeking the release of the grand jury audio.

I understand by seeking a copy of these records, there may be a copying fee. Please inform me of the costs prior to making the copies. I can be reached at 513.383.3136 or by email, [contactdanbrewington@gmail.com](mailto:contactdanbrewington@gmail.com).

Per Indiana statute, you have seven (7) days to respond to this request. If you choose to deny the request, please remember you are required to respond in writing and state the statutory exception authorizing the withholding of all or part of the public record.

A copy of this request can be found on [www.danbrewington.blogspot.com](http://www.danbrewington.blogspot.com) for your convenience. Thank you for your assistance on this matter.

Respectfully,



Daniel P. Brewington

[Redacted address information]

[contactdanbrewington@gmail.com](mailto:contactdanbrewington@gmail.com)