

DANIEL A. BURRESS  
*Attorney at Law*

August 6, 2018

Mr. Milton L. Mack, Jr.  
State Court Administrator  
P.O. Box 30048  
Lansing, MI 48909

Re: In Re Citizens Grand Jury  
No. 18-29968 PZ

Sent via e-mail

Dear Judge Mack:

Thank you for your prompt but unbelievable response to my August 4, 2018 letter.

You have confirmed for me that what occurred here was intentional prohibited judge shopping at the highest level of our judicial system. I have been a lawyer in Michigan for over 55 years and sat as a Livingston County Circuit Judge, with numerous assignments on the Court of Appeals, for almost 19 years and still believe that we are a country of Laws, which must be respected by everyone, especially our judges.

Only dictators get to decide without oversight and rules.

In this case I happen to also be a citizen petitioner. I waited for almost a year before filing my petition for a Citizens Grand Jury, waiting for the Prosecuting Attorney, Attorney General, Judicial Tenure Commission, SCAO, and/or the Michigan State Police to do **something**, all the while watching the statute of limitations run on some matters, and complained of judicial abuses continuing. Your office, as well as the Chief Judge of the Supreme Court were sent copies of Mr. Kizer's January 4 and 7th, 2013 letters and I am unaware of it doing anything to protect the citizens of this county and state from what was going on. The Judicial Tenure Commission finally filed their complaint in 2018 only after my Petition was filed, and then later filed an amendment.

Interestingly, after over 18 months the Michigan State Police have apparently not yet completed their investigation of themselves or others, and both the Livingston County Prosecutor and the Attorney General declined to become involved in the Grand Jury Investigation, and to my knowledge have filed no charges against anyone in this matter. Mr. Kizer supplied them with sworn deposition testimony of claimed criminal conduct over 18 months ago.\

Citizens Grand Juries are exactly the remedy needed to solve inaction by elected and appointed officials who fail to do the jobs they were put in office and paid to perform. And the courts have no business interfering with the process.

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I filed my petition because the entire legal/judicial system in this county and state was doing nothing to curb the abuses of the judicial system in this county, and it in my opinion Mr. Kowalski was not tried by an impartial tribunal. Finally, after the filing of my Petition and the Judicial Tenure Commission Complaint our local judges voted to take Judge Brennan off the bench by taking her docket away from her.

You say that you are aware that the State Police have executed search warrants and suspect that law enforcement is already investigating. Just so that you know, those search warrants, to seize evidence from Judge Brennan's court and home, based on probable cause that a crime/crimes was committed, were executed 15 months ago, and are still under the wraps of a sealed file in Wayne County. My effort to have them unsealed was met with a wall of continued silence.

I am aware of no law that allowed either you or Judge Cavanaugh to do what was done here, and you don't mention any in your response. You do admit that the first Assignment was flawed. In fact, you tell me that you "agree with Chief Judge Cavanaugh that a visiting judge from outside Livingston county should be assigned to hear the case". I am not sure if you are throwing her under the bus by that statement or not.

But, I am more convinced than ever that your offices fingerprint was all over the Order that Judge Cavanaugh signed on June 25, 2018 (if that is the date she signed it).

Each of the three Assignment orders you signed were contrary to the facts and not supported by any law or court rule. The first was structurally defective on its face, and your attempt to make it appear that the second order, indicating that it was authorized June 25, 2018, was merely an amendment of a clerical error was nothing more than an attempt to cover up the fact that you and Judge Cavanaugh had already determined that this case was not to be heard by a Livingston County Citizens Grand Jury presided over by a Livingston County Judge, as required by law. It would have saved us all a lot of work if you and Judge Cavanaugh would have been up front and told me that you were shipping this case out of Livingston County, just because you think you can, irrespective of the law that required that it be filed in Livingston County, and that it be blind draw assigned to judges in Livingston County.

Your response also now explains why Judge Cavanaugh's Order and your assignment were accomplished so quickly and why I was unable to get a hearing date on my motion to contest and vacate Judge Cavanaugh's Order.

I knew and accepted the risk that there would be push back to my petition for a Citizens Grand Jury. There are many people who will stop at nothing to derail it. But I never expected that it would be from the court itself, which of course raises additional questions about why Judge Cavanaugh, who you describe as courageous in killing this investigation and unsealing the Grand Jury file, would do so. She was an assistant prosecuting attorney during the *Kowalski* double murder case investigation, was a supporter of and supported by Judge Brennan in judicial races, and is photographed at Judge Brennan's home in 2014 at an event, which was also attended by the chief witness in the murder case, Michigan State Police Detective Sean Furlong, who Judge Brennan is accused of having an affair and ex-parte communications with during that trial. Those are of course additional matters to be flushed out if this Citizens Grand Jury ever gets to see the light of day.

Finally, as you are aware, Mr. Kizer and I are, and apparently will continue to be required to contest the authority of Judge Cavanaugh to have involved herself in overruling Judge Reader's June 20, 2018 rulings.

She is an elected probate judge who does not have jurisdiction over circuit court civil

cases.

I am attaching a portion of Mr. Kiser's brief on the matter filed in the Court of Appeals, in case you have not had an opportunity to review the same.

*Most importantly, the Probate Court judge has no jurisdiction over a Circuit court judge under the constitution except as allowed by MCL 600.841 and only under the terms of a concurrent plan approved by the Supreme Court. EXHIBIT E is an integral component of the concurrent plan and in the event judge Cavanaugh as a Probate judge violates the terms of the Administrative Order, she has acted "ultra vires" and does not possess the jurisdiction to do so.*

*In effect, her order in EXHIBIT C was entered by her without jurisdiction by law to do so and is void "ab initio". Any order thereafter entered by SCAO is likewise fatally defective.*

*The Chief Judge under our Constitution has acted without jurisdiction and invaded the prerogatives of the Circuit Court without authority by acting outside the clear parameters of the Administrative Order of June 20, 2018.*

Because you and Judge Cavanaugh **think** the case should be handled by an out-of-county judge you have issued three inappropriate Assignment orders in these cases and have effectively buried this Grand Jury Investigation. I reiterate what I said in my August 4, 2018 letter.

The unsealing of the file (even though the Court of Appeals file shows it sealed No's 344468 and 344581) has given potential targets of the investigation unwarranted opportunity to derail the investigation, something that has already occurred because of the intervention of the court through the use of a questionable and contested ex-parte nunc pro tunc order.

Another problem is that in the event an indictment results from a grand jury presided over by a Judge not assigned pursuant to the lawful procedure established by the court rules and by the administrative order in place at the time, will, without question, be subject to legal attack. This could result in reversal of any conviction and/or the quashing of any indictment. Moreover, the guilty could escape accountability at the hands of an improperly convened grand jury presided over by a Judge not properly assigned and thereby without authority.

I am truly sorry that you have chosen to not to follow the law and reverse your position.

Cordially,



Daniel A. Burress

cc: Chief Justice Stephen J. Markman. Chief Judge Miriam A. Cavanaugh, Honorable John D. Maurer, Thomas J. Kizer, Jr Esq.

Enclosures;

Thomas Kizer, Jr. Letter January 4, 2013

Thomas Kizer, Jr. Letter January 7, 2013

Photograph depicting Judge Brennan and Judge Cavanaugh, November, 2014

Photograph depicting Judge Brennan and Detective Sean Furlong, November 2014

## Daniel Burress

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**From:** Milt Mack <MackM@courts.mi.gov>  
**Sent:** Monday, August 6, 2018 9:59 AM  
**To:** Daniel Burress  
**Cc:** Stephen Markman; Miriam A. Cavanaugh; John Douglas Maurer; Angie Curtiss; thomas kizer; Thomas Clement; Jodi Latuszek  
**Subject:** Re: Grand Jury Petition/assignments, Livingston County

Dear Judge Burress,

This matter came to our attention following Judge Reader's decision to recuse himself after entering various orders granting the relief requested in your petition. Chief Judge Cavanaugh correctly observed that the circumstances strongly suggested that Judge Reader knew he should have recused himself prior to granting the petition. You may recall that much of the JTC complaint against Judge Brennan related to her alleged failure to recuse herself on various cases.

Chief Judge Cavanaugh demonstrated courage and integrity in vacating all orders that had been entered in the case. We agreed with Chief Judge Cavanaugh that a visiting judge from outside Livingston County should be assigned to hear the case based on the unusual circumstances of this case including intense lobbying by legislators. We conducted a blind draw from judges in adjacent counties. A case of this nature must be heard by an impartial judge not subject to pressure. From time to time SCAO has been asked by Chief Judges to appoint a visiting judge to handle certain types of cases that necessarily involve the personal interests of the bench as a whole without necessarily disqualifying each member of the bench. This is done to preserve the fullness of a fair and impartial tribunal, not just the appearance.

It is true that the initial order incorrectly characterized the assignment as based on disqualification. That this was in error is clear from the fact that none of the other judges in Livingston had been disqualified. That error was corrected.

I appreciate your concern for speed. However, if you have evidence that supports criminal charges, the Attorney General, State Police and the Livingston County Prosecutor are available. We are aware that the State Police have executed search warrants so I suspect law enforcement is already investigating.

Accordingly, I must decline your invitation to reconsider the appointment of Judge Mauer.

Cordially,  
Milton Mack  
State Court Administrator

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**From:** Daniel Burress <danielaburress@att.net>  
**Sent:** Saturday, August 4, 2018 1:07 PM  
**To:** Milt Mack  
**Cc:** Stephen Markman; Miriam A. Cavanaugh; John Douglas Maurer; Angie Curtiss; thomas kizer  
**Subject:** Grand Jury Petition/assignments, Livingston County

Dear Judge Mack;  
Enclosed please find a letter dated today with supporting attachments for your consideration.

Cordially,

**DANIEL A. BURRESS**

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**THOMAS KIZER, JR  
207 N. Michigan Ave.  
Ste. 200  
Howell, MI 48843**

January 4, 2013

Mr. William Valliencourt  
Livingston County Prosecutor  
Highlander Way  
Howell, MI 48843

Sent by facsimile and regular mail

Re: Request for Investigation of Judge Theresa Brennan in matter of People v. Walter Kowalski

Dear Mr. Valliencourt:

Your office is acting on behalf of the State in the prosecution of Defendant Walter Kowalski for the life offense of murder. You have inherited this case from your predecessor, Mr. Morse. The purpose of this letter is to raise a serious issue which may impact the outcome of the trial of this matter and to seek action by your office in the discharge of your duty.

Specifically, I believe Hon. Theresa Brennan, acting as judge in this matter has not disclosed to the Defendant the relationship and extent thereof with two police officers, who are listed as witnesses in this case. The officers are Furlong and Corriveau.

It is my assertion that based upon information made available to me that judge Brennan has a lengthy social relationship with officer Furlong and that this officer has even been a social guest in the judge's home. Further, that a prosecutor on your staff may have been present on more than one occasion where officer Furlong was with the judge in a social setting. Secondly, as recently as November 14, 2012 officer Corriveau was in the courtroom of judge Brennan in plain clothes and she stopped the others matters before her and invited him to her chambers for a one on one meeting. I do not believe that contact has been reported to the parties. Perhaps the meeting was totally proper but it certainly seems inappropriate for a judge to meet with a police officer potential witness on the eve of trial without promptly disclosing same to all counsel. The complaints I raise relate to more than a casual inadvertent contact with witnesses. My complaint concerns a pattern of association with state witnesses by the trial judge, which, if true, are problematic at best.

I do not want a guilty person to have a conviction reversed due to a serious error committed by any judge which could easily have been avoided by prompt disclosure of the relationship and/or recusal. Equally important, an innocent person should not be subjected to the possibility of conviction resulting from a bias in favor of the testimony of state witnesses from the trial judge resulting from a close personal relationship.

I believe the duty of the prosecutor is to do everything reasonably possible to assure a fair trial and to disclose information known to your office which could impact a fair trial to any Defendant and particularly in the most serious of cases in our community. I am reasonably certain that one or more members of your staff of assistant prosecutors know of the social connection. I believe you have the ethical obligation to fully investigate this issue and provide the proper relief in order to assure the integrity of our judicial system. The judge has apparently not done so. It falls upon your office to correct this matter before a greater injustice is created.

As the result of the failure to disclose the relationship as I believe the judge is duty bound to do pursuant to MCR 2.003 (C) and the Michigan Code of Judicial Conduct, Canons 1, 2, and 3(C) the Defendant may be freed as the result of the improper and prejudicial conduct by his trial judge, unrelated to issues of guilt or innocence. I do not know whether this judge may be part of a violation of our laws for some malfeasance, misfeasance, or non-feasance in office and/or the common law offense of obstruction of justice. I request your investigation of that issue as well. At minimum the judge's actions in failing to disclose these relationships or to recuse herself may very well deny Defendant the protection of his federal and state constitutional rights to a fair trial, due process, and the equal protection of the law.

The extent of the interaction by this judge sitting in judgment of credibility issues which may also involve critical testimony of these officers demands investigation. The difficulty is that given the fact that judge Brennan has failed to make Defendant and his counsel aware of the total extent of her social interaction with the officer(s) and her potential for serious bias in their favor, there is the further perception that something more disturbing is involved beneath the surface. Likewise, if members of your staff knew of this connection and did not raise it, this is also serious. Your duty is to justice and not the judge.

The information I have available is that neither of these relationships/connections outside her official duties nor the extent thereof have been disclosed by her to the Defendant or his counsel. Nor has she suggested she should disqualify herself in order to assure fairness and its appearance to all parties.

It would appear that any investigation surrounding issues should include the following inquiries:

- How often have you socialized with either officer?
- Where did you do so?



- Describe specifically each and every contact and the circumstances surrounding each contact.
- Who was present on each occasion?
- What did your discussion with officer Corriveau involve on November 14, 2012.
- Have you ever been alone socially with either officer? If so, describe the circumstances.
- Have you discussed the murder charge with either officer in any way outside the presence of both counsel for State and Defense?

I raise these issues as a concerned member of our community. I believe I am duty bound to do so. This is a public official and a public issue of considerable importance. I regret having to raise it.

Thank you.

Thomas Kizer, Jr.  
Attorney at Law

cc: Mr. James P. Hughes  
Regional Administrator, SCAO

Hon. Robert P. Young, Jr.  
Chief Justice, Michigan Supreme Court

F/Lt. Joel Allen  
Post Commander  
Michigan State Police, Brighton

Hon. David Reader  
Chief Judge, 44th Circuit Court

**THOMAS KIZER, JR**  
**207 N. Michigan Ave.**  
**Ste. 200**  
**Howell, MI 48843**

January 7, 2013

Mr. William Vaillencourt  
Livingston County Prosecutor  
Highlander Way  
Howell, MI 48843

Sent by facsimile and regular mail

Re: Request for investigation into actions of Hon. Theresa Brennan

Dear Mr. Vaillencourt:

I am compelled to follow up on my letter requesting your full investigation into the activities of Hon. Theresa Brennan in connection with the case your office is prosecuting of People v. Walter Kowalski. I read in the local paper that your chief assistant suggested there are no facts in the record to evidence a bias by the judge. Judge Brennan is quoted by the paper that the only true facts are those relating to officer Corriveau being invited to her chambers to discuss a search warrant. Yet, both judges confirmed her friendship with these officers. Judge Reader even went so far as to acknowledge the widespread knowledge in the legal community of her friendships with the officers in question. "Friendships" are developed through contact. It would seem thereby that statements in my letter of January 4, 2012 referring to contacts with these officers and the judge need exploration as to their extent and nature.

No one explored the extent or nature of those friendships. No one from your office acknowledged the extent of contact between judge Brennan, your assistant(s), and either of these officers. No one from your office apparently inquired of the judge the specific concerns raised in my request. If anyone had done so, then there would be "facts" available upon which a proper determination could be made as to whether judge Brennan is so closely attached in her friendships with these officers as to make her less than impartial when it comes to weighing the credibility of the officers testimony. The extent of these "friendships" is of great importance. Is it only a casual connection from time to time at large gatherings, or are either of these relationships of a more personal nature? Judge Brennan's response was that she has these "friendships" with the officers in question but then she calls the allegations I made in referring to the friendships as untrue. She cannot have it both ways.

Only a month ago at the retirement party for the former prosecutor, I believe it is common knowledge in the legal community that she invited one or both of these same police officers to her home that evening after the festivities. Were members of your office privy to this? On the eve of such a serious case, why would the judge do so? Was the case discussed? Even if not discussed, would you permit a juror to be seated in judgment of your case if that juror was inviting the witnesses against you into her home on the eve of your trial? I think we all know the answer to that question. Equally important, such actions on the eve of trial are evidence of more than just a casual social connection. One additional question would be whether judge Brennan and officer Corriveau and/or Furlong had phone, email, or personal contact about the motion to recuse and the claims made in it on Friday before the hearing. (A FOIA request for phone and email records could assist in verifying all such contacts.) "Facts" if developed may very well show a basis for a real bias in favor of one or more of these state witnesses against the Defendant.

Judge Reader in reviewing the issue of recusal of judge Brennan had no specific facts. None were presented to him. Your office offered nothing except a conclusion that judge Brennan was not biased in favor of these officers. You had a duty to provide clarity as to the facts known to your office by your assistants who may have socialized with the judge and these officers on more than one occasion. Silence was not a proper option for your office.

The media reports statements attributed to the judges that I was motivated by something other than justice for the Defendant. Let me be clear. I do not want a guilty man to have a conviction reversed if his trial was tainted as a result of the close/inappropriate relationships between this judge and critical witnesses for the state. Judge Reader commented upon the common knowledge in the legal community of the social connection of judge Brennan to these officers. Yet, since no facts were forthcoming from judge Brennan as to the extent of her involvement with these officers and how it may impact her potential for bias, the motion for recusal was denied as lacking evidence. That was no surprise but certainly no vindication of judge Brennan.

Members of your staff may be privy to the extent of those contacts between these officers and the judge. Further, I would assume that if there was a search warrant request from officer Corriveau several facts supporting the judge's statement would be easily gathered and verified. For example, was a search warrant issued? Did your office have knowledge of it before or contemporaneously with it as the chief law enforcement officer of our county? Was there a file set up and copies left at the court? Did officer Corriveau have his trip to the court for a search warrant logged with his superiors? Was there a record made of such proceedings where someone may have been subjected to a search? Or, was the purpose of this meeting with judge Brennan in her chambers with officer Corriveau something else entirely? (As an aside, I would regret being the target of a search warrant request by an officer with whom judge Brennan had a close relationship knowing the impact of a bias in favor of the officer created with the judge by such relationship. This too must be investigated by your office--unconnected to the current case.)

Likewise, answers to questions raised in my January 4, 2013 request were never addressed. Why not? If all that was involved between the judge and these officers was just a casual social contact on a limited basis then I would agree with the conclusion of Judge Reader. The paper reported that Judge Brennan was tearful and emotional on the bench over this matter. Why? Was she concerned about the nature and extent of her social relationships with either of these officers? Was her demeanor on the bench an intentional act used to deflect any probing questions? Was it done to receive the sympathy of your office or to somehow convince the Defendant he had nothing to worry about concerning bias by Judge Brennan?

Judge Brennan had the opportunity to act judicial. She should have specifically informed the defense of her contacts with these officers in detail. Instead, she used tearful emotion to deflect and avoid answers to the true issues. Imagine the result if she had advised the defense of the extent of her relationship with these officers with specific facts. Had she done so, that might have solved everything. Unfortunately, she chose emotion over information.

A conclusory statement by Judge Brennan that she had no bias in favor of these officers if they testified in this "capital" crime case would be probed by the attorneys in detail if the judge was a potential juror. You know that and so do most law school freshmen. Your duty is justice -- not the protection and ratification of the judge's conclusory statements by your assistant. Perhaps Judge Brennan will be fair during the course of this trial. I do not know. But one thing is certain: No "facts" surrounding the basis of potential bias by her in favor of these friendships have seen the light of day and her future rulings on issues dealing with the testimony of either of these officers and whether it will be influenced by her relationships with either of them is unknown at this point because you have not searched for the answers.

Bias and the appearance of impropriety are legitimate concerns. When (not "if") during this trial, Judge Brennan is called upon to rule on credibility issues involving either of these two officers and if she rules in their favor to the Defendant's detriment, some higher court reviewing this matter, if the Defendant is convicted, will eventually probe or remand in order to determine the extent of these social relationships and whether such relationships materially influenced rulings by Judge Brennan adverse to the Defendant. If a guilty person is freed because of the temerity and unwillingness of your office to discharge its duty then you will have to live with that knowledge.

Instead of engaging in an emotional tearful denial of bias, it would have been more helpful in preserving the integrity of our judicial system and respect for our judges if Judge Brennan had fully, completely, and with specificity provided the extent, nature, and detail of her social relationships with each of these officers. Then a reviewing court would have had some facts with which to make a thoughtful, independent ruling. As it turns out, it looks like judges protecting judges and prosecutors doing the same, whether it is true or not. We deserve better.

Once again I request you to investigate and report specific findings. If judge Brennan just happened to see these officers at social gatherings, I would never have been concerned. You have an obligation to investigate and determine from "fact gathering" whether there is something seriously wrong here and potential violation of our laws. I stand by my request for a full and complete investigation of the actions of this judge. Her behavior on the bench as observed by the media is disturbing. Is she covering up something that would affect her ability to serve as judge in this case? How often have you witnessed such strange behavior by a jurist dealing in this type of motion? I have never witnessed such behavior in 45 years of practice. As Marcellas observed in Hamlet, "...something is rotten in the state of Denmark". Is that the case here? What, if anything, is the judge not revealing? If it violates the law your duty is clear. If the judge is failing to come forth with the specifics of the nature and extent of her relationship with one or more of these state witnesses that impact her duty as an impartial jurist in this case (and for that matter in others in which one or more of these officers give testimony), she may have some culpability for those actions under our law. Your duty is clear and I respectfully ask you to perform it. If you are too close to the judge to do so or if you are concerned with your own assistants connection to the matter, then please refer it to the attorney general for investigation, or request appointment of a grand jury to perform a full and complete investigation of these issues. Justice will then, and only then, be done.

Cordially,  
Thomas Kizer, Attorney

Cc: Hon. David J. Reader  
Chief judge

Lt. Joel Allen  
Brighton Post Commander  
Michigan State Police

Mr. James Hughes  
SCAO

Mr. William Schuette  
Attorney General of Michigan

**Judge Miriam Cavanaugh**

**53rd District  
Court Judge  
Theresa Brennan**





