

IN THE SUPREME COURT OF INDIANA

Cause No. 23S-OR-311

State of Indiana ex rel. Richard Allen,	)	
	)	
Relator,	)	
	)	Original Action from the
v.	)	Carroll Circuit Court
	)	
Carroll Circuit Court and	)	Trial Court Cause No.
The Honorable Frances C. Gull, Special	)	08C01-2210-MR-000001
Judge,	)	
	)	
Respondents.	)	

**RESPONDENT'S SUPPLEMENTAL RECORD**  
**VOLUME I of I**  
**Pages 1-29**

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Frances C. Gull, Special Judge

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1 APPEARANCES

2  
3 For State of Indiana: Nicholas C. McLeland/James Luttrell  
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7 For Defendant: Bradley A. Rozzi  
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24 THE HONORABLE FRANCES C. GULL ..... JUDGE

25 JODIE L. WILLIAMS ..... REPORTER

1 **PROCEEDINGS**

2 ATTORNEY NICHOLAS MCLELAND: Judge, I wanted to do some  
3 introductions. I finally got approval from our council to hire a paid attorney to  
4 help me, so -

5 THE COURT: Okay.

6 MR. MCLELAND: Small town, local government. So this is Jim  
7 Luttrell, he's a retired prosecutor from Grant County. He's decided or agreed to  
8 come on board -

9 THE COURT: Okay. Have a seat.

10 MR. MCLELAND: -- he signed the oath to my office -

11 THE COURT: Okay.

12 MR. MCLELAND: -- and all that. I'm gonna handle a written  
13 appearance -

14 ATTORNEY JAMES LUTTRELL: Nice to meet you, Judge.

15 THE COURT: Nice to meet you, Jim.

16 MR. MCLELAND: -- next week.

17 THE COURT: Okay.

18 MR. MCLELAND: Or maybe tomorrow, if I have time, Judge, if I get  
19 it done.

20 THE COURT: Okay.

21 MR. MCLELAND: But he will be entered in, and we're trying to get  
22 him up to speed.

23 THE COURT: Okay. Well, good.

24 ATTORNEY BRADLEY ROZZI: Well, I'm the one that kind of asked  
25 to huddle up, so if you want me to lead or if you want to say some things, I'm

1 okay with whatever approach you want to take here.

2 THE COURT: Go ahead.

3 MR. ROZZI: Well, I think -

4 THE COURT: I've got - Jodie's got our portable FTR going, just so  
5 that we've -

6 MR. ROZZI: Oh, okay. That's fine.

7 THE COURT: - got a record.

8 MR. ROZZI: You know, obviously, I'm happy to hear that the  
9 Court's gonna make some decisions on the pending pleadings today.

10 THE COURT: Um-hmm. (Affirmative response)

11 MR. ROZZI: I assume Andy feels the same way. We - you know,  
12 it's time to kind of get some closure, if you will, with regard to those items, so  
13 that we can move forward. It's probably obvious that the tension from our side  
14 is coming, you know, from the words "disqualification" that were murmured in  
15 the phone conference that we had a couple weeks ago. I'm assuming you  
16 understand how that kind of raises the intensity level of the circumstances. And  
17 I guess my - if I have a concern today, it's that, you know, we're gonna go out on  
18 the - kind of in the public, so to speak, in the courtroom, on the record, and  
19 have a discussion about an on-going investigation, and I - that's what I kind of  
20 gathered from the e-mail. You know, I think you invited Nick to talk about that  
21 if he wanted to.

22 THE COURT: Um-hmm. (Affirmative response)

23 MR. ROZZI: And, you know, it makes me a little uncomfortable,  
24 because I don't know - first of all, there are no pleadings that are pending,  
25 whether they're motions to disqualify or contempt citations or whatever they

1 might be, that really frame any of the issues. And I have no problem – I mean, I  
2 don't have any problem talking about this stuff privately on the record in a – you  
3 know, in an ex parte type confidential hearing. I just think it's a little – it's  
4 difficult to expect that there will be any kind of structure to the idea of, you know,  
5 “Hey, there's an on-going investigation and just tell us what's going on.” And I  
6 don't know that it has any relevance to what we're really trying to accomplish  
7 today. And I also don't know why Nick would want to talk about an on-going  
8 investigation in public, knowing that that, in itself, could be a little damaging to  
9 their circumstances. And so we're lawyers, we're used to having issues framed,  
10 we're used to having an opportunity to prepare. And I don't have anything to  
11 hide and I know he doesn't have anything to hide. You've maybe gathered that  
12 we've cooperated, we ran into the State Police posts, our respective posts, if you  
13 will, and I had somebody advise me of my rights and I waived those and I gave a  
14 formal statement, he did the same. And I'm not sure that we're gonna benefit or  
15 that this will be productive to just open floor this, and that's my biggest concern  
16 today.

17 THE COURT: Um-hmm. (Affirmative response)

18 ATTORNEY ANDREW BALDWIN: I'm more of a – like, the due  
19 process side. I'm not really sure what will happen, but I just don't know – I  
20 don't know what's gonna happen and I would like the opportunity to know what's  
21 gonna happen and prepare for they're claiming or whatever before it happens.  
22 And I feel like – I don't feel like – I don't want to say ambushed, but it's just – it's  
23 hard to know, for me, what to do when I don't know what's happening, there's  
24 not a pleading we can respond to, things like that. So, you know, you had  
25 indicated that, you know, when he – when Nick said - I don't know if he said the

1 word "disqualification", but –

2 THE COURT: Oh, he did.

3 MR. BALDWIN: Was it that word?

4 THE COURT: Um-hmm. (Affirmative response)

5 MR. BALDWIN: Okay. I didn't know if he just said it in a more  
6 generic way.

7 THE COURT: Um-um. (Negative response)

8 MR. BALDWIN: And your response was, you know, "I'm leaning in  
9 that direction" or something along those lines.

10 THE COURT: Um-hmm. (Affirmative response)

11 MR. BALDWIN: And so that – that's, you know, a cause of concern.

12 I mean, we're still wanting to try this case in January and I'm willing to – you  
13 know, we have made changes at my office that will prevent this from ever  
14 happening again, you know. And we can take directives from the Court, we can  
15 – you know, we're locking down every single thing on Delphi, it's in a dedicated  
16 room. We are – we put locks on our conference room or the war room where this  
17 guy went, my friend, went in and did this without my knowledge. And that – and  
18 no document, whether it's benign or something super, you know, like a crime  
19 scene photo, is ever gonna be left alone for a single, solitary second ever again.  
20 So, you know, I'm hoping that that can be something that the Court, you know,  
21 can say, "All right. That's fine." And then let's get on with the trial. But I'll shut  
22 up now.

23 THE COURT: Anything, Nick?

24 MR. MCLELAND: Judge, I guess my plan today was give the Court  
25 a summary of the investigation. I've got witnesses here and exhibits to present



1 that go towards the investigation. I'm more than happy to hand those over to  
2 Defense. I know it may harm the investigation, but I think it would be important  
3 that the Court hear these things. I guess, the heart of it (inaudible) investigation,  
4 I think it's important – I think the importance of you hearing it is outweighed by  
5 that, and so I have those things. I'm concerned that the leak is not just a one-  
6 time leak. The evidence that we have shows it is an on-going leak, however it's  
7 being done, and it's just – what's next? That's – I have an issue, what's next? I  
8 mean, I spent the past 17 days investigating this night and day when I should  
9 have been focused on preparing for trial. And when I say night and day, I mean  
10 phone calls at 2 a.m., 3:30 a.m., night and day, and so that's where I'm at, Judge.  
11 Again, I'm an officer of the court, I'm reporting to the Court what I know, and  
12 that's kind of where I see my role.

13 THE COURT: Okay.

14 MR. ROZZI: You know, this is starting to scream due process to  
15 me. I've not – well, I haven't seen any of these exhibits and I don't know really,  
16 frankly, I don't know anything about any of this. And I'm not distancing myself  
17 from Mr. Baldwin, I'm just saying I have no connection with any of these people;  
18 okay? And the idea that somehow the prosecutor is gonna get to roll out a  
19 bunch of statements and exhibits and, you know, testimony without us having  
20 any forewarning or any idea – anyway of scrutinizing that, seems a little outside  
21 the boundaries of due process to me. Plus, again, I get back to what is the  
22 relevance to what is going on in this case? Why we – are we going to use an open  
23 courtroom to air an ancillary matter? It's not really connected in any way, at  
24 this point, to the proceedings that are on-going, whether it's the Franks issue or  
25 anything of that nature. And I will tell you this, and I am prepared to show the

1 Court this, I would rather do it in private, this problem has been a problem from  
2 the very beginning. I have ten pages of a deposition transcript in this file from  
3 my deposition, our deposition that I took of Trooper Holman in this case, and in  
4 that deposition, he talks openly about how there were crime scene links from the  
5 very beginning, unequivocal crime scene leaks, and that as soon as this crime  
6 occurred, they were investigating information that had been released, because  
7 there were laypeople that were part of the search party and the implication is –  
8 and I've got the transcript – is that those people that found those girls started to,  
9 essentially, disseminate or distribute information, and law enforcement,  
10 essentially, try to catch up with them, but it was really too late, as you might  
11 expect. Once it gets in the hands of the public, it's too late. So he told us that,  
12 almost volunteered that information to me, in the deposition. The second  
13 concern I have is that – I think I shared with the Court just as an example, a  
14 week or two ago, somebody sends me a Court TV, you know, bit – and I can  
15 assure you, I've never watched one of those bits on this case. I don't know even  
16 know if I've ever really watched Court TV, maybe back when Simpson was on-  
17 going, I don't know. And in that bit, Barbara MacDonald is talking, two different  
18 occasions she mentioned how she's getting information from investigators on the  
19 ground that were at the crime scene. Now, we can all draw implications about  
20 that; but most importantly, it was corroborated by the fact that she was holding  
21 in her hand documents that I know to be directly related to the Purdue report. I  
22 mean, I saw the pictures, I know where those came from. And if, you know – the  
23 point here is, is I'm gonna say this maybe a little loosely, but forgive me. I don't  
24 care. I don't care that all this stuff is out there, because it's been out there for  
25 five or six years. I don't have time, he doesn't have time, he doesn't have time to

1 sit and try to marshal all of this stuff while this case is on-going, because there's  
2 no end to it. And – but the point is, is the Court needs to have some context that  
3 this is nothing new. I'm super – I lost sleep over the fact that there's a man who's  
4 dead that I don't even know and, frankly, Andy doesn't know, and it's tragic. I  
5 don't know what life circumstances he had or what surrounded this, we've not –  
6 none of that information has been shared with us. But at the end of the day,  
7 what's going on out in the cyber world and in the public, as you might expect in  
8 a case of this magnitude that's been publicized for six years, was beyond our  
9 control before we even got involved.

10 MR. BALDWIN: There's even a guy in Florida who says the guy in  
11 Texas who leaked all this stuff has received from a disgruntled Carroll County  
12 employee a whole file filled with stuff, and photos included. And I haven't seen  
13 – I haven't even seen the photos that were leaked, I don't know what they are,  
14 you know. I mean, if this could be set for a formal hearing in the future, where  
15 we have a chance to do it the right way, then that's one thing, but, you know, to  
16 go in there and we don't have any counter – way to counteract anything. If I  
17 know what it is, I can, “Oh, okay, that's – I know what that is” or “I don't know  
18 what that is.” And it's – you know, and in the meantime, you know, we can – I  
19 don't know, we – honestly, this is the worst, lowest point of my career right now,  
20 because somebody did what they did to me, and I – you know, that has nothing  
21 to do with Richard Allen.

22 THE COURT: It certainly does not.

23 MR. BALDWIN: Richard Allen needs to have counsel there, so – I  
24 just don't want to go in there and not be able to fight back with – if it – with  
25 evidence that we – or witnesses that we have to counteract whatever they claim

1 that they have, so –

2 THE COURT: Okay. Here are my thoughts, in no particular order:  
3 I don't know how many folks are out there, and I certainly don't wish to air  
4 publicly to the world the concerns that I have about this matter. My intent in  
5 having this hearing was to go through some of the pleadings that we have not  
6 yet decided. So I was going to start with reminding everybody about the decorum  
7 order, reminding everybody why we're here, to shut up, etcetera. There have  
8 been reports to my sheriff about disruptive people; and I will remind people, if  
9 they are disruptive, they will be removed, and my sheriff is fully prepared to  
10 execute arrests if necessary, because I know we've seen in our other hearings  
11 people have been disruptive and hateful. So under the rules – under the Canons  
12 of Judicial Conduct, I'm required to advise people within the room that the media  
13 is here and they are filming. They're doing pool coverage, so there's only two  
14 cameras in the courtroom and everybody's going to get coverage from that. And  
15 then, I want to talk about the pleadings. Defendant filed a verified motion for  
16 immediate transfer of custody. The State filed its response. The motion, again,  
17 has a lot of inaccuracies and some speculation, and it has been refuted ably I  
18 think by the affidavits that have been submitted by the State, and I'm going to  
19 deny the motion. The Defendant then filed a motion for broadcasting order. The  
20 State filed its response. Your motion's overbroad, it's got a lot of irrelevant  
21 verbiage in it, and I am required to consider individual requests for hearings, so  
22 I will – if the media wishes to have an individual request submitted, they know  
23 fully well how to do that and I've provided to counsel all of those requests that  
24 I've gotten so far for this hearing. So if you want to file them for particular  
25 hearings, you're certainly welcome to do that, but the media is all over this and

1 they're not – they know how to do this.

2 MR. ROZZI: Yeah. I was just trying to understand, are you  
3 suggesting that you're gonna determine that on a case-by-case basis or a  
4 hearing-by-hearing basis?

5 THE COURT: Hearing-by-hearing.

6 MR. ROZZI: Okay.

7 THE COURT: Yeah.

8 MR. ROZZI: All right. Okay. I just wanted to make sure I  
9 understood what –

10 THE COURT: The State filed its motion for leave of Court to  
11 subpoena the third-party records. I think that was directed, again, to DOC. I,  
12 clearly, can't grant that. I'm gonna grant the Defendant's motion to quash. But  
13 if you continue to raise his medical and mental health in pleadings, that's fair  
14 game then for that to be provided to the State. You have also filed, Mr. McLeland,  
15 a motion for future pleadings and filings to be sealed prior to being released to  
16 the public. I've not gotten a response from the Defense.

17 MR. ROZZI: Can I speak on that?

18 THE COURT: Sure.

19 MR. ROZZI: I think it's important to note that, you know, we've –  
20 so we had this discussion come up before and there was – basically, we decided,  
21 okay, we're done sealing stuff, we're gonna make it public. I had – before we filed  
22 that Franks brief, I had a long conversation with the court reporter, Karen Allen,  
23 over in Delphi, because I wasn't sure about – Allen or Roller? I always want to  
24 call her Karen –

25 MR. MCLELAND: Allen.

1 MR. ROZZI: Karen Allen - because I wasn't sure about the  
2 mechanics of how all of this stuff was moving from Delphi to your office, and I  
3 know that you had set up some kind of a website or something that people could  
4 access. And I was under the understanding, in speaking with Ms. Allen - I'm  
5 not blaming her for anything, but that when we file these things, they were going  
6 from them and they were hitting a button - we were filing with Carroll County,  
7 they were hitting enter, and they were sending it to you and you were, essentially,  
8 filtering this stuff or, at least, you were seeing it before it became public.

9 THE COURT: Nope.

10 MR. ROZZI: And so that's the way I - in talking with her, that's the  
11 way I understood the mechanics. Which, I think, is what happened to a pleading  
12 the other day, from what I understand. We filed something and you either put  
13 it in a queue - I think there's a - anyway, I tried to do some homework on that,  
14 and that's what I -

15 MR. BALDWIN: I was a part of one of those conversations and she  
16 - that's what she said.

17 THE COURT: So do - does that need a hearing? I'm happy to have  
18 a hearing on that, I don't have a problem with that.

19 MR. ROZZI: Well, I don't really - I guess, I'm just telling you for  
20 context, that's what I -

21 MR. BALDWIN: I mean, could there be a happy medium of we file  
22 it confidentially and then the - so the Judge then gets a chance to review it first?  
23 'Cause I - that's what we thought was going on anyway, but if that's not what's  
24 going on -

25 THE COURT: No. It's being filed confidentially if you mark it as

1 such.

2 MR. BALDWIN: I know. Yeah, I know that now.

3 THE COURT: I had my staff mark the memorandum confidential  
4 after it had been filed and disseminated to the public, because the actual warrant  
5 was in there, and that's covered under a miscellaneous cause number. I'm  
6 happy to have a hearing.

7 MR. ROZZI: Well, what is your ruling, I guess to make sure I  
8 understand? I don't want to fight about something that we don't need to argue  
9 about.

10 THE COURT: I haven't ruled on that.

11 MR. ROZZI: Okay.

12 THE COURT: You haven't filed a response and that -

13 MR. ROZZI: Yeah.

14 THE COURT: -- my question is do we need a hearing on that or do  
15 you wish to file a response? The Franks motion, clearly, needs a ruling, and I'm  
16 working on that. The motion and exhibits are about 1500 pages and there are  
17 hours and hours and hours of interviews that have been made available, that  
18 my IT staff has now cleaned to make sure they're okay. We already talked about  
19 that. And then, I mean, that brings us to my concerns that I had that I raised  
20 with all of you on our phone call. And I write everything out, and this is what I  
21 intend to say in open court: I have concerns regarding the defense team and the  
22 totality of the circumstances surrounding your representation of Mr. Allen.  
23 Candidly, my concerns began at our hearing on November 22<sup>nd</sup> of last year. Mr.  
24 McLeland filed a motion for gag order, and we were in chambers, and you  
25 assured me, gentlemen, "We don't want the media in our lives, we will not try

1 this case in the media.” And less than two weeks later, you issued an undated  
2 press release that contained an awful lot of information that would not normally  
3 be revealed. I don't know, I think you knew or should have known those were  
4 potentially violative of Rule 3.6 of the Rules of Professional Responsibility, but it  
5 is that press release that prompted me to issue the order December 2<sup>nd</sup>, granting  
6 the gag order until further hearing. April 18<sup>th</sup> of this year, you filed a notice of  
7 tort claim against the Department of Correction. You stated in that notice that  
8 it was your intent to pursue, “Our client's claims against you. The full amount  
9 of damages sought on behalf of my client is unknown.” I don't know how you  
10 could do that in representing Mr. Allen in a criminal matter and then launch off  
11 into a civil matter, I think that's inappropriate. May of this year, we were notified  
12 by the State of the Brandon Woodhouse arrest and the subsequent discovery of  
13 your work product, and I think it was an outline that you created for yourselves  
14 with the discovery. It was pretty detailed, I don't know if that's the right word.  
15 That, apparently, happened in December of last year, and that was not revealed  
16 to anybody, not shared with the Court, it wasn't shared with you – although,  
17 apparently, you guys knew about what was going on.

18 MR. BALDWIN: He didn't know.

19 THE COURT: You knew.

20 MR. BALDWIN: I did know.

21 THE COURT: So then, Mr. Woodhouse gets arrested and here we  
22 are. Grossly negligent to e-mail that to the wrong Brad. Your pleadings on the  
23 safekeeping order contain inaccuracies and falsehoods. That was proven in the  
24 hearing we conducted in June, the evidence presented by the State clearly  
25 demonstrated the falsity of your claims, and that was very troubling to me. And



1 then, the last couple of weeks that we have been dealing with. The State provided  
2 you discovery. That has been severely compromised. We now have an on-going  
3 investigation. I'm not gonna call it a criminal investigation, I don't know what it  
4 is, but it's clearly being investigated by the State of Indiana. Everyone involved  
5 has sought counsel, including you, Mr. Baldwin, you've had an attorney enter a  
6 written appearance this morning. I don't want to get into the investigation,  
7 candidly. You are the constitutional authority for the State of Indiana; if you  
8 choose to pursue it, that is up to you. If you choose to abandon it, that is clearly  
9 up to you. I'm glad to hear that you have cooperated. But Mr. Baldwin's attorney  
10 has, clearly, shared - I don't know if you've seen his pleading -

11 MR. MCLELAND: I saw it, Judge, yes. I got it kind of late. He e-  
12 mailed us and then -

13 THE COURT: Okay.

14 MR. MCLELAND: -- I saw that was filed on the way here.

15 THE COURT: Well, yeah, so he's clearly shared it in his pleading,  
16 down to the fact that an individual has committed suicide. He included the fact  
17 that you left materials all over a conference-room table, accessible to anyone,  
18 and this is a friend of yours who, apparently, you have consulted with on this  
19 case. So again, it's up to you if you wish to pursue that. I'm looking at the  
20 totality of the circumstances. You know, when I look at a suppression, the case  
21 law requires me to look at the totality of the circumstances, and that's what I'm  
22 doing; and it pains me to say this, but the totality of these circumstances  
23 demonstrate gross negligence and incompetence on the part of the defense team.  
24 I am unsatisfied with your representation of Mr. Allen. I am gravely concerned  
25 about his rights to have competent, non-negligent representation. He currently

1 doesn't have that right now, because what you have demonstrated is negligence  
2 and incompetence. Now, I am sharing my thoughts with you privately. I don't  
3 want to say this in open court. I would encourage you to talk privately about  
4 what you wish to do. I don't want this coming out, it is not where we need to be  
5 with this case, but I will. But you don't know that, you have just now been made  
6 aware of my concerns and where I'm landing; so if you wish to have a private  
7 conversation, I would encourage you to do that. I don't believe your client is here  
8 yet. No, he's not. Clearly, you'll need to speak with him, as well. So -

9 MR. BALDWIN: I'm not good at reading between the lines.

10 THE COURT: You're a lawyer, that's what you do for a living.

11 MR. BALDWIN: When you say have a private conversation, are you  
12 talking the four of us or -

13 THE COURT: I'm talking about you. I am not accusing the State  
14 of gross incompetence and negligence. I am finding gross incompetence and  
15 negligence with you.

16 MR. BALDWIN: So - okay. So -

17 MR. ROZZI: Forgive me - go ahead.

18 MR. BALDWIN: No, no.

19 MR. ROZZI: I mean, obviously, reading the tea leaves here, what  
20 you're giving us a chance to do is bow out gracefully, if you will, if that's the right  
21 term. Is there a scenario where the Court would accept if I stayed in the case?  
22 I mean, I'm not - I'm a team player and I'm not the kind of guy that just bail out  
23 on somebody just for the sake of doing it, but I think it's obvious that, you know  
24 - he can speak differently, but I'm not as connected to some of, you know, this  
25 most recent circumstances as he is. Mr. Allen is in a situation where he's gonna

1 have counsel that's – if he has new counsel, it's gonna take them a year to get  
2 up to speed with the depth of information that continues to come in. And so, I  
3 think that his 6th Amendment rights matter. And, you know, I'm probably the  
4 one that can at least move this thing forward with some sense of judicial  
5 economy. I don't like it and that's not what I intended to do when I came in here  
6 today, but that would be kind of a worst-case scenario on our side. You know, I  
7 guess – and so is that an option that the Court would entertain?

8 THE COURT: No.

9 MR. ROZZI: So basically, what you're saying is “You guys either  
10 quit on your own accord or you make me fire you”? That's what –

11 THE COURT: No. I'm saying to you that this is my – this is what I  
12 plan to say in court on the record when we convene at two o'clock.

13 MR. ROZZI: Well, so are – is the culmination of that that you're  
14 removing us from the case?

15 THE COURT: I will, based on what I've just shared with you.

16 MR. ROZZI: Okay. Well, I just want to make sure we're –

17 THE COURT: And I'm just giving you the opportunity to have a  
18 conversation which – how do you want that to go? I don't want to do this. I don't  
19 want to do this, but I will if I have to.

20 MR. BALDWIN: How would – should we bow out gracefully, as Brad  
21 says, how – would we even have a hearing? How would that go? 'Cause if we're  
22 out of the case, then –

23 MR. ROZZI: Then you're gonna go ahead and rule on a bunch of  
24 stuff without lawyers in the room, that's –

25 THE COURT: No, I would not do that. If you decide that your best

1 course of action is to file a motion to withdraw, you can do that today, and I'll  
2 send Mr. Allen back to the DOC after you've had a chance to speak with him.

3 MR. BALDWIN: Would that happen before the hearing or after the  
4 hearing? That's -

5 THE COURT: Your motion to withdraw would happen before the  
6 hearing.

7 MR. BALDWIN: Okay. That's what I wanted - yeah.

8 THE COURT: Yeah. Because that's - I - he has rights, and I don't  
9 want those rights compromised by having a hearing with him not having counsel.  
10 I assume, if you choose to withdraw, that his financial situation hasn't changed  
11 and he would still be entitled to court-appointed counsel. I can't imagine that  
12 he has the ability, at this point, to hire counsel. I don't know that.

13 MR. BALDWIN: Brad and I need to go talk.

14 THE COURT: Yes, you do. Thank you, gentleman.

15 MR. MCLELAND: Yep. Thank you, Judge.

16 (Off record.)

17 (On record.)

18 THE COURT: Thank you, Jodie.

19 COURT REPORTER: You're welcome.

20 THE COURT: Okay. Yes.

21 MR. ROZZI: All right. So obviously, we're kind of trying to figure  
22 out how to address this issue with very short notice, very little notice. The first  
23 thing we did is really to talk to the client.

24 THE COURT: Um-hmm. (Affirmative response)

25 MR. ROZZI: Our client is a big part of this, the biggest part of this,

1 and he has communicated to us that he does not want us to withdraw from this  
2 case. He wants us to continue with his representation. He understands, I think,  
3 that he's not the gatekeeper or he doesn't have the authority to really force the  
4 Court to do that. He would like to say that on the record. We asked him if that's  
5 what he wanted to do. We suggested maybe he would do it in chambers. It  
6 seems a little bit of a difficult position to put a man who's accused but not been  
7 found guilty, put him in a courtroom and have him, you know, have to speak in  
8 this circumstance with 15 minutes notice. Andy and I – I'm gonna speak for  
9 myself, I'll let him speak for himself. I'm gonna file a motion to withdraw. I don't  
10 want to do it, but I don't think that I have a choice at this point. The options I've  
11 been given without any notice by the Court really are either I withdraw or I'm  
12 gonna be publicly shamed and that's the way I see this. And I think that public  
13 shaming is not only – there's not only a professional element to that, I think  
14 there's a personal aspect to that, too. But when the media is teed up like this  
15 and, you know, we show up here today with the Court having told us that we  
16 were gonna conduct some business, that that somehow bleeds over into a forced  
17 resignation or whatever you want to – however you characterize this, that, you  
18 know, I don't feel like I have any other choice professionally. I have a life beyond  
19 this courtroom and beyond this case and I have a family, too, and I have a law  
20 practice. But I think had been – we been given some notice of what we were  
21 actually – if this would have been framed in a pleading format or some formal  
22 disciplinary claim, which there's a process for that in our business, then we  
23 could have come in here today with an opportunity to refute some of those things  
24 that you clearly had, you know, thought through and prepared before we got  
25 here. And we didn't have that opportunity and it's – the idea that I'm gonna have

1 to go in here in an open courtroom and, essentially, defend myself against claims  
2 that I don't agree with without any notice and without any opportunity I think is  
3 unfair. But I'm also – I also have some common sense and, you know, me going  
4 in there and standing my ground because my client wants me to is just gonna  
5 make things worse for him, and so I'm gonna withdraw my appearance. I'm  
6 gonna walk out of here, I'm gonna go down to my car, I'm gonna call my staff,  
7 and have them prepare a motion, and I'm gonna withdraw my appearance, but  
8 I'm doing it because I don't think I have any other choice professionally, not  
9 because I want to, and not because my client wants me to. And I respect the  
10 Court has an opinion, but we're professionals and we can disagree –

11 THE COURT: Of course.

12 MR. ROZZI: -- and, you know, I am extremely, you know, I'd say  
13 frustrated's probably a soft word, with the idea that we showed up today without  
14 any real opportunity to prepare for any of this, and I just think it's improper, and  
15 that's where I am and that's my position.

16 THE COURT: Well, I think we talked about, when you asked for a  
17 disqualification, and I indicated on our phone conversation I'm inclined to do  
18 that.

19 MR. ROZZI: It was a phone conversation that was not on the record  
20 and then some follow-up e-mails.

21 THE COURT: True.

22 MR. ROZZI: There's an informality to that.

23 THE COURT: True.

24 MR. ROZZI: And you also said that you hadn't even done any  
25 research and you hadn't, you know, had time to talk to your senior Judge and

1 all these other things. And he hasn't filed a pleading with the Court, either.

2 THE COURT: No, I'm doing this on my motion.

3 MR. ROZZI: And I'm a lawyer who practices in lots of courtrooms  
4 and I've been through some disqualification actions. I've – in 20 years, I've never  
5 had a disciplinary complaint in my life that's been confirmed, if you will. But  
6 I've seen lawyers disqualified and there is a process for that and it's not this,  
7 with all due respect, where you walk into somebody's office, a judge's office, and  
8 they read a prepared statement to you and, essentially, that statement is an  
9 indictment on my professional, you know, activities, and then you're handed a –  
10 you know, essentially, a sheet of paper with two – you know, with two options  
11 and one of them is, is “I'm gonna go out here and shame you or you can quit.” I  
12 just – you can understand how upset that would make any lawyer, and I just  
13 think it's – I don't think it's the right way to handle this from a due process  
14 standpoint. So I have no choice but to, you know, withdraw my appearance,  
15 'cause I'm not gonna go in there and take a public shaming without having any  
16 notice of it, I just – you know, that's where I am with it.

17 MR. BALDWIN: I'm the same, withdrawing. I mirror what he said.  
18 I mean, I do appreciate giving us the advance notice. If there is some  
19 appreciation for that, I do appreciate that; but beyond that, I wanted to take this,  
20 you know – I wanted to take this and finish it out. I'm stunned, I don't know  
21 what to say, so I'll just say I'm moving to withdraw orally.

22 THE COURT: Okay.

23 MR. ROZZI: Is the Court gonna generate some further instructions  
24 on what to do with all of this discovery that we have and –

25 THE COURT: I already have.

1 MR. ROZZI: -- all of this information and --

2 THE COURT: There's an order. I granted the State's protective  
3 order on discovery.

4 MR. ROZZI: No, I'm talking about my possession of all of this  
5 information. Am I to take it out to the trash can? Am I supposed to wait for  
6 another attorney? Is the Court gonna give us some guidance on how to move all  
7 of this information from one law office --

8 THE COURT: I did.

9 MR. ROZZI: -- to another?

10 THE COURT: When I granted the State's protective order, the -- I  
11 think it's the last paragraph of that protective order directs you to return it all to  
12 the State of Indiana, all the copies, all of the -- whatever you gave them they are  
13 required, under that order, to return to you.

14 MR. ROZZI: At the conclusion of the case.

15 THE COURT: Or your representation.

16 MR. ROZZI: I know what order you're talking about, I read the order  
17 before I came today.

18 THE COURT: Okay.

19 MR. ROZZI: So we're supposed to just take everything back and  
20 give it to the State and then just retain our work product until somebody asks  
21 us for it?

22 THE COURT: Your work product is your work product. I mean, I  
23 would hope that you would share that with successor counsel, I would hope that  
24 you would help successor counsel just with the transfer of all of the information,  
25 because that's in your client's best interest to do that, but that's entirely up to



1 you. That's your work product that you have developed. I mean, clearly, the  
2 discovery is required to go back to the State.

3 MR. ROZZI: Okay. Thank you. What do you want to do with Mr.  
4 Allen?

5 THE COURT: I can transport him back to the Department of  
6 Correction.

7 MR. ROZZI: Do you want to make a record with his - I mean, I  
8 think it's appropriate that the Court let him speak into the record, his thoughts,  
9 unless the Court just accepts that as notice that those are his opinions.

10 THE COURT: Well, you wouldn't lie to me about that.

11 MR. ROZZI: I would not lie to you about anything.

12 THE COURT: So of course, that's your representation that that's  
13 what he would say if he were brought in here. I can't imagine the DOC being  
14 comfortable bringing him into my office. I would not be comfortable having him  
15 in my office.

16 MR. ROZZI: Would the Court also be inclined to mark as an exhibit  
17 the prepared statement, so that it's part of the record?

18 THE COURT: I have the record rolling.

19 MR. ROZZI: Okay.

20 THE COURT: Yes.

21 MR. BALDWIN: So we're gonna leave, I guess, and you're gonna -  
22 how is this - you're just gonna get up on the bench and say -

23 THE COURT: I will just indicate to - Mr. McLeland's going to be in  
24 there with Mr. Luttrell, and I'll just say we've had a turn of events and defense  
25 counsel is withdrawing and that's all I'm gonna say.

1 MR. BALDWIN: Can you wait for us to get out of here?

2 THE COURT: Of course. And we can have you – I don't know where  
3 you're parked at. We have a hearing set for October 31<sup>st</sup> that I'd like to keep as  
4 trial setting and appointment of new counsel and, if you can get things together  
5 by that date to return to Mr. McLeland, that would be good. Otherwise, if – with  
6 your permission, I will give successor counsel your contact information.

7 MR. BALDWIN: Okay.

8 MR. ROZZI: Okay.

9 THE COURT: Where are you parked?

10 MR. ROZZI: Nice to meet you. Sorry to (inaudible).

11 MR. LUTTRELL: (Inaudible)

12 MR. BALDWIN: Just right out there in front of the building. I  
13 mean, there's a parking lot – there's a little parking lot right in front of the  
14 building, I don't know what –

15 THE COURT: Everybody's in the courtroom, so I don't think that  
16 there's any anybody out in the hallways.

17 MR. ROZZI: I'm gonna go get my staff member, I'm gonna have her  
18 – I don't need any – we'll rendezvous at some point and try to get the stuff back.

19 MR. MCLELAND: Okay. That's fine. Between Steve and I and Sarah  
20 and you –

21 MR. ROZZI: Okay.

22 MR. MCLELAND: -- we will get it all –

23 MR. ROZZI: That's fine.

24 MR. MCLELAND: -- done. That's – either Sarah.

25 MR. ROZZI: Thank you.

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THE COURT: Thank you.

(THIS CONCLUDES THE PROCEEDINGS HAD IN CAMERA ON OCTOBER 19,  
2023, IN THIS CAUSE.)

1 STATE OF INDIANA )  
2 COUNTY OF CARROLL )

IN THE CARROLL CIRCUIT COURT  
)SS:  
CAUSE NO.: 08C01-2210-MR-1

3  
4 STATE OF INDIANA, )  
Plaintiff, )

5 VS. )

6 RICHARD ALLEN, )  
7 Defendant, )

8  
9 **CERTIFICATE OF REPORTER**

10 I, Jodie L. Williams, an official reporter for the Allen Superior Court, Allen  
11 County, Indiana, do hereby certify that I took transcribed from electronic  
12 reporting equipment all of the proceedings had in camera on October 19, 2023,  
13 in said cause.

14 I further certify that the above and foregoing transcript is a full, true, and  
15 complete copy of said proceedings.

16 WITNESS my hand and seal this 23<sup>rd</sup> day of October, 2023.

17  
18  
19 *Jodie L. Williams*

20 \_\_\_\_\_  
Jodie L. Williams, Reporter  
21 Allen Superior Court  
Allen County, Indiana

## VERIFICATION

I certify that the document in this Supplemental Record is an accurate copy of the “Record of In Camera Proceedings Held on October 19, 2023,” transcribed and certified by Allen Superior Court Reporter, Jodie L. Williams.

/s/ Matthew R. Gutwein  
Matthew R. Gutwein (#16414-49)

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## CERTIFICATE OF SERVICE

I certify that on November 20, 2023, I electronically filed the foregoing document using the Indiana Electronic Filing Service (“IEFS”). I further certify that on November 20, 2023, the foregoing document was served on the following persons using the IEFS:

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