

**IN THE SUPREME COURT OF PENNSYLVANIA  
WESTERN DISTRICT**

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**IN RE: THE FORTIETH STATEWIDE INVESTIGATING GRAND JURY**

**APPLICATION OF: PHILADELPHIA MEDIA NETWORK, PBC, ET AL.**

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**Supreme Court Docket Number: 106 WM 2018**

**Supreme Court Docket Number: 2 W.D. Misc. Dkt. 2016**

**Trial Court: Allegheny County Court of Common Pleas**

**Trial Court Docket Number: CP-02-MD-571-2016**

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**ANSWER TO APPLICATION TO INTERVENE**

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**Brian P. Platt, Esquire  
Attorney for Petitioner**

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**Supreme Court No. 205207**

**Date: July 5, 2018**

**SUPREME COURT OF PENNSYLVANIA  
WESTERN DISTRICT**

<b>IN RE: FORTIETH STATEWIDE INVESTIGATING GRAND JURY</b>	<b>: No. 106 WM 2018</b>
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	:
<b>APPLICATION OF PHILADELPHIA MEDIA NETWORK, PBC; ET AL.</b>	:
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	:

**ANSWER TO APPLICATION TO INTERVENE**

AND NOW, comes <sup>1</sup> \_\_\_\_\_ by and through \_\_\_\_\_ counsel,  
Brian P. Platt, Esquire of the law firm of Abom & Kutulakis, L.L.P., and files this  
Answer pursuant to Pa.R.A.P. 123(b) as follows:

**I. RELEVANT PROCEDURAL HISTORY**

1. On June 5, 2018, Judge Norman A. Krumenacker III, Supervising  
Judge of the Fortieth Statewide Investigating Grand Jury, issued an Opinion and  
Order denying requests for pre-deprivation hearings and Stay but granting requests  
to certify the matter for immediate appeal. See Opinion and Order by Supervising  
Judge Norman A. Krumenacker III, Attached as Exhibit A.

2. (

3. One of the issues raised by [redacted] is that [redacted] is entitled to due process in the form of a pre-deprivation hearing which would allow [redacted] an opportunity to defend [redacted] and test the credibility of the allegation against [redacted] before the Grand Jury Report is made public.

4. (

5. On June 20, 2018, at dockets 74 and 75 WM 2018, this Court granted applications for Stay preventing the Grand Jury Report from being released to the public. See Order of this Court granting Stay, Attached as Exhibit B.

6. (

7. On June 25, 2018, this Court issued an opinion providing reasoning for its grant of Stay. See Opinion of this Court, Attached as Exhibit C.

8. On June 29, 2018, the above captioned media outlets, through Counsel, filed “Application to Intervene to Seek Public Access to Grand Jury Report and Associated Docket Sheets and Filings”. See Application to Intervene and Application for Public Access, Attached as **Exhibit D**.

## **II. ARGUMENT**

### **A. The Application to intervene should be dismissed or denied.**

9. The above referenced Application to Intervene should be dismissed as premature due to the fact that the Court has only Stayed the proceedings in order to have adequate time to consider Constitutional challenges by many individuals prior to public release of the Grand Jury Report.

10. This Court has not yet issued an Order indicating its intent to permanently deny public access to some or all of the information sought and therefore the application should be dismissed.

11. Grand Jury proceedings are designed for secrecy by law and often involve sealed filings, documents, and evidence.

12. The Application to intervene should be dismissed or denied due to the fact that Grand Jury Proceedings and documents are not Public Judicial Documents.

13. Counsel for the media in making Application to Intervene cites to *Commonwealth v. Upshur*, 924 A.2d 642, (Pa. 2007), *PG Publ'g Co. v Commonwealth*, 614 A.2d 1106 (Pa. 1992); *Commonwealth v. Fenstermaker*, 530 A.2d 414 (Pa. 1987); and *Commonwealth v. Long*, 922 A.2d 892 (Pa. 2007).

14. The Superior Court in *In Re 2014 Allegheny County Investigating Grand Jury*, 181 A.3d 349 (2018), addressed whether or not documents presented during a Grand Jury Proceeding were Public Judicial Documents and found that they were not.

15. The Court in *In Re 2014 Allegheny County Investigating Grand Jury* denied public access to Grand Jury documents and distinguished Grand Jury proceedings from the proceedings at issue in *Fenstermaker* and *PG Publ'g Co.* which carry a "...constitutional presumption of openness".

16. The secret nature of the Grand Jury Process distinguishes Grand Jury matters from other criminal proceedings and therefore the Application to Intervene should be denied.

17.

18. Immediate public access to the Report, associated docket sheets, and filings, would cause irreparable harm to [redacted] name and reputation.

19. While opposing Counsel argues it is of great public importance that the report is made public, it is also of great public importance that individuals facing false allegations have an opportunity for due process, as afforded by the Constitution, before their name and reputation are irreparably harmed.

WHEREFORE, [redacted] respectfully requests that this Honorable Court dismiss or deny the Application to Intervene seeking public access to the Grand Jury Report, associated docket sheets, and filings.

Respectfully submitted,

*ABOM & KUTULAKIS, L.L.P*

Date: 7-5-18



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(717) 249-0900  
*Attorney for Petitioner*

**CERTIFICATE OF COMPLIANCE**

I certify that this filing complies with the provisions of the Public Access Policy of the United Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts that require filing confidential information and documents differently than non-confidential information and documents.

Submitted by: Petitioner

Signature: 

Printed name: Brian P. Platt, Esquire

Attorney No.: 205207

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

*IN RE:*  
THE FORTIETH STATEWIDE  
INVESTIGATING GRAND JURY

Motions for Pre-depravation Hearing

\*  
\* Supreme Court of Pennsylvania  
\* 2 W.D. MISC. DKT. 2016  
\*  
\* Allegheny County Common Pleas  
\* No. 571 M.D. 2016  
\*  
\*  
\* Notice Number 1  
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**OPINION AND ORDER**

**Krumenacker, J:** Currently before the Court are various Motions for Pre-depravation Hearings filed by persons named, but not indicted, in the Fortieth Statewide Investigating Grand Jury's Report Number 1 relative to Notice Number 1 (Report). The Motions seek to have evidentiary hearings prior to the release of the Report arguing that such hearings are required by due process as the reputation interest of the nonindicted named persons will be harmed by the release of the Report. The Office of Attorney General (OAG) responds that the Investigating Grand Jury Act (Grand Jury Act), 42 Pa. C.S. §§ 4541-4553, provides the requisite due process by: requiring that a named nonindicted person be informed of the existence of the critical language in the report; providing an opportunity to file a written response to the report; and providing for the inclusion of such response in the report that is released to the public. 42 Pa. C.S. § 4552 (e).

**DISCUSSION**

The specific constitutional question before the Court is whether a named nonindicted person in a grand jury report is, prior to the public release of the report, entitled by virtue of due process to have a full pre-depravation hearing, including the right to cross-examine Commonwealth witnesses, present witnesses of their own, and present evidence. "Courts examine procedural due process questions in two steps: the first asks whether there is a life,





liberty, or property interest with which the state has interfered, and the second examines whether the procedures attendant to that deprivation were constitutionally sufficient.” J.P. v. Dep’t of Human Servs., 170 A.3d 575, 580–81 (Pa. Cmwlth. 2017) (citing Kentucky Dep’t of Corr. v. Thompson, 490 U.S. 454, 460, 109 S.Ct. 1904, 104 L.Ed.2d 506 (1989)). In Pennsylvania a person’s reputation is recognized as a fundamental right in Sections 1 and 11 of Article I of the Pennsylvania Constitution. “In Pennsylvania, therefore, reputational harm alone is an affront to one’s constitutional rights.” D.C. v. Dep’t of Human Serv., 150 A.3d 558, 566 (Pa. Cmwlth. 2016). Accordingly, our Courts have long recognized that this fundamental interest in reputation “cannot be abridged without compliance with constitutional standards of due process and equal protection.” R. v. Com., Dep’t of Pub. Welfare, 535 Pa. 440, 454, 636 A.2d 142, 149 (1994) (citing Hatchard v. Westinghouse Broadcasting Co., 516 Pa. 184, 193, 532 A.2d 346, 350 (1987)). Having answered the first question and determined that there is a fundamental interest affected by naming a nonindicted person in a grand jury report the second question, what level of due process is owed, must be addressed. This question is one of first impression in the Commonwealth.

The Pennsylvania Supreme Court has recently explained that

“Due process is a flexible concept which “varies with the particular situation.” Zinerman v. Burch, 494 U.S. 113, 127, 110 S.Ct. 975, 984, 108 L.Ed.2d 100 (1990). Ascertaining what process is due entails a balancing of three considerations: (1) the private interest affected by the governmental action; (2) the risk of an erroneous deprivation together with the value of additional or substitute safeguards; and (3) the state interest involved, including the administrative burden the additional or substitute procedural requirements would impose on the state. See Mathews v. Eldridge, 424 U.S. 319, 335, 96 S.Ct. 893, 903, 47 L.Ed.2d 18 (1976). The central demands of due process are notice and an “opportunity to be heard at a meaningful time and in a meaningful manner.” Commonwealth v. Maldonado, 576 Pa. 101, 108, 838 A.2d 710, 714 (2003) (quoting Mathews, 424 U.S. at 333, 96 S.Ct. at 902); see also Anderson Nat’l Bank v. Lockett, 321 U.S. 233, 246, 64 S.Ct. 599, 606, 88 L.Ed. 692 (1944) (“The fundamental requirement of due process is an opportunity to be heard upon such notice and proceedings as

are adequate to safeguard the right for which the constitutional protection is invoked.”).

Bundy v. Wetzel, \_\_\_ Pa. \_\_\_, \_\_\_, \_\_\_ A.3d \_\_\_, \_\_\_, 2018 WL 2075562, at \*4 (Pa. 2018).

In Hannah v. Larche, 363 U.S. 420, 442, 80 S.Ct. 1502, 1514–15, 4 L.Ed.2d 1307 (1960), the United States Supreme Court addressed the questions of: (1) whether the Commission on Civil Rights was authorized by Congress to adopt Rules of Procedure which provide that the identity of persons submitting complaints to the commission need not be disclosed and that those summoned to testify before the commission, including persons against whom complaints have been filed, may not cross-examine other witnesses called by the commission; and (2) if so, whether those procedures violated the Due Process Clause of the Fifth Amendment. The Hannah court held that the Commission’s procedural rules were authorized by the Civil Rights Act and did not, in view of the purely investigative nature of the commission’s function, violate the due process clause of the Fifth Amendment.

The Court in Hannah was careful to distinguish the level of due process required differs based upon whether the action taken by the government is adjudicative or investigative in nature, with the former requiring a higher degree of due process than the latter. In this regard the Court opined that

‘Due process’ is an elusive concept. Its exact boundaries are undefinable, and its content varies according to specific factual contexts. Thus, when governmental agencies adjudicate or make binding determinations which directly affect the legal rights of individuals, it is imperative that those agencies use the procedures which have traditionally been associated with the judicial process. On the other hand, when governmental action does not partake of an adjudication, as for example, when a general fact-finding investigation is being conducted, it is not necessary that the full panoply of judicial procedures be used. Therefore, as a generalization, it can be said that due process embodies the differing rules of fair play, which through the years, have become associated with differing types of proceedings. Whether the Constitution requires that a particular right obtain in a specific proceeding depends upon a complexity of factors. The nature of the alleged right involved, the nature of the proceeding, and the possible burden on that

proceeding, are all considerations which must be taken into account. An analysis of these factors demonstrates why it is that the particular rights claimed by the respondents need not be conferred upon those appearing before purely investigative agencies, of which the Commission on Civil Rights is one.

It is probably sufficient merely to indicate that the rights claimed by respondents are normally associated only with adjudicatory proceedings, and that since the Commission does not adjudicate it need not be bound by adjudicatory procedures.

Id. 363 U.S. at 442, 80 S.Ct. at 1514-15.

In Pennsylvania Bar Ass'n v. Commonwealth, 147 Pa. Cmwlth. 351, 607 A.2d 850 (1992), the Commonwealth Court concluded that before an attorney's name could be placed on a suspected fraud list because the attorney's client was suspected of fraud, the state was required to give the attorney notice and an opportunity to be heard. Later in Simon v. Commonwealth, 659 A.2d 631 (Pa. Cmwlth. 1995), our Commonwealth Court, relying on Hannah, concluded that due process required the Pennsylvania Crime Commission to give notice and the opportunity to respond to persons named in public reports. The Grand Jury Act in section 4552(e) already provides the due process protections required by Simon by requiring notice to named nonindicted persons and providing them a right to respond. 42 Pa. C.S. § 4552(e).

Similar to the Civil Rights Commission and the Crime Commission, a grand jury is an investigative not adjudicative body and so a lesser degree of due process is required than is afforded to those who appear before adjudicative governmental entities. Hannah, 363 U.S. 420, 442, 80 S.Ct. 1502, 1514-15. Nonetheless as the Simon Court recognized, because the right to reputation is a fundamental one in the Commonwealth some amount of due process is required when a person is named in an investigative report. Simon, 659 A.2d 631, 639. Here application of the Mathews factors results in the same conclusion reached by the Simon Court, that given the investigative nature of a grand jury due process only requires notice and an opportunity to response to a report prior to the release of any report.

The first Mathews factor requires a determination of the nature of the private interest affected by the governmental action and whether such interest is entitled to due process protections. As discussed *supra* under Pennsylvania law there is no question that the right to reputation is a fundamental interest that cannot be abridged without some due process protections. The second Mathews factor requires a consideration of the risk of an erroneous deprivation with the value of additional or substitute safeguards. The Grand Jury Act provides a person named in a report notice of the report, an opportunity to review that portion of the report critical of them, and an opportunity to file response. See, 42 Pa. C.S. §4552(e). The issue then is whether the additional process sought would reduce the risk of erroneous deprivation. The nature of grand jury proceedings significantly minimizes the risk of erroneous deprivations by requiring the findings of the grand jurors be supported by a preponderance of the evidence presented by the OAG through witnesses testifying under oath. Specifically with regards to the Report, the grand jury, in reaching its findings, heard from dozens of witnesses, examined numerous exhibits, and reviewed over half a million pages of internal diocesan documents from the archives of various Dioceses. Further, all current Bishops for the Dioceses were afforded an opportunity to testify before the Grand Jury with one, the Bishop for the Diocese of Erie, testifying and five electing to submit written statements. See, Gr. J., Notice 1 Exs. 472, 478, 479, 480, 481 501, 502, 513, 514, 515, 516. This level of protection is significantly higher than that afforded to the Simon plaintiffs who were named in Crime Commission report with no clear evidentiary basis for their inclusion.

The movants argue that due process requires the opportunity to present evidence to the grand jury to refute the evidence presented by the OAG that resulted in the language critical of them contained in the Report. The Court has found no support for this proposition in either the

laws of the Commonwealth, in Pennsylvania Supreme Court, or United States Supreme Court due process jurisprudence. In comparing the nature of the Civil Rights Commission to other traditional investigative bodies the Hannah Court commented on the nature of grand jury proceedings and explained

we think it would be profitable at this point to discuss the oldest and, perhaps, the best known of all investigative bodies, the grand jury. It has never been considered necessary to grant a witness summoned before the grand jury the right to refuse to testify merely because he did not have access to the identity and testimony of prior witnesses. Nor has it ever been considered essential that a person being investigated by the grand jury be permitted to come before that body and cross-examine witnesses who may have accused him of wrongdoing. Undoubtedly, the procedural rights claimed by the respondents have not been extended to grand jury hearings because of the disruptive influence their injection would have on the proceedings, and also because the grand jury merely investigates and reports. It does not try.

Hannah, 363 U.S. 420, 448-49, 80 S.Ct. 1502, 1518. The Hannah Court acknowledged that in the context on grand jury proceedings permitting cross-examination and presentation of evidence by potential targets would be unduly disruptive to the purely investigative function of the grand jury. Similarly, permitting those named in grand jury reports to present evidence would disrupt the investigative function while affording little additional safeguards. Further, permitting persons named in grand jury reports to present evidence, including potentially their own testimony subject to cross-examination, to the grand jury would turn an investigative proceeding into an adjudicative one which is not the purpose or function of an investigative grand jury. See, 42 Pa. C.S. § 4548 (providing that investigative grand juries have the power or inquiry and investigation not adjudication); Commonwealth v. Bradfield, 352 Pa. Super. 466, 508 A.2d 568 (1986)(purpose of statute authorizing Supreme Court to convene multicounty, investigating grand juries is to enhance ability of Commonwealth to inquire into criminal activity or public corruption reaching into several counties). Adopting the position advanced by the movants

would fundamentally change the Grand Jury Act's procedures, change the historical function of grand juries, and effectively bring the grand jury process to a halt turning each investigation into a full adjudication.

The final Mathews factor requires consideration of the state interest involved, including the administrative burden the additional or substitute procedural requirements would impose on the state. Here there are two identifiable state interests are implicated: the interest in having a effective and efficient grand jury process; and the interest in protecting children from child sexual predators and those who enable them. Relative to the first consideration concerning grand juries, the state interest is to have an entity that is capable of conducting inquiries into organized crime or public corruption or both involving more than one county of the Commonwealth. As noted above, never in the history of grand juries have persons under investigation been permitted to cross-examine witnesses or present evidence to an investigative grand jury. To permit persons named in a report the full panoply of due process rights would be a substantial burden to the Commonwealth who would be required to allow such persons access to the testimony of witnesses traditionally shielded in grand jury secrecy, permit them to recall and cross-examine those witnesses, and allow the presentation of new evidence.

Such requirements would disrupt the functions of the grand jury and distract it from its sole function as an investigative body and transform it into an adjudicative body. Investigative grand juries are, by their nature, not adjudicative in nature and the Grand Jury Act narrowly prescribes their authority to be investigative only. It would be a substantial overreach to transform a grand jury into an adjudicative body where the legislature has clearly intended to limit their authority to investigative functions only. Such a transformation would be contrary to the long standing historical role grand juries serve in our system of jurisprudence and would

require the creation of new procedures and safeguards that would burden all those involved with the process including the OAG, supervising judges, and most importantly the grand jurors themselves. Further, if persons named in a report were afforded the right to an evidentiary hearing it would require the hearing be held before the grand jury, whose function it is to weigh the evidence and make factual findings. This procedure would be extremely burdensome significantly increasing the time and expense required to complete each investigation. In some cases, such as the matter *sub judice*, permitting such hearings would be impossible as the grand jury's term has expired and so it cannot be reconvened to review this additional evidence or make or approve changes to the report it issued.

Movants suggest that this can be overcome by having the court conduct pre-depravations hearings and then making any necessary redactions or changes to the Report. There is no provision in the Grand Jury Act, other laws of the Commonwealth, or Pennsylvania Constitution that would authorize the Court to redact or rewrite a grand jury report once it has been submitted by the grand jury. Providing a court with such authority would effectively eviscerate the Grand Jury Act relative to grand jury reports by taking the power to make findings and recommendations away from the grand jury and placing it in the hands of the supervising judge. A grand jury report consists of factual findings by the grand jury supported by a preponderance of the evidence found credible by the jurors and in some cases, such as this one, recommendations for changes to the laws of the Commonwealth. Once a report is submitted to the supervising judge, the Grand Jury Act mandates the supervising judge review the report and if it is supported by a preponderance of the evidence accept the report and make it public. 42 Pa. C.S. § 4552. There exists only a narrow exception to this requirement for reports that are either not supported by a preponderance of the evidence or reports whose immediate release would

prejudice a pending criminal matter. Id. Authorizing a supervising judge to alter the report after its acceptance would fundamentally alter the Grand Jury Act and the power of the grand jury.

The second interest implicate is the Commonwealth's substantial interests to prevent child abuse, to provide justice to those abused children, and to protect abused children from further abuse by identifying abusers and those individuals and institutions that enable the abuses to continue abusing children. See e.g., 23 Pa.C.S. § 6302 (finding and purpose of CPSL). Here the Report is the culmination of two years of investigation into the Dioceses related to allegations of child sexual abuse, failure to make a mandatory report, acts endangering the welfare of children, and obstruction of justice by individuals associated with the Roman Catholic Church, local public officials, and community leaders. This investigation followed the report issued by the Thirty-Seventh Statewide Investigating Grand Jury concerning child sexual abuse in the Altoona-Johnstown Diocese and the failure of Diocesan leaders to protect children from such abuse and to conceal that the abuse occurred. The Commonwealth's interest in protecting children from sexual predators and persons or institutions that enable them to continue their abuse is of the highest order.

Balancing these Mathews factors the Court reaches the same conclusion as did the Commonwealth Court in Pennsylvania Bar and Simon that where an individual is named in an investigative report due process requires only that they be afforded notice of the report and an opportunity to respond to the report in writing. Distinguishable are recent cases involving placing individuals on child abuse registries, such as ChildLine, without affording the affected person any or only limited due process rights. See, J.P. v. Dep't of Human Servs., 170 A.3d 575 (Pa. Cmwlth. 2017) (Department of Human Services violated teacher's due process rights in placing teacher's name on ChildLine and Abuse Registry of alleged child abuse perpetrators, pursuant to



the Child Protective Services Law, where Department did not provide any form of hearing despite teacher's clear request for one). See also, G.V. v. Dep't of Pub. Welfare, 625 Pa. 280, 295, 91 A.3d 667, 676 (2014) (Saylor, J. dissenting) ("I would only observe that the inquiry into whether the Pennsylvania statute reflects adequate process remains seriously in question."); D.C. v. Dep't of Human Servs., 150 A.3d 558 (Pa. Cmwlth. 2016) (person whose name is entered into the ChildLine Registry as a perpetrator of child abuse is entitled to a clear and unequivocal notice of the post-deprivation hearing as a matter of due process); K.J. v. DPW, 767 A.2d 609, 616 n. 9 (Pa.Cmwlth.2001) (Friedman, J., dissenting) ("It shocks my conscience that the Law would allow the investigating caseworker to render a *de facto* adjudication that is adverse to an individual's reputation *without* an independent adjudicator having had the opportunity to consider the investigator's evidence of child abuse in accordance with established procedures of due process."). In each of these cases the state, through one or more agencies, engaged in an adjudicative not investigative role in finding a person a perpetrator of child abuse and as such due process clearly required more process than was afforded to the individuals placed on the registry. Here, by its very nature as an investigating grand jury, the Grand Jury was involved in an investigative function not an adjudicative one and as such those named in its report are entitled to a lesser degree of due process. See, Hannah, 363 U.S. 420, 80 S.Ct. 1502; Simon, 659A.2d 631; Pennsylvania Bar, 147 Pa. Cmwlth. 351, 607 A.2d 850. This degree of due process is met by providing named persons notice of the report and an opportunity to respond to their inclusion in the report. Id.

**For the foregoing reasons the following Order is entered:**

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

*IN RE:*  
THE FORTIETH STATEWIDE  
INVESTIGATING GRAND JURY

Motions for Pre-depravation Hearing

\* Supreme Court of Pennsylvania  
\* 2 W.D. MISC. DKT. 2016  
\*  
\* Allegheny County Common Pleas  
\* No. 571 M.D. 2016  
\*  
\* Notice Number 1

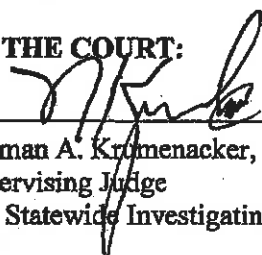
**ORDER**

AND NOW, this 5 day of June 2018, upon consideration of the Motions for Pre-depravation Hearing and for the reasons discussed in the foregoing Opinion, it is hereby **ORDERED, DIRECTED, AND DECREED** that the Motions for Pre-depravation Hearing are **DENIED**. It is **FURTHER ORDERED, DIRECTED, AND DECREED** that the Motions for Stay are **DENIED**.

The request to certify this matter for immediate appeal is **GRANTED** as the Court is of the opinion that this Opinion and Order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the Opinion and Order may materially advance the ultimate termination of this matter.

This Opinion and Order are not sealed.

BY THE COURT:

  
\_\_\_\_\_  
Norman A. Kromenacker, III  
Supervising Judge  
40<sup>th</sup> Statewide Investigating Grand Jury

cc: Daniel Dye, Esq., SDAG  
Christopher D. Carusone, Esq.  
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**IN THE SUPREME COURT OF PENNSYLVANIA  
WESTERN DISTRICT**

**IN RE: FORTIETH STATEWIDE  
INVESTIGATING GRAND JURY**

**Nos. 74 and 75 WM 2018**

**ORDER**

**PER CURIAM**

**AND NOW**, this 20th day of June, 2018, the Applications for Stay are GRANTED. The Honorable Norman A. Krumenacker, III, and the Office of the Attorney General are enjoined from releasing Report No. 1 of the 40th Statewide Investigating Grand Jury pending further order of this Court.

The instant order is unsealed. All other materials at these docket numbers are not presently publicly available.





to investigating grand jury proceedings, subject to the discretion of the supervising judge to permit the public release of information. See 42 Pa.C.S. §4549(b).

Prior to the expiration of its term, the 40th Statewide Investigating Grand Jury submitted a report of the above investigation to its supervising judge, the Honorable Norman A. Krumenacker, III. See 42 Pa.C.S. §4552. This report is denominated "Report No. 1," and its submission triggered a statutory procedure pertaining to such reports. See *id.* By law, the supervising judge was required to examine the report and the confidential record of the proceedings and to issue an order accepting and filing the report as a matter of public record "if the report is based upon facts received in the course of an investigation authorized by [the Investigating Grand Jury Act] and is supported by the preponderance of the evidence." *Id.* §4552(b).

Additionally, the statutory scheme allocates discretion to the supervising judge to permit the submission of responses by individuals who are not charged with any crime, but about whom a report is critical. See *id.* §4552(e). Again, in the discretion of the supervising judge, such responses may be incorporated into the report and also released publicly. See *id.*

The supervising judge accepted the grand jury's Report No. 1 and has signaled his intention to file the report publicly. Furthermore, the supervising judge has found that this report may be construed as critical of certain unindicted individuals, and he has permitted living individuals so named or implicated to submit responses to material allegations in the report. The supervising judge then devised a procedure to afford notice to these individuals, allowing them until June 22, 2018, to respond.<sup>2</sup>

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<sup>2</sup> To the extent that this opinion discusses matters that remain subject to grand jury secrecy requirements, the Court has confirmed with the supervising judge that release of the information does not impair any protected interests.

Many individuals have lodged challenges to Report No. 1 with the supervising judge, generally asserting a denial of constitutional rights. Although the claims evidently differed in particulars to some degree, they shared certain key commonalities. Most, if not all, of the petitioners alleged that they are named or identified in Report No. 1 in a way that unconstitutionally infringes on their right to reputation and denies them due process based upon the lack of a pre-deprivation hearing and/or an opportunity to be heard by the grand jury. See PA. CONST. art. I, §§1, 11. A number of the petitioners asserted that they were not aware of, or allowed to appear at, the proceedings before the grand jury.

In an opinion and order of June 5, 2018, the supervising judge denied a series of motions seeking pre-deprivation hearings. That decision was released to the public and is self-explanatory. See *In re 40th Statewide Investigating Grand Jury*, No. 571 M.D. 2016, *slip op.* at 9 (C.P. Allegheny June 5, 2018). Otherwise, the supervising judge has generally maintained the grand jury seal to ensure that identifying details are not disclosed prematurely.

The supervising judge has certified his orders in those and other challenges for immediate appeal, in recognition of the existence of controlling questions of law over which there are substantial grounds for a difference of opinion. See 42 Pa.C.S. §702(b). Despite this certification, the supervising judge did not temporarily halt the release of Report No. 1. Rather, and although responses are not due before him until June 22, 2018, he has indicated that the report would be published as early as June 23, 2018.

Affected individuals have filed multiple petitions for review, along with emergency applications for stay, in this Court. At some dockets, the Office of Attorney General advised that "a temporary stay would be appropriate so that this Court can thoughtfully and dutifully consider the petition for review and the [forthcoming] answer thereto[.]" In later submissions, the Office of Attorney General stated it did not oppose "a brief stay of

a matter of days, consistent with the emergency nature of these proceedings.” The Office of Attorney General requested, however, that any such stay be sufficiently limited as to permit release of the report in the week following receipt of the responses.

Some of the petitions for review disclose aspects of Report No. 1. Nevertheless, the report has not yet been presented to this Court in its entirety.

This Court is cognizant that Report No. 1 is a matter of great public interest. The Court has found, however, that a temporary stay is appropriate for the following reasons:

1) the release of Report No. 1 on June 23, 2018 -- while affected individuals are permitted to file responses through June 22, 2018 -- provides inadequate time for essential judicial review;

2) consistent with the supervising judge's certification, the Court recognizes that many of the petitions for review pending before it raise constitutional claims and matters of first impression;

3) the proceedings on the petitions for review filed in this Court are incomplete, and adequate development and consideration of the constitutional claims presented is necessary;

4) this Court does not possess sufficient information at this time to address the petitions for review as, for example, Report No. 1 has not yet been presented to the Court in its entirety; and

5) the Office of Attorney General has alternatively confirmed the appropriateness of a stay and otherwise indicated that it has no objection.

The Court intends to revisit the stay order when the proceedings before it have advanced to a stage at which either the petitions for review can be resolved, or an informed and fair determination can be made as to whether a continued stay is warranted. The Office of Attorney General may withdraw its agreement and/or acquiescence to the

**stay at any time and lodge an objection to a continued stay on developed reasoning addressing the petitioners' entitlement to orderly judicial review.**



**FILED**

JUN 29 2018

SUPREME COURT  
WESTERN DISTRICT

**RECEIVED**

JUN 29 2018

SUPREME COURT  
WESTERN DISTRICT

Eli Segal, Attorney I.D. #205845  
Michael A. Schwartz., Attorney I.D. #60234      Attorneys for Media Intervenors  
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**IN THE SUPREME COURT OF PENNSYLVANIA  
WESTERN DISTRICT**

IN RE: FORTIETH STATEWIDE                    :            Nos. 74 and 75 WM 2018  
INVESTIGATING GRAND JURY                :

**APPLICATION TO INTERVENE TO SEEK PUBLIC ACCESS TO GRAND  
JURY REPORT AND ASSOCIATED DOCKET SHEETS AND FILINGS**

Pursuant to Pennsylvania Appellate Rule 123, Philadelphia Media Network, PBC; the Associated Press; LNP Media Group, Inc; NBC Subsidiary (WCAU-TV), L.P.; PG Publishing Co., Inc.; Telemundo Mid-Atlantic LLC; and WHYY, Inc. ("Media Intervenors") move this Court to grant them leave to seek public access to Report No. 1 of the Fortieth Statewide Investigating Grand Jury



and to any docket sheets and filings associated with any challenges to Report No. 1's release. In support of their Application, the Media Intervenors state as follows:

1. Philadelphia Media Network, PBC, publishes *The Philadelphia Inquirer*, the *Philadelphia Daily News*, and Philly.com.

2. The Associated Press is an independent, not-for-profit news cooperative with news bureaus located throughout the state of Pennsylvania.

3. LNP Media Group, Inc., publishes *LNP*, LancasterOnline.com, and *The Caucus*.

4. NBC Subsidiary (WCAU-TV), L.P., broadcasts WCAU-TV and publishes NBCPhiladelphia.com.

5. PG Publishing Co., Inc., publishes the *Pittsburgh Post-Gazette* and Post-Gazette.com.

6. Telemundo Mid-Atlantic LLC broadcasts WWSI and publishes Telemundo62.com.

7. WHYY, Inc., broadcasts WHYY-TV and WHYY-FM and publishes WHYY.org.

8. In this matter of extraordinary public importance, the Court has stayed the public release of Report No. 1 of the Fortieth Statewide Investigating Grand Jury, and the dockets and filings associated with challenges to Report No. 1's release have not been made publicly available. But as explained in the Media

Intervenors' Application for Public Access, attached as Exhibit A, the Investigating Grand Jury Act requires Report No. 1's public release, and this Court's practice in other grand jury matters supports making associated docket sheets and filings available to the public as well.

9. "This Court has long held that a motion to intervene is an appropriate method for the news media to assert the public right of access to information concerning criminal cases," *Commonwealth v. Upshur*, 924 A.2d 642, 645 n.2 (Pa. 2007) (plurality opinion) (citing *Commonwealth v. Fenstermaker*, 530 A.2d 414, 416 n.1 (Pa. 1987) and *Capital Cities Media, Inc. v. Toole*, 483 A.2d 1339, 1344 (Pa. 1984)), and has described such intervention as "provisional in nature and for the limited purpose of permitting the intervenor to file a motion, to be considered separately, requesting that access to proceedings or other matters be granted," *Fenstermaker*, 530 A.2d at 416 n.1.

10. Using this procedure, the Media Intervenors move for leave to intervene to file the Application for Public Access attached as Exhibit A, which seeks public access to Report No. 1 and to any docket sheets and filings associated with any challenges to Report No. 1's release.

WHEREFORE, the Media Intervenors request that the Court grant them leave to intervene to file the Application for Public Access attached as Exhibit A, which seeks access to Report No. 1 of the Fortieth Statewide

Investigating Grand Jury and to any docket sheets and filings associated with any challenges to Report No. 1's release.

Date: June 29, 2018

Respectfully submitted,



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# **EXHIBIT A**

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**IN THE SUPREME COURT OF PENNSYLVANIA  
WESTERN DISTRICT**

IN RE: FORTIETH STATEWIDE : Nos. 74 and 75 WM 2018  
INVESTIGATING GRAND JURY :

**APPLICATION FOR PUBLIC ACCESS TO GRAND JURY REPORT AND  
ASSOCIATED DOCKET SHEETS AND FILINGS**

Pursuant to Pennsylvania Appellate Rule 123, Philadelphia Media Network, PBC; the Associated Press; LNP Media Group, Inc; NBC Subsidiary (WCAU-TV), L.P.; PG Publishing Co., Inc.; Telemundo Mid-Atlantic LLC; and WHYY, Inc. ("Media Intervenors") move this Court to vacate its June 20, 2018 stay of the public release of Report No. 1 of the Fortieth Statewide Investigating

Grand Jury and to make publicly available any Supreme Court docket sheets and filings associated with any challenges to Report No. 1's release. In support of their Application, the Media Intervenors state as follows:

## I. INTRODUCTION

1. Report No. 1 of the Fortieth Statewide Investigating Grand Jury "is the culmination of two years of investigation into [six] Dioceses related to allegations of child sexual abuse, failure to make a mandatory report, acts endangering the welfare of children, and obstruction of justice by individuals associated with the Roman Catholic Church, local public officials, and community leaders." Ex. 1 at 9 (June 5, 2018 Supervising Judge Opinion and Order). Needless to say, Report No. 1 is of extraordinary importance to the public in general and to abuse victims in particular. As the Investigating Grand Jury Act required of him, the supervising judge ordered Report No. 1's public release after determining that it was supported by the preponderance of the evidence and that its release would not prejudice any pending criminal matter. *Id.* at 8-9 (citing 42 Pa.C.S. § 4552 and its requirements).

2. But on June 20, 2018, this Court temporarily stayed Report No. 1's public release at the request of an unknown number of unknown individuals named in Report No. 1. Ex. 2 (June 20, 2018 Supreme Court Order). These unknown individuals apparently maintain that they have a constitutional right to an

evidentiary hearing and/or to be heard by the grand jury before Report No. 1's public release—even though the supervising judge seems to have already provided them an opportunity to review Report No. 1 and to attach to Report No. 1 itself a written response to anything that it states about them. Ex. 1 at 1, 4, 10 (June 5, 2018 Supervising Judge Opinion and Order); Ex. 3 at 3 (June 25, 2018 Supreme Court Opinion). Dockets sheets and filings associated with the unknown petitioners' challenges have not been made publicly available.

3. On behalf of the public, the Media Intervenors now seek the following relief:

a. *First*, the stay should be vacated because the supervising judge determined that Report No. 1 was supported by the preponderance of the evidence and that its public release would not prejudice any pending criminal matter and because the supervising judge appears to have already afforded the unknown petitioners an opportunity to review Report No. 1 and to attach to it a written response.

b. *Second*, if the Court decides that it needs more time to consider the unknown petitioners' constitutional challenges to Report No. 1's statutorily mandated release, it should order the release of a redacted version of Report No. 1 in the interim that redacts only those portions implicated by the unknown petitioners' challenges.



c. *Third*, consistent with its practice in other grand jury matters, the Court should make publicly available the dockets and filings associated with any challenges to Report No. 1's release, with redactions, if necessary, where appropriate.

## II. ARGUMENT

A. **The stay should be vacated because the supervising judge determined that Report No. 1 was supported by the preponderance of the evidence and that its public release would not prejudice any pending criminal matter and because the supervising judge appears to have already afforded the unknown petitioners an opportunity to review Report No. 1 and to attach to it a written response.**

4. The Investigating Grand Jury Act provides that “[a]ny investigating grand jury, by an affirmative majority vote of the full investigating grand jury, may, at any time during its term submit to the supervising judge an investigating grand jury report.” 42 Pa.C.S. § 4552(a). The Fortieth Statewide Investigating Grand Jury chose to do so here, submitting Report No. 1 to the supervising judge. And in reaching the findings reflected in Report No. 1, the grand jury “heard from dozens of witnesses, examined numerous exhibits, and reviewed over half a million pages of internal diocesan documents from the archives of various Dioceses.” Ex. 1 at 5 (June 5, 2018 Supervising Judge Opinion and Order).

5. The Investigating Grand Jury Act requires the supervising judge to “issue an order accepting and filing such report as a public record,” as

long as the report is “supported by the preponderance of the evidence” and its release would not “prejudice fair consideration of a pending criminal matter.” 42 Pa.C.S. §§ 4552(b)-(c). The supervising judge found both requirements satisfied here, making Report No. 1’s public release mandatory under the Act. Ex. 1 at 9 (June 5, 2018 Supervising Judge Opinion and Order).

6. Where a “report is critical of an individual not indicted for a criminal offense,” the Investigating Grand Jury Act gives the supervising judge discretion to “allow the named individual to submit a response to the allegations contained in the report” and to “allow the response to be attached to the report as part of the report before the report is made part of the public record.” 42 Pa.C.S. § 4552(e). The supervising judge appears to have exercised his discretion to do just that here and to have provided all of the unknown petitioners with the opportunity to review Report No. 1 and to submit a written response to be attached to Report No. 1 itself. *See* Ex. 1 at 1, 4, 10 (June 5, 2018 Supervising Judge Opinion and Order).

7. As the supervising judge explained, this level of process was more than adequate, and to find otherwise would fundamentally alter the nature of investigating grand juries and thus undermine the Legislature’s intent in passing the Investigating Grand Jury Act. *See* Ex. 1 at 1-10 (June 5, 2018 Supervising Judge Opinion and Order). Indeed, the amount of process that the supervising

judge appears to have provided to all of the unknown petitioners here—namely, the opportunity to review Report No. 1 before its release and to attach to it a written response—is more than is often provided in other situations where a government body criticizes an individual in a public document. *See, e.g., PG Publ'g Co. v. Commonwealth*, 614 A.2d 1106, 1107-10 (Pa. 1992) (holding search warrant affidavits presumptively public, despite lack of opportunity for subject to respond before release); *Commonwealth v. Fenstermaker*, 530 A.2d 414, 417-21 (Pa. 1987) (same, as to arrest warrant affidavits); 42 Pa.C.S. § 4551 (providing no opportunity to review or respond to investigating grand jury presentments before release); *see also Commonwealth v. Long*, 922 A.2d 892, 899-901 (Pa. 2007) (recognizing that criminal trials and preliminary hearings are presumptively public, regardless of the fact that witnesses may offer damaging testimony about third parties who have no opportunity to respond to such testimony).

8. Therefore, the Court should vacate its June 20 stay and permit the immediate public release of Report No. 1, with any responses to Report No. 1 by any of the unknown petitioners attached to Report No. 1 itself.

**B. If the Court decides that it needs more time to consider the unknown petitioners' constitutional challenges to Report No. 1's statutorily mandated release, it should order the release of a redacted version of Report No. 1 in the interim that redacts only those portions implicated by the unknown petitioners' challenges.**

9. Given the tremendous scope of the grand jury's investigation, it is likely that only some of Report No. 1—and perhaps just a very small portion of it—contains material that identifies any of the unknown petitioners. Thus, if the Court does not permit the immediate release of the full Report No. 1, it should order the release of a redacted version of Report No. 1 in the interim. And that redacted version should only conceal those portions of Report No. 1 that are implicated by the unknown petitioners' constitutional challenges. Simply put, even if the unknown petitioners were correct—which they are not—that releasing Report No. 1 now, as required by the text of the Investigating Grand Jury Act, would violate their constitutional due process rights, it still would not justify delaying the statutorily mandated release of any portions of Report No. 1 that do not identify the unknown petitioners.

**C. Consistent with its practice in other grand jury matters, the Court should make publicly available the dockets and filings associated with any challenges to Report No. 1's release.**

10. The Supreme Court docket sheets associated with the unknown petitioners' challenges are not publicly available. Nor are any Supreme Court filings relating to those challenges—with the exception of the Court's June 20, 2018 stay order and its June 25, 2018 opinion explaining the stay. But for other grand jury matters before this Court—including one that also stems from the Fortieth Statewide Investigating Grand Jury—docket sheets are publicly available,

as are many filings referenced on such docket sheets. *See, e.g.*, Ex. 4 (Supreme Court docket sheet for *In re Fortieth Statewide Investigating Grand Jury*, No. 45 WM 2017, reflecting some filings that are sealed, some that are not sealed, and some that are redacted); Ex. 5 (Supreme Court docket sheet for *In re Thirty-fifth Investigating Grand Jury*, No. 197 MM 2014, reflecting some filings that are sealed, some that are not sealed, and none that are redacted); Ex. 6 (Supreme Court docket sheet for *In re Dauphin County Fourth Investigating Grand Jury*, No. 149 MM 2007, reflecting no sealed or redacted filings). There is no reason to treat the unnamed petitioners' challenges to Report No. 1's public release differently.

11. Therefore, consistent with its practice in other grand jury matters, the Court should make publicly available the docket sheets for case numbers 74 WM 2018 and 75 WM 2018—the docket numbers referenced in the Court's June 20 order and June 25 opinion—and any other docket sheets associated with any unknown petitioners' challenges to Report No. 1's release. The Court also should make publicly available any related filings. The Media Intervenors recognize that some of these filings might contain factual matters occurring before the grand jury that are still secret and that are not disclosed in Report No. 1. If that is the case, limited redactions of such filings may be appropriate. (The Media Intervenors also recognize that, if the Court decides that it needs more time to consider the unknown petitioners' constitutional

challenges to Report No. 1's release, redacting identifying information about those petitioners from filings in the interim may be appropriate, too.)

WHEREFORE, the Media Intervenors request that the Court vacate its June 20, 2018 stay of the public release of Report No. 1 of the Fortieth Statewide Investigating Grand Jury and make publicly available any Supreme Court docket sheets and filings associated with any challenges to Report No. 1's release.

Date: June 29, 2018

Respectfully submitted,



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# **EXHIBIT 1**

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

*IN RE:*  
THE FORTIETH STATEWIDE  
INVESTIGATING GRAND JURY

Motions for Pre-depravation Hearing

\*  
\* Supreme Court of Pennsylvania  
\* 2 W.D. MISC. DKT. 2016  
\*  
\* Allegheny County Common Pleas  
\* No. 571 M.D. 2016  
\*  
\*  
\* Notice Number 1  
\*

**OPINION AND ORDER**

**Krumenacker, J.:** Currently before the Court are various Motions for Pre-depravation Hearings filed by persons named, but not indicted, in the Fortieth Statewide Investigating Grand Jury's Report Number 1 relative to Notice Number 1 (Report). The Motions seek to have evidentiary hearings prior to the release of the Report arguing that such hearings are required by due process as the reputation interest of the nonindicted named persons will be harmed by the release of the Report. The Office of Attorney General (OAG) responds that the Investigating Grand Jury Act (Grand Jury Act), 42 Pa. C.S. §§ 4541-4553, provides the requisite due process by: requiring that a named nonindicted person be informed of the existence of the critical language in the report; providing an opportunity to file a written response to the report; and providing for the inclusion of such response in the report that is released to the public. 42 Pa. C.S. § 4552 (e).

**DISCUSSION**

The specific constitutional question before the Court is whether a named nonindicted person in a grand jury report is, prior to the public release of the report, entitled by virtue of due process to have a full pre-depravation hearing, including the right to cross-examine Commonwealth witnesses, present witnesses of their own, and present evidence. "Courts examine procedural due process questions in two steps: the first asks whether there is a life,



liberty, or property interest with which the state has interfered, and the second examines whether the procedures attendant to that deprivation were constitutionally sufficient.” J.P. v. Dep’t of Human Servs., 170 A.3d 575, 580–81 (Pa. Cmwlth. 2017) (citing Kentucky Dep’t of Corr. v. Thompson, 490 U.S. 454, 460, 109 S.Ct. 1904, 104 L.Ed.2d 506 (1989)). In Pennsylvania a person’s reputation is recognized as a fundamental right in Sections 1 and 11 of Article I of the Pennsylvania Constitution. “In Pennsylvania, therefore, reputational harm alone is an affront to one’s constitutional rights.” D.C. v. Dep’t of Human Serv., 150 A.3d 558, 566 (Pa. Cmwlth. 2016). Accordingly, our Courts have long recognized that this fundamental interest in reputation “cannot be abridged without compliance with constitutional standards of due process and equal protection.” R. v. Com., Dep’t of Pub. Welfare, 535 Pa. 440, 454, 636 A.2d 142, 149 (1994) (citing Hatchard v. Westinghouse Broadcasting Co., 516 Pa. 184, 193, 532 A.2d 346, 350 (1987)). Having answered the first question and determined that there is a fundamental interest affected by naming a nonindicted person in a grand jury report the second question, what level of due process is owed, must be addressed. This question is one of first impression in the Commonwealth.

The Pennsylvania Supreme Court has recently explained that

“Due process is a flexible concept which “varies with the particular situation.” Zinerman v. Burch, 494 U.S. 113, 127, 110 S.Ct. 975, 984, 108 L.Ed.2d 100 (1990). Ascertaining what process is due entails a balancing of three considerations: (1) the private interest affected by the governmental action; (2) the risk of an erroneous deprivation together with the value of additional or substitute safeguards; and (3) the state interest involved, including the administrative burden the additional or substitute procedural requirements would impose on the state. See Mathews v. Eldridge, 424 U.S. 319, 335, 96 S.Ct. 893, 903, 47 L.Ed.2d 18 (1976). The central demands of due process are notice and an “opportunity to be heard at a meaningful time and in a meaningful manner.” Commonwealth v. Maldonado, 576 Pa. 101, 108, 838 A.2d 710, 714 (2003) (quoting Mathews, 424 U.S. at 333, 96 S.Ct. at 902); see also Anderson Nat’l Bank v. Lockett, 321 U.S. 233, 246, 64 S.Ct. 599, 606, 88 L.Ed. 692 (1944) (“The fundamental requirement of due process is an opportunity to be heard upon such notice and proceedings as

are adequate to safeguard the right for which the constitutional protection is invoked.”).

Bundy v. Wetzel, \_\_\_ Pa. \_\_\_, \_\_\_, \_\_\_ A.3d \_\_\_, \_\_\_, 2018 WL 2075562, at \*4 (Pa. 2018).

In Hannah v. Larche, 363 U.S. 420, 442, 80 S.Ct. 1502, 1514–15, 4 L.Ed.2d 1307 (1960), the United States Supreme Court addressed the questions of: (1) whether the Commission on Civil Rights was authorized by Congress to adopt Rules of Procedure which provide that the identity of persons submitting complaints to the commission need not be disclosed and that those summoned to testify before the commission, including persons against whom complaints have been filed, may not cross-examine other witnesses called by the commission; and (2) if so, whether those procedures violated the Due Process Clause of the Fifth Amendment. The Hannah court held that the Commission’s procedural rules were authorized by the Civil Rights Act and did not, in view of the purely investigative nature of the commission’s function, violate the due process clause of the Fifth Amendment.

The Court in Hannah was careful to distinguish the level of due process required differs based upon whether the action taken by the government is adjudicative or investigative in nature, with the former requiring a higher degree of due process than the latter. In this regard the Court opined that

‘Due process’ is an elusive concept. Its exact boundaries are undefinable, and its content varies according to specific factual contexts. Thus, when governmental agencies adjudicate or make binding determinations which directly affect the legal rights of individuals, it is imperative that those agencies use the procedures which have traditionally been associated with the judicial process. On the other hand, when governmental action does not partake of an adjudication, as for example, when a general fact-finding investigation is being conducted, it is not necessary that the full panoply of judicial procedures be used. Therefore, as a generalization, it can be said that due process embodies the differing rules of fair play, which through the years, have become associated with differing types of proceedings. Whether the Constitution requires that a particular right obtain in a specific proceeding depends upon a complexity of factors. The nature of the alleged right involved, the nature of the proceeding, and the possible burden on that

proceeding, are all considerations which must be taken into account. An analysis of these factors demonstrates why it is that the particular rights claimed by the respondents need not be conferred upon those appearing before purely investigative agencies, of which the Commission on Civil Rights is one.

It is probably sufficient merely to indicate that the rights claimed by respondents are normally associated only with adjudicatory proceedings, and that since the Commission does not adjudicate it need not be bound by adjudicatory procedures.

Id. 363 U.S. at 442, 80 S.Ct. at 1514-15.

In Pennsylvania Bar Ass'n v. Commonwealth, 147 Pa. Cmwlth. 351, 607 A.2d 850 (1992), the Commonwealth Court concluded that before an attorney's name could be placed on a suspected fraud list because the attorney's client was suspected of fraud, the state was required to give the attorney notice and an opportunity to be heard. Later in Simon v. Commonwealth, 659 A.2d 631 (Pa. Cmwlth. 1995), our Commonwealth Court, relying on Hannah, concluded that due process required the Pennsylvania Crime Commission to give notice and the opportunity to respond to persons named in public reports. The Grand Jury Act in section 4552(e) already provides the due process protections required by Simon by requiring notice to named nonindicted persons and providing them a right to respond. 42 Pa. C.S. § 4552(e).

Similar to the Civil Rights Commission and the Crime Commission, a grand jury is an investigative not adjudicative body and so a lesser degree of due process is required than is afforded to those who appear before adjudicative governmental entities. Hannah, 363 U.S. 420, 442, 80 S.Ct. 1502, 1514-15. Nonetheless as the Simon Court recognized, because the right to reputation is a fundamental one in the Commonwealth some amount of due process is required when a person is named in an investigative report. Simon, 659 A.2d 631, 639. Here application of the Mathews factors results in the same conclusion reached by the Simon Court, that given the investigative nature of a grand jury due process only requires notice and an opportunity to response to a report prior to the release of any report.

The first Mathews factor requires a determination of the nature of the private interest affected by the governmental action and whether such interest is entitled to due process protections. As discussed *supra* under Pennsylvania law there is no question that the right to reputation is a fundamental interest that cannot be abridged without some due process protections. The second Mathews factor requires a consideration of the risk of an erroneous deprivation with the value of additional or substitute safeguards. The Grand Jury Act provides a person named in a report notice of the report, an opportunity to review that portion of the report critical of them, and an opportunity to file response. See, 42 Pa. C.S. §4552(e). The issue then is whether the additional process sought would reduce the risk of erroneous deprivation. The nature of grand jury proceedings significantly minimizes the risk of erroneous deprivations by requiring the findings of the grand jurors be supported by a preponderance of the evidence presented by the OAG through witnesses testifying under oath. Specifically with regards to the Report, the grand jury, in reaching its findings, heard from dozens of witnesses, examined numerous exhibits, and reviewed over half a million pages of internal diocesan documents from the archives of various Dioceses. Further, all current Bishops for the Dioceses were afforded an opportunity to testify before the Grand Jury with one, the Bishop for the Diocese of Erie, testifying and five electing to submit written statements. See, Gr. J., Notice 1 Exs. 472, 478, 479, 480, 481 501, 502, 513, 514, 515, 516. This level of protection is significantly higher than that afforded to the Simon plaintiffs who were named in Crime Commission report with no clear evidentiary basis for their inclusion.

The movants argue that due process requires the opportunity to present evidence to the grand jury to refute the evidence presented by the OAG that resulted in the language critical of them contained in the Report. The Court has found no support for this proposition in either the

laws of the Commonwealth, in Pennsylvania Supreme Court, or United States Supreme Court due process jurisprudence. In comparing the nature of the Civil Rights Commission to other traditional investigative bodies the Hannah Court commented on the nature of grand jury proceedings and explained

we think it would be profitable at this point to discuss the oldest and, perhaps, the best known of all investigative bodies, the grand jury. It has never been considered necessary to grant a witness summoned before the grand jury the right to refuse to testify merely because he did not have access to the identity and testimony of prior witnesses. Nor has it ever been considered essential that a person being investigated by the grand jury be permitted to come before that body and cross-examine witnesses who may have accused him of wrongdoing. Undoubtedly, the procedural rights claimed by the respondents have not been extended to grand jury hearings because of the disruptive influence their injection would have on the proceedings, and also because the grand jury merely investigates and reports. It does not try.

Hannah, 363 U.S. 420, 448-49, 80 S.Ct. 1502, 1518. The Hannah Court acknowledged that in the context on grand jury proceedings permitting cross-examination and presentation of evidence by potential targets would be unduly disruptive to the purely investigative function of the grand jury. Similarly, permitting those named in grand jury reports to present evidence would disrupt the investigative function while affording little additional safeguards. Further, permitting persons named in grand jury reports to present evidence, including potentially their own testimony subject to cross-examination, to the grand jury would turn an investigative proceeding into an adjudicative one which is not the purpose or function of an investigative grand jury. See, 42 Pa. C.S. § 4548 (providing that investigative grand juries have the power of inquiry and investigation not adjudication); Commonwealth v. Bradfield, 352 Pa. Super. 466, 508 A.2d 568 (1986)(purpose of statute authorizing Supreme Court to convene multicounty, investigating grand juries is to enhance ability of Commonwealth to inquire into criminal activity or public corruption reaching into several counties). Adopting the position advanced by the movants

would fundamentally change the Grand Jury Act's procedures, change the historical function of grand juries, and effectively bring the grand jury process to a halt turning each investigation into a full adjudication.

The final Mathews factor requires consideration of the state interest involved, including the administrative burden the additional or substitute procedural requirements would impose on the state. Here there are two identifiable state interests are implicated: the interest in having a effective and efficient grand jury process; and the interest in protecting children from child sexual predators and those who enable them. Relative to the first consideration concerning grand juries, the state interest is to have an entity that is capable of conducting inquiries into organized crime or public corruption or both involving more than one county of the Commonwealth. As noted above, never in the history of grand juries have persons under investigation been permitted to cross-examine witnesses or present evidence to an investigative grand jury. To permit persons named in a report the full panoply of due process rights would be a substantial burden to the Commonwealth who would be required to allow such persons access to the testimony of witnesses traditionally shielded in grand jury secrecy, permit them to recall and cross-examine those witnesses, and allow the presentation of new evidence.

Such requirements would disrupt the functions of the grand jury and distract it from its sole function as an investigative body and transform it into an adjudicative body. Investigative grand juries are, by their nature, not adjudicative in nature and the Grand Jury Act narrowly prescribes their authority to be investigative only. It would be a substantial overreach to transform a grand jury into an adjudicative body where the legislature has clearly intended to limit their authority to investigative functions only. Such a transformation would be contrary to the long standing historical role grand juries serve in our system of jurisprudence and would

require the creation of new procedures and safeguards that would burden all those involved with the process including the OAG, supervising judges, and most importantly the grand jurors themselves. Further, if persons named in a report were afforded the right to an evidentiary hearing it would require the hearing be held before the grand jury, whose function it is to weigh the evidence and make factual findings. This procedure would be extremely burdensome significantly increasing the time and expense required to complete each investigation. In some cases, such as the matter *sub judice*, permitting such hearings would be impossible as the grand jury's term has expired and so it cannot be reconvened to review this additional evidence or make or approve changes to the report it issued.

Movants suggest that this can be overcome by having the court conduct pre-deprivations hearings and then making any necessary redactions or changes to the Report. There is no provision in the Grand Jury Act, other laws of the Commonwealth, or Pennsylvania Constitution that would authorize the Court to redact or rewrite a grand jury report once it has been submitted by the grand jury. Providing a court with such authority would effectively eviscerate the Grand Jury Act relative to grand jury reports by taking the power to make findings and recommendations away from the grand jury and placing it in the hands of the supervising judge. A grand jury report consists of factual findings by the grand jury supported by a preponderance of the evidence found credible by the jurors and in some cases, such as this one, recommendations for changes to the laws of the Commonwealth. Once a report is submitted to the supervising judge, the Grand Jury Act mandates the supervising judge review the report and if it is supported by a preponderance of the evidence accept the report and make it public. 42 Pa. C.S. § 4552. There exists only a narrow exception to this requirement for reports that are either not supported by a preponderance of the evidence or reports whose immediate release would

prejudice a pending criminal matter. Id. Authorizing a supervising judge to alter the report after its acceptance would fundamentally alter the Grand Jury Act and the power of the grand jury.

The second interest implicate is the Commonwealth's substantial interests to prevent child abuse, to provide justice to those abused children, and to protect abused children from further abuse by identifying abusers and those individuals and institutions that enable the abuses to continue abusing children. See e.g., 23 Pa.C.S. § 6302 (finding and purpose of CPSL). Here the Report is the culmination of two years of investigation into the Dioceses related to allegations of child sexual abuse, failure to make a mandatory report, acts endangering the welfare of children, and obstruction of justice by individuals associated with the Roman Catholic Church, local public officials, and community leaders. This investigation followed the report issued by the Thirty-Seventh Statewide Investigating Grand Jury concerning child sexual abuse in the Altoona-Johnstown Diocese and the failure of Diocesan leaders to protect children from such abuse and to conceal that the abuse occurred. The Commonwealth's interest in protecting children from sexual predators and persons or institutions that enable them to continue their abuse is of the highest order.

Balancing these Mathews factors the Court reaches the same conclusion as did the Commonwealth Court in Pennsylvania Bar and Simon that where an individual is named in an investigative report due process requires only that they be afforded notice of the report and an opportunity to respond to the report in writing. Distinguishable are recent cases involving placing individuals on child abuse registries, such as ChildLine, without affording the affected person any or only limited due process rights. See, J.P. v. Dep't of Human Servs., 170 A.3d 575 (Pa. Cmwlth. 2017) (Department of Human Services violated teacher's due process rights in placing teacher's name on ChildLine and Abuse Registry of alleged child abuse perpetrators, pursuant to



the Child Protective Services Law, where Department did not provide any form of hearing despite teacher's clear request for one). See also, G.V. v. Dep't of Pub. Welfare, 625 Pa. 280, 295, 91 A.3d 667, 676 (2014) (Saylor, J. dissenting) ("I would only observe that the inquiry into whether the Pennsylvania statute reflects adequate process remains seriously in question."); D.C. v. Dep't of Human Servs., 150 A.3d 558 (Pa. Cmwlth. 2016) (person whose name is entered into the ChildLine Registry as a perpetrator of child abuse is entitled to a clear and unequivocal notice of the post-deprivation hearing as a matter of due process); K.J. v. DPW, 767 A.2d 609, 616 n. 9 (Pa.Cmwlth.2001) (Friedman, J., dissenting) ("It shocks my conscience that the Law would allow the investigating caseworker to render a *de facto* adjudication that is adverse to an individual's reputation *without* an independent adjudicator having had the opportunity to consider the investigator's evidence of child abuse in accordance with established procedures of due process."). In each of these cases the state, through one or more agencies, engaged in an adjudicative not investigative role in finding a person a perpetrator of child abuse and as such due process clearly required more process than was afforded to the individuals placed on the registry. Here, by its very nature as an investigating grand jury, the Grand Jury was involved in an investigative function not an adjudicative one and as such those named in its report are entitled to a lesser degree of due process. See, Hannah, 363 U.S. 420, 80 S.Ct. 1502; Simon, 659A.2d 631; Pennsylvania Bar, 147 Pa. Cmwlth. 351, 607 A.2d 850. This degree of due process is met by providing named persons notice of the report and an opportunity to respond to their inclusion in the report. Id.

**For the foregoing reasons the following Order is entered:**

**IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA**

*IN RE:*  
**THE FORTIETH STATEWIDE  
INVESTIGATING GRAND JURY**

Motions for Pre-depravation Hearing

\* Supreme Court of Pennsylvania  
\* 2 W.D. MISC. DKT. 2016  
\*  
\* Allegheny County Common Pleas  
\* No. 571 M.D. 2016  
\*  
\*  
\* Notice Number 1


**ORDER**

AND NOW, this 5 day of June 2018, upon consideration of the Motions for Pre-depravation Hearing and for the reasons discussed in the foregoing Opinion, it is hereby **ORDERED, DIRECTED, AND DECREED** that the Motions for Pre-depravation Hearing are **DENIED**. It is **FURTHER ORDERED, DIRECTED, AND DECREED** that the Motions for Stay are **DENIED**.

The request to certify this matter for immediate appeal is **GRANTED** as the Court is of the opinion that this Opinion and Order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the Opinion and Order may materially advance the ultimate termination of this matter.

This Opinion and Order are not sealed.

**BY THE COURT:**

  
\_\_\_\_\_  
Norman A. Krimmenacker, III  
Supervising Judge  
40<sup>th</sup> Statewide Investigating Grand Jury

cc: Daniel Dye, Esq., SDAG  
Christopher D. Carusone, Esq.  
John A. Marty, Esq.  
Robert J. Donatoni, Esq.  
Christopher M. Capozzi, Esq.  
Glenn A. Parno, Esq.  
Jessica Meller, Esq.

# EXHIBIT 2



# **EXHIBIT 3**

**IN THE SUPREME COURT OF PENNSYLVANIA  
WESTERN DISTRICT**

IN RE: FORTIETH STATEWIDE  
INVESTIGATING GRAND JURY

: Nos. 74 and 75 WM 2018  
:  
: Applications for Stay of Release of  
: Report No. 1  
:  
:  
:  
:  
:

**OPINION**

**PER CURIAM**

**DECIDED: JUNE 25, 2018**

On June 20, 2018, this Court issued an Order staying the public release of Report No. 1 of the 40th Statewide Investigating Grand Jury, pending further order of the Court. This opinion is in support of that Order.

The 40th Statewide Investigating Grand Jury was convened in 2016 per the Investigating Grand Jury Act.<sup>1</sup> Under 42 Pa.C.S. §4550, the Attorney General initiated confidential grand jury proceedings to investigate allegations of child sexual abuse by individuals associated with the Roman Catholic Church, including several Pennsylvania dioceses, and failure to make mandatory reports, acts endangering the welfare of children, and obstruction of justice by church officials, local public officials, and community leaders. See, e.g., *In re 40th Statewide Investigating Grand Jury*, No. 571 M.D. 2016, *slip op.* at 9 (C.P. Allegheny June 5, 2018). As required by the Pennsylvania General Assembly, these proceedings were conducted under the umbrella of secrecy pertaining

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<sup>1</sup> Act of Oct. 5, 1980, P.L. 693, No. 142, §216(a)(2) (as amended 42 Pa.C.S. §§4541-4553).

to investigating grand jury proceedings, subject to the discretion of the supervising judge to permit the public release of information. See 42 Pa.C.S. §4549(b).

Prior to the expiration of its term, the 40th Statewide Investigating Grand Jury submitted a report of the above investigation to its supervising judge, the Honorable Norman A. Krumenacker, III. See 42 Pa.C.S. §4552. This report is denominated "Report No. 1," and its submission triggered a statutory procedure pertaining to such reports. See *id.* By law, the supervising judge was required to examine the report and the confidential record of the proceedings and to issue an order accepting and filing the report as a matter of public record "if the report is based upon facts received in the course of an investigation authorized by [the Investigating Grand Jury Act] and is supported by the preponderance of the evidence." *Id.* §4552(b).

Additionally, the statutory scheme allocates discretion to the supervising judge to permit the submission of responses by individuals who are not charged with any crime, but about whom a report is critical. See *id.* §4552(e). Again, in the discretion of the supervising judge, such responses may be incorporated into the report and also released publicly. See *id.*

The supervising judge accepted the grand jury's Report No. 1 and has signaled his intention to file the report publicly. Furthermore, the supervising judge has found that this report may be construed as critical of certain unindicted individuals, and he has permitted living individuals so named or implicated to submit responses to material allegations in the report. The supervising judge then devised a procedure to afford notice to these individuals, allowing them until June 22, 2018, to respond.<sup>2</sup>

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<sup>2</sup> To the extent that this opinion discusses matters that remain subject to grand jury secrecy requirements, the Court has confirmed with the supervising judge that release of the information does not impair any protected interests.

Many individuals have lodged challenges to Report No. 1 with the supervising judge, generally asserting a denial of constitutional rights. Although the claims evidently differed in particulars to some degree, they shared certain key commonalities. Most, if not all, of the petitioners alleged that they are named or identified in Report No. 1 in a way that unconstitutionally infringes on their right to reputation and denies them due process based upon the lack of a pre-deprivation hearing and/or an opportunity to be heard by the grand jury. See PA. CONST. art. I, §§1, 11. A number of the petitioners asserted that they were not aware of, or allowed to appear at, the proceedings before the grand jury.

In an opinion and order of June 5, 2018, the supervising judge denied a series of motions seeking pre-deprivation hearings. That decision was released to the public and is self-explanatory. See *In re 40th Statewide Investigating Grand Jury*, No. 571 M.D. 2018, *slip op.* at 9 (C.P. Allegheny June 5, 2018). Otherwise, the supervising judge has generally maintained the grand jury seal to ensure that identifying details are not disclosed prematurely.

The supervising judge has certified his orders in those and other challenges for immediate appeal, in recognition of the existence of controlling questions of law over which there are substantial grounds for a difference of opinion. See 42 Pa.C.S. §702(b). Despite this certification, the supervising judge did not temporarily halt the release of Report No. 1. Rather, and although responses are not due before him until June 22, 2018, he has indicated that the report would be published as early as June 23, 2018.

Affected individuals have filed multiple petitions for review, along with emergency applications for stay, in this Court. At some dockets, the Office of Attorney General advised that "a temporary stay would be appropriate so that this Court can thoughtfully and dutifully consider the petition for review and the [forthcoming] answer thereto[.]" In later submissions, the Office of Attorney General stated it did not oppose "a brief stay of



a matter of days, consistent with the emergency nature of these proceedings.” The Office of Attorney General requested, however, that any such stay be sufficiently limited as to permit release of the report in the week following receipt of the responses.

Some of the petitions for review disclose aspects of Report No. 1. Nevertheless, the report has not yet been presented to this Court in its entirety.

This Court is cognizant that Report No. 1 is a matter of great public interest. The Court has found, however, that a temporary stay is appropriate for the following reasons:

1) the release of Report No. 1 on June 23, 2018 – while affected individuals are permitted to file responses through June 22, 2018 -- provides inadequate time for essential judicial review;

2) consistent with the supervising judge’s certification, the Court recognizes that many of the petitions for review pending before it raise constitutional claims and matters of first impression;

3) the proceedings on the petitions for review filed in this Court are incomplete, and adequate development and consideration of the constitutional claims presented is necessary;

4) this Court does not possess sufficient information at this time to address the petitions for review as, for example, Report No. 1 has not yet been presented to the Court in its entirety; and

5) the Office of Attorney General has alternatively confirmed the appropriateness of a stay and otherwise indicated that it has no objection.

The Court intends to revisit the stay order when the proceedings before it have advanced to a stage at which either the petitions for review can be resolved, or an informed and fair determination can be made as to whether a continued stay is warranted. The Office of Attorney General may withdraw its agreement and/or acquiescence to the

stay at any time and lodge an objection to a continued stay on developed reasoning addressing the petitioners' entitlement to orderly judicial review.

# **EXHIBIT 4**

10:01 A.M.

Sealed Documents

Sealed Record

Supreme Court of Pennsylvania



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June 29, 2018

CAPTION

In Re: Fortieth Statewide Investigating Grand Jury

Petition of: Diocese of Harrisburg and Diocese of Greensburg

CASE INFORMATION

Initiating Document: Petition for Review

Case Status: Active

Journal Number: J-40-2018 May 15, 2018

Case Category: Criminal

Case Type(s):

Multicounty Investigating Grand Jury

CONSOLIDATED CASES

RELATED CASES

COUNSEL INFORMATION

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One Liberty Place, 46th Floor  
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Phone No: (215) 496-7225

Representing: Diocese of Greensburg, Petitioner

Pro Se: No

IFP Status:

Representing: Diocese of Harrisburg, Petitioner

Pro Se: No

IFP Status:

Attorney: Seiberling, Mark Edward

Address: Kleinbard LLC  
1650 Market St Fl 46  
Philadelphia, PA 19103

Phone No: (215) 496-7222

Representing: Diocese of Greensburg, Petitioner

Pro Se: No

IFP Status:

Representing: Diocese of Harrisburg, Petitioner

Pro Se: No

IFP Status:

## Supreme Court of Pennsylvania



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## COUNSEL INFORMATION

**Attorney:** Voss, Joshua John  
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 Harrisburg, PA 17101  
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**Pro Se:** No  
**IFP Status:**  
**Representing:** Diocese of Harrisburg, Petitioner  
**Pro Se:** No  
**IFP Status:**

**Attorney:** Barker, James Patrick  
**Address:** Pennsylvania Office of Attorney General  
 Strawberry Sq Fl 16  
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**Phone No:** (717) 787-6348  
**Representing:** Commonwealth of Pennsylvania, Respondent  
**Pro Se:** No  
**IFP Status:**

**Attorney:** Dye, Daniel Jacob  
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 16th Floor, Strawberry Square  
 Harrisburg, PA 17120  
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**Pro Se:** No  
**IFP Status:**

**Attorney:** Buck, Jennifer Anne  
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 Harrisburg, PA 17120-0001  
**Phone No:** (717) 783-0158  
**Representing:** Office of Attorney General, Respondent  
**Pro Se:** No  
**IFP Status:**

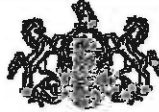
**Attorney:** Welsh, Robert Eugene, Jr.  
**Address:** Welsh & Recker, P.C.  
 2000 Market St Ste 2903  
 Philadelphia, PA 19103  
**Phone No:** (215) 972-6430  
**Representing:** Pennsylvania Association of Criminal Defense Lawyers, Amicus Curiae  
**Pro Se:** No  
**IFP Status:**

10:01 A.M.

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COUNSEL INFORMATION

Attorney: Casey, Patrick Aloysius

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425 Spruce St Ste 200  
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Representing: Pennsylvania Association of Criminal Defense Lawyers, Amicus Curiae

Pro Se: No

IFP Status:

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Law Offices of Arthur Thomas Donato, Jr.  
Address: 216 W Front St 2nd Fl  
Media, PA 19063-3101  
Phone No: (610) 565-4747  
Representing: Pennsylvania Association of Criminal Defense Lawyers, Amicus Curiae  
Pro Se: No  
IFP Status:

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Myers, Brier & Kelly, L.L.P.  
Address: 425 Spruce St  
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Scranton, PA 18503  
Phone No: (570) 342-8100  
Representing: Pennsylvania Association of Criminal Defense Lawyers, Amicus Curiae  
Pro Se: No  
IFP Status:

Attorney: Winnick, Bradley Adam  
Address: Dauphin County Public Defender's Office  
2 S Second St, 2nd Floor  
Harrisburg, PA 17101  
Phone No: (717) 780-6370  
Representing: Pennsylvania Association of Criminal Defense Lawyers, Amicus Curiae  
Pro Se: No  
IFP Status:

SUPREME COURT INFORMATION

Appeal From: the Order of the Supervising Judge of the Fortieth Statewide Investigating Grand Jury entered June 15, 2017 at Allegheny County No. CP-02-MD-0000571-2016.

Appeal Filed Below:

Probable Jurisdiction Noted: Docketed Date: June 26, 2017

Allocatur/Miscellaneous Granted: Allocatur/Miscellaneous Docket No.:

Allocatur/Miscellaneous Grant Order:

FEE INFORMATION

Fee Dt	Fee Name	Fee Amt	Receipt Dt	Receipt No	Receipt Amt
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Neither the Appellate Courts nor the Administrative Office of Pennsylvania Courts assumes any liability for inaccurate or delayed data, errors or omissions on the docket sheets.

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**FEE INFORMATION**

Fee Dt	Fee Name	Fee Amt	Receipt Dt	Receipt No	Receipt Amt
06/26/2017	Petition for Review	85.50	06/26/2017	2017-SUP-W-001192	85.50

**INTERMEDIATE APPELLATE COURT INFORMATION**

**Court Name:**  
**Date of Order:**  
**Judge(s):**  
**Intermediate Appellate Court Action:**  
**Referring Court:**

**Docket Number:**  
**Rearg/Recon Disp Date:**  
**Rearg/Recon Disposition:**

**AGENCY/TRIAL COURT INFORMATION**

**Court Below:** Allegheny County Court of Common Pleas  
**County:** Allegheny **Division:** Allegheny County Criminal Division  
**Date of Agency/Trial Court Order:** June 15, 2017  
**Order Type:** Order  
**OTN(s):**  
**Lower Ct Docket No(s):** CP-02-MD-0000571-2016  
**Lower Ct Judge(s):** Krumenacker, Norman A., III  
 Judge

**ORIGINAL RECORD CONTENT**

Original Record Item	Filed Date	Content/Description
----------------------	------------	---------------------

**Record Remittal:**

**BRIEFING SCHEDULE**

<p><b>Amicus Curiae</b>                  Pennsylvania Association of Criminal Defense Lawyers                  Brief                  Due: March 29, 2018      Filed: March 28, 2018</p>	<p><b>Respondent</b>                  Commonwealth of Pennsylvania                  Brief                  Due: February 5, 2018      Filed: February 5, 2018                  Due: March 12, 2018      Filed: March 12, 2018</p>
<p><b>Petitioner</b>                  Diocese of Greensburg                  Brief                  Due: January 5, 2018      Filed: January 5, 2018                  Due: March 12, 2018      Filed: March 12, 2018</p>	<p><b>Office of Attorney General</b>                  Brief                  Due: February 5, 2018      Filed:</p>
<p><b>Reply Brief</b>                  Due: February 12, 2018      Filed: February 7, 2018                  Due: March 12, 2018      Filed: March 12, 2018</p>	<p><b>Reply Brief</b>                  Due: May 7, 2018      Filed: May 7, 2018</p>
<p><b>Reproduced Record</b>                  Due: January 5, 2018      Filed: January 5, 2018                  Due: March 12, 2018      Filed: March 12, 2018</p>	<p><b>Supplemental Brief</b>                  Due: April 11, 2018      Filed:</p>

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BRIEFING SCHEDULE

Petitioner

Diocese of Greensburg

Diocese of Harrisburg

Brief

Due: January 5, 2018 Filed: January 5, 2018

Due: March 12, 2018 Filed: March 12, 2018

Reply Brief

Due: February 12, 2018 Filed: February 7, 2018

Due: March 12, 2018 Filed: March 12, 2018

Reproduced Record

Due: January 5, 2018 Filed: January 5, 2018

Due: March 12, 2018 Filed: March 12, 2018

SESSION INFORMATION

Journal Number: J-40-2018
Listed/Submitted Date: May 15, 2018
Consideration Type: Oral Argument Supreme Ct.

DOCKET ENTRY

Table with 4 columns: Filed Date, Docket Entry / Representing, Participant Type, Filed By. Contains 10 rows of docket entries from June 26, 2017 to July 17, 2017.



## Supreme Court of Pennsylvania



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Docket Number: 45 WM 2017

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June 29, 2018

Filed Date	Docket Entry / Representing	Participant Type	Filed By
July 18, 2017	<b>Sealed Application for Leave to File Reply in Further Support of Petition for Review</b>	Petitioner Petitioner	Diocese of Harrisburg Diocese of Greensburg
July 18, 2017	<b>Sealed Praecipe for Appearance</b>	Petitioner Petitioner Petitioner Petitioner Petitioner Petitioner	Haverstick, Matthew Hermann Haverstick, Matthew Hermann Seiberling, Mark Edward Voss, Joshua John Seiberling, Mark Edward Voss, Joshua John
July 18, 2017	<b>Sealed Praecipe for Appearance</b>	Petitioner Petitioner Petitioner Petitioner	Haverstick, Matthew Hermann Haverstick, Matthew Hermann Voss, Joshua John Voss, Joshua John
August 1, 2017	<b>Sealed Answer to Application for Relief</b>	Respondent	Office of Attorney General
September 20, 2017	<b>Order Regarding Petition for Review - Other Disposition</b>		Per Curiam
<p>Comments:</p> <p>AND NOW, this 20th day of September, 2017, upon consideration of the Petition for Review, this matter shall be determined by this Court upon full appellate briefing by the parties.</p> <p>The Application to File a Reply and the Application for Leave to Present Oral Argument are GRANTED. As to the filings presently before this Court, the Application to Seal is GRANTED.</p> <p>As to the Application to Unseal, issues involving redaction are to be resolved by the supervising judge of the grand jury. To that end, the Diocese of Harrisburg and the Diocese of Greensburg are DIRECTED to submit to the supervising judge proposed versions of their Petition for Review and their Reply that are redacted to remove references to any matters subject to grand jury secrecy. Additionally, the Office of Attorney General is DIRECTED to submit to the supervising judge a proposed redacted version of its Answer to the Petition for Review.</p> <p>Any issues regarding redaction of those party filings shall be expeditiously resolved, with the redacted versions, as approved by the supervising judge, submitted in this Court within 60 days of this Order.</p> <p>Additionally, the supervising judge is to submit, within 60 days of this Order, redacted versions of his June 15 opinion and order.</p> <p>Following the submission of those redacted documents in this Court, they will be publicly docketed, along with the instant order of this Court, and a briefing schedule shall be established.</p>			
September 20, 2017	<b>Order Exited</b>		Office of the Prothonotary
October 18, 2017	<b>Sealed Praecipe for Appearance</b>	Respondent	Barker, James Patrick

## Supreme Court of Pennsylvania



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Docket Number: 45 WM 2017

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## DOCKET ENTRY

Filed Date	Docket Entry / Representing	Participant Type	Filed By
November 13, 2017	Redacted documents submitted		Other
Comments:			
Opinion and Order of Supervising Judge			
Redacted Petition for Review			
Redacted Answer to Petition for Review			
Redacted Reply in Further Support of Petition for Review			
December 4, 2017	Sealed Designation of Contents of Reproduced Record		
	Diocese of Harrisburg	Petitioner	Voss, Joshua John
	Diocese of Greensburg	Petitioner	Voss, Joshua John
January 5, 2018	Sealed Petitioner's Brief		
	Diocese of Harrisburg	Petitioner	Haverstick, Matthew Hermann
	Diocese of Greensburg	Petitioner	Haverstick, Matthew Hermann
January 5, 2018	Sealed Appellant's Reproduced Record		
	Diocese of Harrisburg	Petitioner	Haverstick, Matthew Hermann
	Diocese of Greensburg	Petitioner	Haverstick, Matthew Hermann
February 5, 2018	Sealed Respondent's Brief	Respondent	Commonwealth of Pennsylvania
February 7, 2018	Sealed Petitioner's Reply Brief	Petitioner Petitioner	Diocese of Harrisburg Diocese of Greensburg
February 13, 2018	Sealed Application for Leave to File Amicus Curiae Brief NPT and Application to File Under Seal	Amicus Curiae	Pennsylvania Association of Criminal Defense Lawyers
February 14, 2018	Sealed Answer to Application for Relief	Petitioner Petitioner	Diocese of Harrisburg Diocese of Greensburg
March 12, 2018	Supervising Judge's Letter approving redacted briefs		Other
March 12, 2018	Redacted Petitioner's Brief	Petitioner Petitioner	Diocese of Harrisburg Diocese of Greensburg
March 12, 2018	Redacted Petitioner's Reproduced Record	Petitioner Petitioner	Diocese of Harrisburg Diocese of Greensburg
March 12, 2018	Redacted Respondent's Brief	Respondent	Commonwealth of Pennsylvania
March 12, 2018	Redacted Petitioner's Reply Brief	Petitioner Petitioner	Diocese of Harrisburg Diocese of Greensburg

## Supreme Court of Pennsylvania



## Miscellaneous Docket Sheet

Docket Number: 45 WM 2017

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Filed Date	Docket Entry / Representing	Participant Type	Filed By
March 22, 2018	<b>Acknowledgement of Argument Notice</b>		
	Diocese of Harrisburg	Petitioner	Haverstick, Matthew Hermann
	Diocese of Greensburg	Petitioner	Haverstick, Matthew Hermann
March 27, 2018	<b>Acknowledgement of Argument Notice</b> Commonwealth of Pennsylvania	Respondent	Barker, James Patrick
March 27, 2018	<b>Acknowledgement of Argument Notice</b> Office of Attorney General	Respondent	Buck, Jennifer Anne
March 28, 2018	<b>Sealed Praecipe to Withdraw Application for Leave to File Amicus Brief</b>	Amicus Curiae	Pennsylvania Association of Criminal Defense Lawyers
March 28, 2018	<b>Amicus Curiae Brief</b>	Amicus Curiae	Pennsylvania Association of Criminal Defense Lawyers
April 23, 2018	<b>Acknowledgement of Argument Notice</b>		
	Diocese of Greensburg	Petitioner	Voss, Joshua John
	Diocese of Harrisburg	Petitioner	Voss, Joshua John
April 23, 2018	<b>Acknowledgement of Argument Notice</b>		
	Diocese of Harrisburg	Petitioner	Seiberling, Mark Edward
	Diocese of Greensburg	Petitioner	Seiberling, Mark Edward
April 25, 2018	<b>Notice of Disclosure</b>		Office of the Prothonotary
April 30, 2018	<b>Sealed Application for Leave to File Nunc Pro Tunc Brief in Response to Amicus Curiae Brief</b>	Respondent	Commonwealth of Pennsylvania
May 1, 2018	<b>Sealed Answer to Application for Leave to File Nunc Pro Tunc Brief in Response to Amicus Curiae Brief</b>		
		Petitioner	Diocese of Harrisburg
		Petitioner	Diocese of Greensburg
May 2, 2018	<b>Sealed No Answer Letter to Application for Leave to File NPT Brief in Response to Amicus Curiae Brief</b>	Amicus Curiae	Pennsylvania Association of Criminal Defense Lawyers
May 2, 2018	<b>Praecipe for Withdrawal of Appearance</b> Pennsylvania Association of Criminal Defense Lawyers	Amicus Curiae	Sheppard, Mark B.
May 2, 2018	<b>Praecipe for Appearance</b> Pennsylvania Association of Criminal Defense Lawyers	Amicus Curiae	Winnick, Bradley Adam
May 2, 2018	<b>Acknowledgement of Argument Notice</b> Office of Attorney General	Respondent	Dye, Daniel Jacob

10:01 A.M.

Sealed Documents

Sealed Record

Supreme Court of Pennsylvania



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Docket Number: 45 WM 2017

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June 29, 2018

DOCKET ENTRY

Filed Date	Docket Entry / Representing	Participant Type	Filed By
May 3, 2018	Notice of Disclosure		Office of the Prothonotary
May 7, 2018	Order Granting Application for Leave to File Nunc Pro Tunc Brief in Response to Amicus Curiae Brief		Per Curiam
Comments: AND NOW, this 7th day of May, 2018, the Application for Leave to File Nunc Pro Tunc Brief in Response to Amicus Curiae Brief is GRANTED.			
May 7, 2018	Brief of Appellee in Response to Brief of Amicus Curiae	Respondent	Commonwealth of Pennsylvania
May 7, 2018	Order Exited		Office of the Prothonotary
May 15, 2018	Argued		Supreme Court of Pennsylvania
June 21, 2018	Notice of Disclosure		Office of the Prothonotary

# **EXHIBIT 5**

10:02 A.M.

Sealed Documents

Supreme Court of Pennsylvania



Miscellaneous Docket Sheet

Docket Number: 197 MM 2014

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June 29, 2018

CAPTION

In Re: The Thirty-fifth Statewide Investigating Grand Jury

Petition of: Attorney General, Kathleen G. Kane

CASE INFORMATION

Initiating Document: Petition for Review

Case Status: Closed

Journal Number: J-17-2015 March 11, 2015

Case Category: Civil

Case Type(s): Quo Warranto

CONSOLIDATED CASES

RELATED CASES

COUNSEL INFORMATION

Attorney: Minora, Arnil Michael  
 Minora, Minora, Colbassani, Krowiak & Mattioli  
 Address: 700 Vine St  
 Scranton, PA 18510  
 Phone No: (570) 961-1618  
 Representing: Kane, Kathleen G., Petitioner  
 Pro Se: No  
 IFP Status:

Attorney: Del Sole, Joseph A.  
 Del Sole Cavanaugh Stroyd, L.L.C.  
 Address: 200 1st Avenue, Suite 300  
 Pittsburgh, PA 15222-1512  
 Phone No: (412) 261-2393  
 Representing: Kane, Kathleen G., Petitioner  
 Pro Se: No  
 IFP Status:

Attorney: Kramer, Ross Mitchell  
 Pro Hac Vice  
 Address: WINSTON & STRAWN LLP  
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 Representing: Kane, Kathleen G., Petitioner  
 Pro Se: No  
 IFP Status:

10:02 A.M.

Sealed Documents

Supreme Court of Pennsylvania



Miscellaneous Docket Sheet

Docket Number: 197 MM 2014

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June 29, 2018

COUNSEL INFORMATION

Attorney: Shargel, Gerald L.  
Pro Hac Vice

Address: Winston & Strawn, LLP  
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New York, NY 10166

Phone No: (212) 294-2637

Representing: Kane, Kathleen G., Petitioner

Pro Se: No

IFP Status:

Attorney: Stickman, William Shaw, IV  
Del Sole Cavanaugh Stroyd, L.L.C.

Address: Del Sole Cavanaugh Stroyd Lic  
200 First Ave Ste 300  
Pittsburgh, PA 15222-1512

Phone No: (412) 261-2393

Representing: Kane, Kathleen G., Petitioner

Pro Se: No

IFP Status:

Attorney: Carluccio, Thomas E.  
Law Office of Thomas E. Carluccio

Address: Plymouth Greene Ofc Campus  
1000 Germantown Pike Ste D3  
Plymouth Meeting, PA 19462-2484

Phone No: (484) 674-2899

Representing: Special Prosecutor, Respondent

Pro Se: No

IFP Status:

SUPREME COURT INFORMATION

Appeal From:  
Appeal Filed Below:

Probable Jurisdiction Noted:  
Allocatur/Miscellaneous Granted:  
Allocatur/Miscellaneous Grant Order:

Docketed Date: December 23, 2014  
Allocatur/Miscellaneous Docket No.:

SEE INFORMATION

Fee Dt	Fee Name	Fee Amt	Receipt Dt	Receipt No	Receipt Amt
01/08/2015	Petition for Review - \$65.50 Reason Waived: Collected on Temp Docket	65.50			

10:02 A.M.

Sealed Documents

Supreme Court of Pennsylvania



Miscellaneous Docket Sheet

Docket Number: 197 MM 2014

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INTERMEDIATE APPELLATE COURT INFORMATION

Court Name: Docket Number:  
 Date of Order: Rearg/Recon Disp Date:  
 Rearg/Recon Disposition:  
 Judge(s):  
 Intermediate Appellate Court Action:  
 Referring Court:

AGENCY/TRIAL COURT INFORMATION

Court Below: Montgomery County Court of Common Pleas  
 County: Montgomery Division: Montgomery County Criminal Division  
 Date of Agency/Trial Court Order:  
 Order Type:  
 OTN(s):  
 Lower Ct Docket No(s): 2644-2012  
 Lower Ct Judge(s): Carpenter, William R.  
 Judge

ORIGINAL RECORD CONTENT

Original Record Item	Filed Date	Content/Description
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Record Remittal:

BRIEFING SCHEDULE

Petitioner	Participant
Kane, Kathleen G.	Supervising Judge
Brief	Brief
Due: February 4, 2015	Due: February 18, 2015
Filed: February 4, 2015	Filed: February 18, 2015
Reply Brief	Respondent
Due: February 23, 2015	Special Prosecutor
Filed: February 23, 2015	Brief
Reproduced Record	Due:
Due: February 4, 2015	Filed: February 18, 2015
Filed:	

SESSION INFORMATION

Journal Number: J-17-2015  
 Listed/Submitted Date: March 11, 2015  
 Consideration Type: Oral Argument Supreme Ct.

DISPOSITION INFORMATION

Related Journal No:	J-17-2015	Judgment Date:	March 31, 2015
Category:	Decided	Disposition Author:	Saylor, Thomas G.
Disposition:	Denied	Disposition Date:	March 31, 2015





## DISPOSITION INFORMATION

Dispositional Filing: **Opinion Announcing Judgment of the Court** Author: Saylor, Thomas G.

Filed Date:

March 31, 2015

Justice: Eakin, J. Michael

Vote:

Joins

Dispositional Filing: **Concurring Opinion** Author:

Baer, Max

Filed Date:

March 31, 2015

Dispositional Filing: **Concurring Opinion** Author:

Filed Date:

March 31, 2015

Dispositional Filing: **Dissenting Opinion** Author:

Todd, Debra

Filed Date:

March 31, 2015

## DOCKET ENTRY

Filed Date	Docket Entry / Representing	Participant Type	Filed By
December 18, 2014	Petition for Review	Petitioner	Kane, Kathleen G.
December 23, 2014	Case was transferred from 747 MT 2014		Office of the Prothonotary

Comments:

"Quo Warranto Action" with "Memorandum of Law in Support"

Comments:

Pleadings perfected

December 23, 2014	Application for Leave to File Original Process	Petitioner	Kane, Kathleen G.
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December 23, 2014	Motion to File Under Seal	Petitioner	Kane, Kathleen G.
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December 30, 2014	Answer	Participant	Supervising Judge
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Comments:

Presentment referred to in exhibits B & C currently filed under seal by Supervising Judge, pursuant to investigating grand jury act.

January 7, 2015	Answer together with Memorandum in Support	Respondent	Special Prosecutor
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January 7, 2015	Answer to Application to Seal	Respondent	Special Prosecutor
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June 29, 2018

## DOCKET ENTRY

Filed Date	Docket Entry / Representing	Participant Type	Filed By
January 9, 2015	Addendum to Opinion of December 30, 2014	Participant	Supervising Judge
January 16, 2015	Petition for Leave to Respond	Petitioner	Kane, Kathleen G.
January 20, 2015	Order Denying Motion to File Under Seal		Per Curiam
Comments:			
AND NOW, this 20th day of January, 2015, upon the subsequent request of Petitioner and the Answer of the Special Prosecutor, and with the agreement of the Supervising Judge, the Motion to File Under Seal is DENIED, and the Prothonotary is DIRECTED to unseal all the filings in this matter.			
January 20, 2015	Order Exited		Office of the Prothonotary
January 21, 2015	Order Granting Application for Oral Argument		Per Curiam
Comments:			
AND NOW, this 21st day of January, 2015, the Application for Leave to File Original Process is GRANTED. The parties are DIRECTED to file supplemental briefs discussing, inter alia, the apparent conflict between Smith v. Gallagher, 185 A.2d 135, 137 (Pa. 1962), and In re Dauphin County Fourth Investigating Grand Jury, 19 A.3d 491 (Pa. 2011), and the legislative history surrounding the appointment of special prosecutors. See, e.g., 18 Pa.C.S. §§9301 et seq. (expired Feb. 18, 2003).			
The Prothonotary is DIRECTED to establish an expedited briefing schedule for the supplemental briefs and to list this matter for oral argument at this Court's March 2015 session.			
January 21, 2015	Order Exited		Office of the Prothonotary
February 3, 2015	Supplemental Order to the January 21, 2015 Order		Per Curiam
Comments:			
AND NOW, this 3rd day of February, 2015, supplementing this Court's previous Order dated January 21, 2015, Special Prosecutor Thomas E. Carluccio, Esquire, is designated as the party Respondent.			
The Honorable William C. Carpenter may, in his discretion, file a supplemental opinion.			
February 3, 2015	Order Exited		Office of the Prothonotary
February 4, 2015	Petitioner's Brief	Petitioner	Kane, Kathleen G.
February 11, 2015	Acknowledgement of Argument Notice Special Prosecutor	Respondent	Carluccio, Thomas E.
February 11, 2015	Sealed Application to be Admitted Pro Hac Vice of Ross Mitchell Kramer, Esquire Kane, Kathleen G.	Petitioner	Minora, Anil Michael



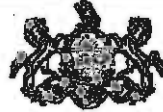
## DOCKET ENTRY

Filed Date	Docket Entry / Representing	Participant Type	Filed By
February 13, 2015	<b>Acknowledgement of Argument Notice</b> Kane, Kathleen G. Kane, Kathleen G. Kane, Kathleen G. Kane, Kathleen G.	Petitioner Petitioner Petitioner Petitioner	Del Sole, Joseph A. Stickman, William Shaw, IV Minora, Amil Michael Shargel, Gerald L.
February 18, 2015	<b>Supplemental Opinion</b>	Participant	Supervising Judge
February 18, 2015	<b>Respondent's Brief</b>	Respondent	Special Prosecutor
February 18, 2015	<b>Praecipe for Appearance</b> Kane, Kathleen G. Kane, Kathleen G.	Petitioner Petitioner	Del Sole, Joseph A. Stickman, William Shaw, IV
February 23, 2015	<b>Petitioner's Reply Brief</b>	Petitioner	Kane, Kathleen G.
February 24, 2015	<b>Order Granting Application to be Admitted Pro Hac Vice</b>		Dreibelbis, Amy
	Comments: AND NOW, this 24th day of February, 2015, the Motion for Admission Pro Hac Vice of Rose Mitchell Kramer, Esquire is hereby granted		
February 24, 2015	<b>Order Exited</b>		Office of the Prothonotary
March 4, 2015	<b>Petition to Unseal or Approve Disclosure of Specific Information for Use at Argument</b>	Respondent	Special Prosecutor
	Comments: "Petition to Unseal or Approve Disclosure of Specific Information, Testimony, and Documents for Use at Argument Before the Supreme Court of Pennsylvania on March 11, 2015 and for Permission to File a Responsive Affidavit"		
March 4, 2015	<b>Sealed Opinion (to Petition to Unseal or Approve of Disclosure)</b>	Participant	Supervising Judge
March 6, 2015	<b>Answer to Petition to Unseal or Approve Disclosure of Specific Information for Use at Argument</b>	Petitioner	Kane, Kathleen G.
March 10, 2015	<b>Order Denying Petition to Unseal or Approve Disclosure of Specific Information</b>		Per Curiam
	Comments: AND NOW, this 10th day of March 2015, the Petition to Unseal or Approve Disclosure of Specific Information is DENIED.		
March 10, 2015	<b>Order Exited</b>		Office of the Prothonotary
March 11, 2015	<b>Argued</b>		Supreme Court of Pennsylvania

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Sealed Documents

Supreme Court of Pennsylvania



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**DOCKET ENTRY**

Filed Date	Docket Entry / Representing	Participant Type	Filed By
March 31, 2015	Quo Warranto Denied		Saylor, Thomas G.

Comments:  
The request for quo warranto relief is denied.

Mr. Justice Eakin joins this opinion.  
Mr. Justice Baer files a concurring opinion.  
Mr. Justice Stevens files a concurring opinion.  
Madame Justice Todd files a dissenting opinion.

March 31, 2015	Judgment Entered		Office of the Prothonotary
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May 18, 2015	Reconsideration Time Expirad/Case Closed		Office of the Prothonotary
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August 26, 2015	Order Regarding Unsealing Matters Involving 35th Statewide Investigating Grand Jury		Per Curiam
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Comments:  
AND NOW, this 26th day of August, 2015, upon the request of the supervising judge for removal of the seal from all matters involving the 35th Statewide Investigating Grand Jury and the investigation of Attorney General Kathleen Kane which have been lodged in this Court, save for grand jury materials such as testimony, exhibits, and in camera proceedings, and based on the supervising judge's assurance that there are no present grand jury secrecy concerns relative to such unsealing, it is hereby ORDERED that the seal is lifted, in part, upon such terms.

August 26, 2015	Order Exited		Office of the Prothonotary
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**CROSS COURT ACTIONS**

Docket Number: 747 MT 2014

# **EXHIBIT 6**



June 29, 2018

## CAPTION

IN RE: Dauphin County Fourth Investigating Grand Jury

Petition of: Louis A. Denaples and Mount Airy #1, LLC

## CASE INFORMATION

Initiating Document: Petition for Review

Case Status: Closed

Journal Number: J-126-2007 November 7, 2007

Case Category: Civil Case Type(s): Other

## CONSOLIDATED CASES

## RELATED CASES

Docket No / Reason	Type
13 MM 2008 Same Record Below 4th Dauphin Cty Invest Grand Jury	Related Pet: Sica
28 MM 2008 Same Record Below 4th Dauphin Cty Invest Grand Jury v DeNaples Pet.	Related
59 MT 2008 Same Record Below 4th Dauphin Cty Invest Grand Jury	Related Pet: Sica
102 MT 2008 Same Record Below 4th Dauphin Cty Invest Grand Jury v Denaples Pet.	Related

## COUNSEL INFORMATION

Attorney: Sprague, Richard A.  
Sprague & Sprague  
Address: 135 S 19th St Ste 400  
Philadelphia, PA 19103  
Phone No: (215) 561-7681  
Representing: Louis A. DeNaples and Mount Airy #1, LLC, Petitioner  
Pro Se: No  
IFP Status:

Attorney: Chylack, Theodore John P.  
Sprague & Sprague  
Address: 135 S 19th St Ste 400  
Philadelphia, PA 19103  
Phone No: (215) 561-7681  
Representing: Louis A. DeNaples and Mount Airy #1, LLC, Petitioner  
Pro Se: No  
IFP Status:

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Supreme Court of Pennsylvania



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Docket Number: 149 MM 2007

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COUNSEL INFORMATION

Attorney: Johnson, Geoffrey Richard  
Sprague & Sprague  
Address: 135 S 19th St Ste 400  
Philadelphia, PA 19103  
Phone No: (215) 561-7681  
Representing: Louis A. DeNaples and Mount Airy #1, LLC, Petitioner  
Pro Se: No  
IFP Status:

Attorney: Marsico, Edward Michael, Jr.  
Address: Dauphin County District Attorney's Office  
Front & Market Streets  
Harrisburg, PA 17101  
Phone No: (717) 780-6767  
Representing: Commonwealth Of Pennsylvania, Respondent  
Pro Se: No  
IFP Status:

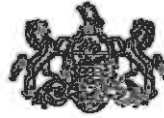
Attorney: Chardo, Francis T.  
Address: Dauphin County District Attorney's Office  
Front & Market Streets  
Harrisburg, PA 17101  
Phone No: (717) 780-6767  
Representing: Commonwealth Of Pennsylvania, Respondent  
Pro Se: No  
IFP Status:

Attorney: Carusone, Christopher D.  
Address: Ofc Of The Attorney General  
16th Floor, Strawberry Square  
Harrisburg, PA 17120  
Phone No: (717) 787-6348  
Representing: Office of Attorney General of Pennsylvania, Amicus Curiae  
Pro Se: No  
IFP Status:

Attorney: Corbett, Thomas W., Jr.  
Address: Ofc Of The Attorney General  
Strawberry Square, 15th Flr.  
Harrisburg, PA 17120  
Phone No: (717) 787-3391  
Representing: Office of Attorney General of Pennsylvania, Amicus Curiae  
Pro Se: No  
IFP Status:

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**COUNSEL INFORMATION**

Attorney: Zapp, Amy  
PA Office of Attorney General  
Address: Ofc Of Attorney General  
16th Floor Strawberry Square  
Harrisburg, PA 17120  
Phone No: (717) 705-4487  
Representing: Office of Attorney General of Pennsylvania, Amicus Curiae  
Pro Se: No  
IFP Status:

**FEE INFORMATION**

Fee Dt	Fee Name	Fee Amt	Receipt Dt	Receipt No	Receipt Amt
10/01/2007	Petition for Review	60.00	10/01/2007	2007-SUP-M-001091	60.00

**AGENCY TRIAL COURT INFORMATION**

Court Below: Dauphin County Court of Common Pleas  
County: Dauphin Division: Dauphin County Criminal Division  
Date of Agency/Trial Court Order: September 25, 2007  
Order Type: Order  
OTN(s):  
Lower Ct Docket No(s): CP-22-MD-0000452-2006  
Lower Ct Judge(s): Hoover, Todd A.  
Judge

**ORIGINAL RECORD CONTENT**

Original Record Item	Filed Date	Content/Description
Transcripts	October 19, 2007	1

Record Remittal: May 19, 2011

**SESSION INFORMATION**

Journal Number: J-126-2007  
Listed/Submitted Date: November 7, 2007  
Consideration Type: Submit on Briefs Supreme

**DISPOSITION INFORMATION**

Related Journal No: J-126-2007 Judgment Date: December 10, 2007  
Category: Decided Disposition Author: Castille, Ronald D.  
Disposition: Denied Disposition Date: December 10, 2007  
Dispositional Filing: Majority Opinion Author:  
Filed Date: December 10, 2007  
Justice: Castille, Ronald D. Vote: Join Majority Opinion  
Justice: Saylor, Thomas G. Vote: Join Majority Opinion



## Supreme Court of Pennsylvania



Miscellaneous Docket Sheet

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## DISPOSITION INFORMATION

Justice:	Eakin, J. Michael	Vote:	Join Majority Opinion
Justice:	Beer, Max	Vote:	Join Majority Opinion
Justice:	Fitzgerald, James J., III	Vote:	Join Majority Opinion
Dispositional Filing:	Concurring Opinion	Author:	
Filed Date:	December 10, 2007		
Justice:	Cappy, Ralph J.	Vote:	Join Concurring Opinion
Justice:	Baldwin, Cynthia A.	Vote:	Join Concurring Opinion

## DOCKET ENTRY

Filed Date	Docket Entry / Representing	Participant Type	Filed By
October 1, 2007	Petition for Review	Petitioner	Louis A. DeNaples and Mount Airy #1, LLC
Comments: Proof of Service - 10-01-2007 Personal			
Petition is asking for relief from orders dated 9/20/07, 9/21/07 and 9/25/07			
October 2, 2007	Order Regarding Application for Stay - Other Disposition		Castille, Ronald D.
Comments: AND NOW, this 2nd day of October 2007, the Orders of the Supervising Judge of the Dauphin County Fourth Investigating Grand Jury, dated September 20, 2007, September 21, 2007 and September 25, 2007, are hereby STAYED pending further order of this Court.			
October 2, 2007	Order Exited		Office of the Prothonotary
October 3, 2007	Application to File Under Seal	Petitioner	Louis A. DeNaples and Mount Airy #1, LLC
Comments: Proof of Service - 10-02-2007 Personal			
October 9, 2007	Emergency Application for Appointment of Master to Investigate Violations	Petitioner	Louis A. DeNaples and Mount Airy #1, LLC
Comments: Response due 10/19 at noon			
October 10, 2007	No Brief in Opposition (Motion to Seal Emergency Petition for Review)	Respondent	Commonwealth Of Pennsylvania
Comments: No Proof of Service			

11:47 A.M.

Supreme Court of Pennsylvania



Miscellaneous Docket Sheet

Docket Number: 149 MM 2007

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June 29, 2018

**DOCKET ENTRY**

Filed Date	Docket Entry / Representing	Participant Type	Filed By
October 10, 2007	Answer Together with Brief in Opposition to Emergency Application for Review	Respondent	Commonwealth Of Pennsylvania
Comments: Proof of Service 10-10-2007 1st Class Mail			
10-12-2007 - Received a revised page 16 with the addition of "both the Board and" and the substitution of the word "the" on line 7			
October 11, 2007	Answer to Emergency Relief for Appointment of Master to Investigate Violations of Seal	Respondent	Commonwealth Of Pennsylvania
Comments: Proof of Service - 10/11/2007 1st Class Mail			
October 18, 2007	Trial Court Record Received		Lower Court or Agency
October 22, 2007	Order Exited		Office of the Prothonotary
October 22, 2007	Order Regarding Filing Amicus Brief		Per Curiam
Comments: AND NOW, this 22nd day of October 2007, the Attorney General of Pennsylvania is invited to file an amicus brief to address the authority of county district attorneys to engage in grand jury investigations into matters arising out of the licensing procedure established by the Pennsylvania Race Horse Development and Gaming Act, 4 Pa.C.S. § 1101 et seq. Should the Attorney General choose to do so, the brief shall be filed within fifteen days of the issuance of this Order. This Order is entered pursuant to our exclusive jurisdiction over appeals from final orders of the courts of common pleas in matters relating to the convening, supervision, administration, operation or discharge of an investigating grand jury. See 42 Pa.C.S. § 722(5). The October 2, 2007 single-Justice order temporarily staying the orders entered by the Supervising Judge of the Dauphin County Fourth Investigating Grand Jury on September 20, 2007, September 21, 2007, and September 25, 2007 shall remain in effect pending further order of this Court. Mr. Justice Saylor concurs in the invitation to the Attorney General to file an amicus brief. However, Justice Saylor would vacate the stay previously imposed by the single-Justice Order and thus dissents relative to the portion of the above Order continuing the stay.			
November 7, 2007	Amicus Curiae Brief	Amicus Curiae	Office of Attorney General of Pennsylvania
Comments: Proof of Service - 11-07-2007 1st Class Mail			
November 7, 2007	Application to File Under Seal	Amicus Curiae	Office of Attorney General of Pennsylvania
November 20, 2007	Emergency Motion for Expedited Review	Respondent	Commonwealth Of Pennsylvania
Comments: 11-20-07 - Served via 1st class mail.			

11:47 A.M.

Supreme Court of Pennsylvania



Miscellaneous Docket Sheet

Docket Number: 149 MM 2007

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June 29, 2018

Filed Date	Docket Entry / Representing	Participant Type	Filed By
November 26, 2007	Answer and New Matter to Emergency Motion for Expedited Review	Petitioner	Louis A. DeNaples and Mount Airy #1, LLC
Comments: 11-26-07 - Served via fax			
November 27, 2007	Answer to New Matter	Respondent	Commonwealth Of Pennsylvania
November 30, 2007	Order Regarding Application for Extension of Time - Other Disposition	Respondent	Lower Court or Agency Commonwealth Of Pennsylvania
Comments: AND NOW, this 30th day of November, 2007, upon the request of the Fourth Dauphin County Grand Jury for an extension of its term;  IT IS HEREBY ORDERED that the term of the Fourth Dauphin County Investigating Grand Jury is extended by six months.  BY THE COURT: s/ Todd A. Hoover, J.			
December 10, 2007	Denied		Castille, Ronald D.
Comments: For the reasons set forth above, we dismiss petitioners' Application for Review, as well as their Application for a Stay of Proceedings Pending Review, and Emergency Application for Appointment of Master to Investigate Violations. The Application for Exercise of King's Bench Jurisdiction is denied as stated; nevertheless, we have examined one issue under our related plenary powers pursuant to 42 Pa.C.S. § 726, and we have determined that petitioners are not entitled to relief on their claim that the District Attorney of Dauphin County lacks authority to conduct the instant Grand Jury investigation. Petitioners have also filed an Application to File under Seal and a Motion to Seal Brief of Amicus Curiae. There is little argument forwarded in support of this claim. It appears that the information contained in the filings of all parties is limited to that which is within the public realm. Because petitioners have failed to demonstrate how the pleadings implicate the secrecy of the Grand Jury, the Application and Motion are hereby denied. Additionally, the Commonwealth has filed a Motion for Expedited Review, to which petitioners have responded with a new matter. The Commonwealth's Motion for Expedited Review is denied as moot and petitioners' new matter is concomitantly dismissed. Finally, the existing stay is hereby dissolved.			
December 10, 2007	Order Exited		Office of the Prothonotary
December 28, 2007	Reconsideration Time Expired/Case Closed		Office of the Prothonotary

**IN THE SUPREME COURT OF PENNSYLVANIA  
WESTERN DISTRICT**

IN RE: FORTIETH STATEWIDE                   :           Nos. 74 and 75 WM 2018  
INVESTIGATING GRAND JURY                :

**ORDER**

AND NOW, this \_\_\_\_\_ day of \_\_\_\_\_, 2018, upon  
consideration of the Media Intervenors' Application for Public Access to Grand  
Jury Report and Associated Docket Sheets and Filings, IT IS HEREBY  
ORDERED that the Motion is GRANTED, that this Court's June 20, 2018 Order  
staying the public release of Report No. 1 of the Fortieth Statewide Investigating  
Grand Jury IS VACATED, and that any docket sheets and filings in this Court  
associated with any challenges to Report No. 1's release shall be made publicly  
available.

BY THE COURT:

---

**IN THE SUPREME COURT OF PENNSYLVANIA  
WESTERN DISTRICT**

IN RE: FORTIETH STATEWIDE : Nos. 74 and 75 WM 2018  
INVESTIGATING GRAND JURY :

**ORDER**

AND NOW, this \_\_\_\_\_ day of \_\_\_\_\_, 2018, upon consideration of the Media Intervenors' Application to Intervene to Seek Public Access to Grand Jury Report and Associated Docket Sheets and Filings, IT IS **HEREBY ORDERED** that the Motion is **GRANTED** and that the Media Intervenors are granted leave to intervene to seek such access and to file the Application for Public Access to Grand Jury Report and Associated Docket Sheets and Filings that is attached as Exhibit A to their Application to Intervene.

**BY THE COURT:**

---

**CERTIFICATE OF SERVICE**

I, Eli Segal, do hereby certify that I have on this date caused a copy of the foregoing Application to Intervene to Seek Access to Grand Jury Report and Associated Docket Sheets and Filings to be served on the following by hand-delivery:

Senior Deputy Attorney General Daniel Jacob Dye  
Senior Deputy Attorney General Jennifer Anne Buck  
Pennsylvania Office of Attorney General  
16th Floor, Strawberry Square  
Harrisburg, PA 17120

I am unable to serve the unknown individuals who have filed papers challenging Report No. 1's public release and request that the Court do so on my behalf.

Dated: June 29, 2018

A handwritten signature in black ink, appearing to read "Eli Segal", is written over a horizontal line.

**CERTIFICATE OF COMPLIANCE**

I certify that this filing complies with the provisions of the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania* that require filing confidential information and documents differently than non-confidential information and documents.

Dated: June 29, 2018

A handwritten signature in black ink, appearing to read "Eli Segal", is written over a horizontal line.

**CERTIFICATE OF SERVICE**

I hereby certify that I am this day serving the foregoing document upon the persons and in the manner indicated below, which service satisfies the requirements of Pa.R.A.P. 121:

Service by first class mail addressed as follows:

**Eli Segal, Esquire**  
**Michael A. Schwartz, Esquire**  
Pepper Hamilton, LLP  
3000 Two Logan Square  
Eighteenth and Arch Streets  
Philadelphia, PA 19103-2799

Date: 7-5-18



---

Brian P. Platt, Esquire  
Attorney ID # 205207  
2 West High Street  
Carlisle, Pennsylvania 17013  
(717) 249-0900  
*Attorney for Petitioner*