



March 21, 2013

**Via First Class U.S. Mail**

Michael T. Gmoser, Esquire  
Prosecuting Attorney  
Butler County, Ohio  
P.O. Box 515  
Hamilton, OH 45012-0515

**RE: Notice to Cease & Desist**

Dear Mr. Gmoser:

Please be advised that Nurick Law Group, LLC proudly represents the interests of Phil Sowerby, a/k/a “Punxsutawney Phil Sowerby” a/k/a “Punxsutawney Phil” (hereinafter “Punxsutawney Phil”) his predecessors and progeny, for the purposes of this preposterous prosecution and persecution. Punxsutawney Phil provides (primarily Pennsylvanians) preeminent prognostication predicated on the position of his shadow.

You recently filed an indictment against Punxsutawney Phil for alleged “Misrepresentation of Early Spring” wherein you alleged without factual support or other justification that our client “purposely” and with “prior calculation” did “cause people to believe that Spring would come early.” (A true and correct copy of the indictment is attached hereto and is referred to hereinafter as the “Indictment”). Furthermore, without specificity or reasonable explanation, you cite “aggravated circumstances” warranting that Punxsutawney Phil be put to death for the crimes that you allege he perpetrated against humanity.

In the event that a crime was actually committed, which is specifically denied, you, Mr. Gmoser, as prosecutor for the County of Butler in the State of Ohio, have no authority for any crimes alleged to have occurred in Pennsylvania. You therefore lack jurisdiction to prosecute our client and are therefore “out of court” without need for further legal pontification. However, given the extreme nature of the Indictment and your flagrant disregard for the jurisdictional limitations of the Courts, we feel it necessary to remind you of the following:

The Eighth Amendment of the Federal Constitution prohibits cruel and unusual punishment; Article 1, Section 13 of Pennsylvania Constitution reiterates this prohibition. An obvious example of cruel and unusual punishment would be: the punishment for

stealing a shirt from a department store is getting your hand chopped off. Or, in the case of Punxsutawney Phil, death for being slightly off in his prediction of Spring's arrival.

It has previously been deemed unconstitutional by the Supreme Court of the United States to impose capital punishment for crimes committed while under the age of 18. *See Roper v. Simmons*, 543 U.S. 551 (2005). *See also, Commonwealth v. Chambers* (cruel and unusual punishment includes life in jail without possibility of parole or the death penalty for persons under the age of 18 at the time the crime was committed)(citation intentionally omitted). Although Punxsutawney Phil's exact age is not currently known, it is well-established that the average lifespan of a groundhog is ten (10) years in captivity, six (6) years in the wild, with the longest living documented groundhog having expired after fourteen (14) years in captivity. (*See, Light, Jessica E. Marmota monax*, woodchuck. *Animal Diversity Web*). Thus, the death penalty as sought by your heavy hand would necessarily be precluded and even if Punxsutawney Phil were perceivably prosecuted, same would be under the auspices of the juvenile justice system in the jurisdiction in which the crime was perpetrated, not as an adult in the Court of Common Pleas of Butler County Ohio by a rogue prosecutor with a seeming indifference to life itself.

The Indictment was recently picked up by Jason Samenow (carbon copied here), a highly regarded and ubiquitously-known journalist for The Washington Post, who subsequently published an article ("Ohio prosecutor seeks death penalty for Punxsutawney Phil after bad forecast" at <http://www.washingtonpost.com/blogs/capital-weather-gang/wp/2013/03/21/ohio-prosecutor-seeks-death-penalty-for-punxsutawney-phil-after-bad-forecast/>) wherein the allegations against our client were discussed at length and wherein Mr. Samenow included a web-link to the Indictment document, thereby facilitating increased traffic to the baseless and highly inflammatory allegations contained therein. Mr. Samenow, by reference herein, is on notice that by publishing the article and facilitating dissemination of the defamatory contents of the Indictment, has placed himself and his principal in the chain of publication and may also be liable for the damages caused to Punxsutawney Phil's good name and reputation. It is well-established in Pennsylvania that defamatory comments that tend to cause criminal implication constitute *per se* defamation, which shall act to entitle Punxsutawney Phil to punitive damages.

On February 2 of each year, the eyes of the world turn to Punxsutawney Phil as the preeminent predictor of the official arrival of Spring. Predicting is not just Punxsutawney Phil's expertise, it is his exclusive source of income and repute. As a result of Punxsutawney Phil's proclivity to predict, throngs of people flock to his abode at Gobbler's Knob every year, including a great number of your Butler County constituency. Thus, the Indictment is something of an anomaly in that, as recently as February 2, 2013, dozens, if not thousands, of Butler County, Ohio residents crossed state lines to witness Punxsutawney Phil make his annual prediction and to avail themselves of the festivities generated thereby.

Punxsutawney Phil maintains complete innocence and denies any and all accusations made against him. He will appeal the Indictment and, in the absence of an immediate retraction and public apology, has further authorized the undersigned to commence a civil action in the Jefferson County, Pennsylvania Court of Common Pleas for defamation against any and all potentially liable parties. You should be advised that Punxsutawney Phil is not a “hog without means” as he maintains close ties to many friends and acquaintances who are financially well-to-do. For example, as a result of his starring role in the movie *Groundhog Day* in 1993, Punxsutawney Phil forged lifelong and loyal friendships with the lesser supporting cast including Bill Murray, Andie MacDowell and Chris Elliot. It is believed that Punxsutawney Phil has already been in contact with Mr. Murray, Ms. MacDowell and Mr. Elliot, all of whom allegedly pledged to “have his back” should legal action be necessary.

Thus, it is in your best interest, Mr. Gmoser to immediately cease and desist from pursuing the preposterous prosecution that you have proposed, to retract any and all defamatory allegations that you have made against our client and to immediately and publicly apologize for said transgressions.

Thank you and we look forward to your compliance with the very reasonable demand set forth herein.

For the Firm,



Todd B. Nurick, Esquire  
Brian M. Andris, Esquire

**P.S. Disclosure and Disclaimer:** The contents of the foregoing correspondence are obviously intended as satire and should in no way be interpreted as legally, factually or even realistically true or accurate by any party or parties. Prosecutor Gmoser and Mr. Samenow are believed to be of high repute. Prosecutor Gmoser is not, in reality, a “rogue” and Mr. Samenow is not actually in the “chain of publication” referenced above as there can be no such chain as it relates to the “rights” of a groundhog which species is not afforded the same or even similar rights as those guaranteed by the United States Constitution or the laws of the Commonwealth of Pennsylvania. Thus, the foregoing correspondence is tongue-in-cheek. It is also unknown whether Bill Murray, Andy MacDowell and/or Chris Elliot ever actually met Punxsutawney Phil. Even less is known as to whether he/she would contribute financially to a civil action brought by a groundhog.

BMA/ns  
Enclosure

cc: Punxsutawney Phil Sowerby (*via hand delivery at Gobbler’s Knob*)  
Todd B. Nurick, Esquire (*via email only w/out enclosure*)  
Jason Samenow, The Washington Post (*via email only w/out enclosure*)

**IN THE COURT OF COMMON PLEAS  
BUTLER COUNTY, OHIO**

STATE OF OHIO

Plaintiff

vs.

PUNXSUTAWNEY PHIL

Defendant

CASE NO. DIRECT

INFORMATION

STATE OF OHIO,  
COUNTY OF BUTLER, SS:

In the Year 2013

*I, Michael T. Gmoser, the Prosecuting Attorney of this County, say by way of information that:*

COUNT ONE

**MISREPRESENTATION OF EARLY SPRING**

On or about February 02, 2013, at Gobbler's Knob, Punxsutawney Phil did purposely, and with prior calculation and design, cause the people to believe that Spring would come early. Contrary to the Groundhog day report, a snowstorm and record low temperatures have been and are predicted to continue in the near future, which constitutes the offense of MISREPRESENTATION OF EARLY SPRING, a Unclassified Felony, and against the peace and dignity of the State Of Ohio.

SPECIFICATION: The people further find and specify that due to the aggravating circumstances and misrepresentation to the people that the death penalty be implemented to the defendant, Punxsutawney Phil.

  
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MICHAEL T. Gmoser  
PROSECUTING ATTORNEY