

IN THE COURT OF COMMON PLEAS
DAUPHIN COUNTY, PENNSYLVANIA

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DAUPHIN COUNTY, PENNSYLVANIA

IN RE: : SUPREME COURT OF PENNSYLVANIA
: 6 M.D. MISC. DKT. 2008
THE TWENTY-EIGHTH STATEWIDE :
: DAUPHIN COUNTY COMMON PLEAS
INVESTIGATING GRAND JURY : NO. 10 M.D. 2008
:
: NOTICE NO. 4

FINAL ORDER OF COURT AUTHORIZING THE RELEASE
AND PUBLIC DISEMINATION OF GRAND JURY REPORT NUMBER 1
INVOLVING RECOMMENDATIONS TO THE GENERAL ASSEMBLY WITH
FOOTNOTE EXPLANATION

AND now this 24th day of May, 2010, pursuant to 42 Pa.C.S.A. § 4552¹ and having

¹ § 4552. Investigating grand jury reports

- (a) **General rule.**- Any 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.
- (b) **Examination by court.**- The judge to whom such report is submitted shall examine it and the record of the investigating grand jury and, except as otherwise provided in this section, shall issue an order accepting and filing such report as a public record with the court of common pleas established for or embracing the county or counties which are the subject of such report only if the report is based upon facts received in the course of an investigation authorized by this subchapter and is supported by the preponderance of the evidence.
- (c) **Sealed report.**- Upon the submission of a report pursuant to subsection (a), if the supervising judge finds that the filing of such report as a public record may prejudice fair consideration of a pending criminal matter, he shall order such report sealed and such report shall not be subject to subpoena or public inspection during the pendency of such criminal matter except upon order of court.
- (d) **Appeal from refusal to file.**- Failure of the supervising judge to accept and file as a public record a report submitted under this section may be appealed by the attorney for the Commonwealth to the Supreme Court in the manner prescribed by general rules.
- (e) **Authorization of response by nonindicted subject.**- If the supervising judge finds that the report is critical of an individual not indicted for a criminal offense the supervising judge may in his sole discretion allow the named individual to submit a response to the allegations contained in the report. The supervising judge may then in his discretion allow the response to be attached to the report as part of the report before the report is made part of the public record pursuant to subsection (b).

examined Report No. 1 of the Twenty-Eighth Statewide Investigating Grand Jury which has made multiple recommendations which it believes will improve the structure and operation of the Pennsylvania General Assembly; the Court finds that the release of the report at this time will not prejudice the fair consideration of any pending criminal matters. The Court also finds that the report is based upon facts received in the course of an investigation authorized by the Investigating Grand Jury Act and is supported by a preponderance of the evidence. The Court further finds that pursuant to its interim order dated April 23, 2010, (which Order is attached hereto) the one individual that the report was critical of chose to file a response; and such was received on May 19, 2010. A copy of the response will, as requested by Ms. Runk, be attached to this report and made part of the public record.²

In consideration of the foregoing, the Court finds the contents of this extraordinary report, prepared at the direction of a unique body of citizens, should not lay fallow beyond the time which the Court deemed appropriate; and that its immediate release is clearly in the public interest.

It is hereby ORDERED and DIRECTED that:

1. Both of the Orders of Court dated April 23, 2010 and May 20, 2010, along with the 34 page Report Number 1 of the 28th Statewide Investigating Grand Jury, attachments and response should be docketed in the Dauphin County Clerk of Courts Office. The Clerk of Court is authorized to provide copies of all of the aforesaid documents to anyone who

² With the exception of the aforementioned individual, this report does not criticize, expressly reference or impliedly inculcate any individual who was presented (indicted) by this or any prior Grand Jury. However out of an overabundance of caution, this Court decided to not release the report until after the conclusion of the trial pending before Honorable Richard Lewis. Similarly, this Court chose to not release the report until after the one specific person criticized had the opportunity to respond, and the Court intentionally set the date for release subsequent to the primary election. A careful reading of the report reveals that its content and specific recommendations are “systemic” and not critical of or favoring any political party. Rather its recommendations are directed to the structure and operation of the entire General Assembly.

requests such, after payment of any lawful fee for copying.

2. A copy of this report shall be expeditiously forwarded to the Honorable Ronald Castille, Chief Justice, who approved the empanelment of the Grand Jury. It is further ORDERED AND DIRECTED, in accordance with the implied request of the Grand Jurors who made their recommendations for legislative, executive or administrative actions; that the aforesaid Orders and Report shall also be provided to:

- a. The Honorable Edward G. Rendell, Governor of Pennsylvania;
- b. The leadership of the Pennsylvania Senate and House of Representatives. Specifically in the Senate, Joseph B. Scarnatti, Dominic Pileggi, Robert J. Mellow and in the House Keith R. McCall, Todd A. Eachus and Samuel H. Smith. The Court respectfully requests the aforesaid leadership to facilitate the provision of a copy of the Grand Jury report to all of the elected members of the Senate and House.
- c. Gretchen A. Mundorff, Esquire, President of the Pennsylvania Bar Association and the Honorable James Gardner Collins, Chairman of the Pennsylvania Bar Associations Internal State Constitutional Review Commission.³

³ In my order I characterize the contents of grand jury report number 1 as extraordinary. Actually, one of my first thoughts when I read the report was the line uttered by the broadcaster in the satirical movie Network – “I’m mad as hell and I’m not going to take this anymore.” However, I found this jury to be an astute and reflective group of men and women and saw this report “if not its substantive content,” coming early on. I believe the circumstances surrounding the issuance of this report should be developed to enhance its credibility and weight.

On the day of their empanelment, March 24, 2008, the jury of 23 plus 10 alternates hopefully having overcome their shock at having to serve a minimum of one week a month for eighteen months, were sworn as the 28th Statewide Investigative Grand Jury. At that time, I charged the jury on the law that was to guide them in their deliberations. After explaining the importance of secrecy, I told them their primary role is to listen to evidence and determine if there is probable cause (sufficient evidence) to charge (issue a presentment) or not charge someone with a crime. I explained that it is not their duty to decide whether someone is guilty, or not guilty, and noted that the much higher burden as to guilt (beyond a reasonable doubt) is to be decided by a Petit Jury. In addition, at the conclusion of my charge, I added

that the grand jury at any time, by a majority vote, may submit to me a report concerning part or all of the matters under inquiry.

I have been a grand jury judge approximately seven years and it is my observation that generally such reports are the rare exception. Yet, this is the third report I have authorized for release. The first recommended that the method of selection of grand jurors be modified. Prior thereto, six of our 67 counties were selected at random to sit in Harrisburg or Pittsburgh. Such random selection resulted in the need to house and transport jurors across the state. Besides costing the taxpayers a large sum of money, jurors were reluctant to be away from their homes for a full week at a time. I sent the report (which was endorsed by Attorney General Corbett) recommending regional selection with the grand jury sitting at three different locations (Harrisburg, Pittsburgh and Norristown) to Chief Justice Cappy. He appointed, now Chief Justice Castille, to chair a committee to review the recommendation. To my amazement and pleasure, within a few months we had a new rule. Such has not only made the responsibility of a grand jury judge in selecting a fair and representative cross section of the community easier, (most jurors now can go home each night) but it saves our taxpayers approximately \$500,000 a year in lodging, transportation, and meal expenses.

The second report recommended that grand jurors (if they so choose) can opt out of future jury service. Presently, the current law only allows current jurors to be excused for three years if they have served three or more days on any jury (petit or grand). 42 Pa.C.S. § 4503(a)(2). Needless to say, most jurors when they are summoned, are shocked when they learn they must serve a minimum of one week for eighteen months and possibly up to 24 months. This time, Chief Justice Castille sent the report to Senator Greenleaf and Representative Caltagirone (chairs of the Senate and House Judiciary Committee). Again, to my pleasant surprise, within a short time a bill allowing discretionary exemption was introduced by Representative Will Gabig. I am told the likelihood of passage is good.

It would be easy to be glib and suggest my belief that Chief Justice Castille will not be able to so easily facilitate the recommendations in this report. In fact, I suspect he and his peers on the Supreme Court (who may have to rule on any potential constitutional changes) will do little beyond reading the report. However, I write further in the hope of persuading the Legislature that this grand jury's recommendations are theirs alone, are both sincere and serious, and have an early and solid foundation in fact.

I am bound by 42 Pa.C.S. § 4552 as to the release of this report, and am satisfied the statutory criteria have been met. However, I am so impressed with the work of these men and women, that within the confines of secrecy (which I decide but of course am answerable to a higher body) I am going to be specific in explaining the genesis of this report:

1. This jury was extraordinary in its inception by nature of the fact that (unlike other grand juries hearing testimony from witnesses on what usually entails 60-70 different cases involving organized crime or public corruption), their focus was primarily limited to one notice. In effect they only heard from witnesses about what has been characterized as "BonusGate," and other relevant issues that arose out of such, that arguably implicated both malfeasance and misfeasance in the Pennsylvania General Assembly.
2. Grand Jurors, unlike petit jurors, have the right to ask questions. While most of the questions were related to the particular person or caucus being investigated, many seemed focused on about what was going on in the legislature, especially as it impacted their pocketbooks.
3. Such, I submit, was the genesis of this report.

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4. Also, many subpoenaed witnesses, both immunized and not, had a lot to say in response to jurors' inquiries about the internal operation of the legislature.
 5. I received notes from the grand jury foreman requesting information that was collateral but relevant to the criminal investigation extant. For example, I was asked to explain or asked to have someone explain:
 - a. The constitutional convention process
 - b. The difference between a voter referendum and constitutional convention
 - c. A breakdown of the state budget – total dollars, mandated versus discretionary, WAM, and salaries. Clearly, the use/misuse of public monies was a recurring theme.
 - d. Explain the grant request process
 6. Based on the foregoing, and similar inquiries, the Office of Attorney General arranged for the testimony of Professor Allan Rosenthal. Professor Rosenthal at his testimony on July 23, 2009, in response to the question by Deputy Attorney General James Reeder "Professor tell these folks who you are" indicated the following. "I'm a political scientist by training. I teach at Rutgers University, the State University of New Jersey. My career has been as a student of state legislatures. I've studied legislatures for 40 years, written about them, taught about them and consulted with legislatures around the country. As a disclaimer, I kind of like legislatures and the legislatures I've met I kind of have had great respect for. This doesn't mean that I have met every legislator, or I like every legislator, but I think these institutions around the country have done a pretty good job in representative democracy. It's not easy. I think for the most part legislators take the job seriously and try to do it right as they see right. That's not to comment on the situation you're looking into in Pennsylvania, but it's just to give you an idea of where I'm coming from. Currently, I'm serving as the chairman of the Joint Legislative Committee on Ethical Standards. I have written a lot of books on state legislators. I have received awards for my work and I received an award from the National Conference of State Legislators."
 7. Towards the end of our session, the grand jury requested time, separate from the ongoing criminal investigation, to discuss "their report." Their request was granted.
 8. Near the expiration of their 18 month term, the grand jury was asked to extend six more months. Such required the acquiesce of a majority of the 23 permanent grand jurors. Such requests are often denied by Grand Juries weary from their extended service. Grand jury votes are secret. However, in my discretion (and given the limited nature of the revelation, and the rationale for revealing such) I note the vote was 23-0 to extend. In my experience, that was both extraordinary and unprecedented. From the foregoing, I infer these fine citizens wanted to be heard, and also wanted to be involved in a matter they deemed important to the public good.

In consideration of the foregoing, I would respectfully submit that this grand jury is a serious minded group of citizens. In my view the grand jury will not be satisfied with non substantive window dressing and/or sound byte utterances; regarding the concerns set forth in their report.

Finally, while I arguably may have gone on much longer than necessary to justify the release of this report, there is one area where I am going to tender my own recommendations. While such may be presumptuous, however, akin to the grand jury report and recommendations, I am hopeful they may facilitate the public interest and welfare as well as the ongoing investigation.

The very first grand jury recommendation on page 31 of the report is "that tax payer funded political caucuses be eliminated." I concur with that recommendation. For what it's worth (admittedly

little) I, like professor Rosenthal, do not agree with some of the recommendations, including the recommendation for term limits.

However, the political caucus recommendation directly impacts one of my roles as a grand jury judge and has been a significant legal issue in this case. I previously authored and published a redacted opinion involving the inapplicability of what was characterized as legislative privilege. That privilege was not asserted by any individual legislator, but rather by a political caucus in opposition to my authorizing the seizure of boxes of evidence which were reportedly being destroyed in anticipation of the newly initiated "BonusGate" investigation. I found that assertion of privilege to be without merit. One of the primary responsibilities of the Supervising Judge of the Grand Jury is to decide all legal questions arising out of the grand jury inquiry. I note, the legislation creating the grand jury is relatively new and there is little case law interpreting the act or decisions of the grand jury judges. The individual grand jury judge is often charting new ground. I have authored several opinions in this and other cases in support of, and in opposition to, the interest of both the Office of Attorney General and the respective person being investigated. However, I could find no case law on how to deal with a caucus corporate entity. That entity, and the nuances of such, came in conflict with another important responsibility of the grand jury judge. That responsibility is to ensure that the work of the grand jury not be improperly impeded or delayed by dilatory tactics. Finally, it is always the responsibility of the Judge to ensure orders of court, which include subpoenas, are complied with. Such implicates the question of contempt as well as collaterally the expenditure of taxpayer monies when there is unjustified noncompliance or delay regarding such orders. Admittedly, the depth and breadth of the subpoenas and documents sought, reviewed by opposing counsel, and ultimately, if in some cases belatedly, was overwhelming to both Office of Attorney General and counsel for the caucus, as well as other counsel for various parties.

In my view, this investigation has been delayed by the ill defined and arguably unaccountable caucus system. It is my observation that the caucus system has been used as both a sword and shield by both parties.

Both the Democratic and Republican caucus are aware of my views on this. Such has been often stated on and off the record. As I have bluntly stated, "who the hell is the caucus." If requests for documents pursuant to a subpoena *duces tecum* (i.e. emails, letters, invoices, etc) are not forthcoming, and there is no valid reason for such, the court is stymied by who should be held in contempt and/or what sanctions should be utilized.

By way of illustration, the most dramatic moment of my 23 years as a judge, arose out of an alleged subpoena non-compliance proceeding. Frank Fina, the Chief Deputy Attorney General in charge of the Public Corruption/"BonusGate" investigation, did an extensive *in camera* (as authorized by law) proffer in support of the contempt proceeding. Thereafter, in open court, in the presence of opposing counsel, Mr. Fina summarized such with his request I enter a contempt citation against leaders of the caucus. The proceeding became so loud and adversarial that I had to recess because the court reporter could not keep up with the rapid fire exchanges.

While that matter was ultimately resolved, I make the following specific recommendations to the General Assembly:

1. If the caucus system is not amended, then it should be statutorily explicit that if it is determined the caucus is the holder of documents that are improperly being withheld, the court has the authority to impose any fine it deems appropriate on any member(s) of the leadership of the caucus. Such would not be paid out of taxpayer subsidized caucus monies, but out of the individual funds of the caucus, House or Senate member(s), or employee(s) who the court found responsible for non compliance. Otherwise, in effect, the taxpayers would be subsidizing non compliance and thereby frustrate the grand jury investigation and search for the truth. Because of separation of powers concerns, the Grand Jury Judge's order

should be stayed pending expedited review (as is already the case with the review) by the Pennsylvania Supreme Court. Such does not mean to suggest the Court does not have the inherent authority to impose an appropriate contempt sanction including incarceration on an individual leader of the caucus. In fact, as to the matter referenced above, if the dispute had not been “amicably” resolved, the court was considering the imposition of a substantial fine on the caucus until there was full compliance. Where I was “stymied” was on how such could be paid without the cost in effect being borne by the taxpayers.

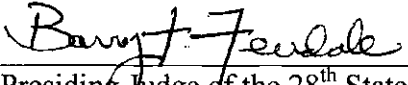
2. The obstruction of justice statute should be amended to provide a separate section or statute that focuses on interference with a grand jury inquiry. Also, such should be classified as a more serious felony. The current obstruction of justice statute, 18 Pa.C.S. § 5102, is only a misdemeanor of the second degree with a maximum penalty of two years. A review of our, and many other state obstruction of justice statutes and case law, seems to suggest such are more focused on interfering with the trial portion of the justice system. However, even in those cases, in many states, the penalty is much higher than in Pennsylvania.
3. During my review of other state statutes, I also noted several had a separate official misconduct and/or obstructing governmental operations statute. By way of example, both Illinois and Indiana have official misconduct statutes that are felonies. As a courtesy, I have enclosed a copy of an overview of those state statutes.
4. Finally, despite the aforementioned comments/recommendations, I acknowledge the need for deference and sensitivity to the separation of powers doctrine. Additionally, unlike many, I do not consider the appellation politician a pejorative term. In my view it is akin to the misuse of the quote by Shakespeare in Henry the VI (“let’s kill all the lawyers”). Like Professor Rosenthal, I concur most politicians (and lawyers) are honorable hard working public servants. I share the sentiments of Professor Rosenthal who at the very beginning of his testimony (here again I exercise my discretion as to concerns about revealing testimony before a grand jury) in noting his non prejudicial comments as a preface to his testimony. Professor Rosenthal stated:
 - a. I’ve been an advocate of legislatures as institutions and I’ve worked with them for such a long career. I am one of the few people in the United States that is not a legislator, on the legislative staff, or maybe a lobbyist who actually likes legislatures. I understand and I recognize that most people are fairly cynical about them and critical of them. I disagree with that position but I understand that most people take it and I understand why they take it.

At the beginning of this explanation for the release of a report, I noted my first reaction was the citizen grand jury was “mad as hell and not going to take it anymore.” Having reread the report and recommendations numerous times, I have come to the conclusion a different aphorism may be more reflective of the recommendations tendered in the report. Whether biblical or based on the admonition to physicians, the grand jury’s admonition to the legislature may be “Heal Thy Self.” While aspirational, and perhaps not likely to occur, I believe the effort (perhaps armed with a copy of the report and the book Profiles in Courage) is a worthy endeavor. Failing such, I trust the matters of concern outlined by the grand jury in report number 1 will be addressed by the special bar association committee, the next Governor and/or ultimately, as it should, by the fellow citizens of the Commonwealth of Pennsylvania.

With the exception of the foreman (who signed the report) I conclude by only identifying the additional grand jurors by their occupation which reflects their diverse and broad-based background. I would note several of the grand jurors wondered whether, when, and under what circumstances, I would authorize the release of this report. Such has now occurred and I am proud to have served with these fine group of citizens. They are:

<u>Juror Number</u>	<u>Job Description</u>
1	Office Clerk
3	Used Car Salesperson
4	Information Technology Technician
5	Jerry W. Sterner-Retired Plant Mgr/Senior Mgt Consultant
6	Group Coordinator
7	Research Technician
8	Retired Supervisor
9	Chemical Engineer
10	Teacher
11	Retired
12	Tax Collector
13	IT Logistics Analyst
14	Retired
15	Sheet Metal Mechanic
16	Machine Operator
17	School District Paraprofessional
18	Retired
20	Highway Department
21	Grand Jury Secretary-Business Analyst
23	Data Management
Alt 1	Food Service Worker
Alt 2	Wastewater Operator
Alt 3	Clerk
Alt 4	Production Worker
Alt 6	Coach Driver
Alt 7	Shipping Supervisor
Alt 8	Department Manager
Alt 9	Material Clerk
Alt 10	Retired Auditor

BY THE COURT:

 S.J.
Presiding Judge of the 28th Statewide
Investigating Grand Jury

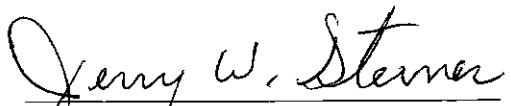
**IN THE COURT OF COMMON PLEAS
DAUPHIN COUNTY, PENNSYLVANIA**

IN RE: : **SUPREME COURT OF PENNSYLVANIA**
: **6 M.D. MISC. DKT. 2008**
THE TWENTY-EIGHTH STATEWIDE :
: **DAUPHIN COUNTY COMMON PLEAS**
INVESTIGATING GRAND JURY : **NO. 10 M.D. 2008**
:
: **NOTICE NO. 04**

TO THE HONORABLE BARRY F. FEUDALE,
GRAND JURY SUPERVISING JUDGE:

REPORT NO. 1

We, the Twenty-Eighth Statewide Investigating Grand Jury, duly charged to inquire into offenses against the criminal laws of the Commonwealth, have obtained knowledge of such matters from witnesses sworn by the Court who have testified before us. We make the following findings of fact upon proof by a preponderance of the evidence and issue these recommendations for legislative, executive or administrative action in the public interest. By an affirmative majority vote of the full investigating Grand Jury, so finding with not fewer than twelve concurring, we do hereby make this Report to the Court.


Foreperson, Twenty-Eighth Statewide
Investigating Grand Jury
DATED: February 24, 2010

28TH STATEWIDE INVESTIGATING GRAND JURY
REPORT NUMBER 1

I. INTRODUCTION

We, the members of the Twenty-Eighth Statewide Investigating Grand Jury, having received evidence pertaining to matters of the Commonwealth of Pennsylvania, pursuant to Notice of Submission Number 4, do hereby make the following findings of fact and recommendations.

This Grand Jury investigation initially was commenced before the 25th Statewide Investigating Grand Jury in August of 2007 as the result of public allegations of potential public corruption and criminal misconduct within the Pennsylvania General Assembly. Upon the expiration of that Grand Jury, this investigation was transferred to the 28th Statewide Investigating Grand Jury in March of 2008. As part of that corruption investigation, this Grand Jury has issued Presentments against 24 individuals employed by or associated with either the House Democratic Caucus or House Republican Caucus, including five current or former state representatives.¹ This Grand Jury also has investigated the Senate caucuses; that aspect of the investigation, as well as certain aspects of the investigation involving the two House caucuses, remains ongoing and will continue even after the expiration of this Grand Jury.

Both in this investigation and in the preparation of this Report, the Grand Jury has continued to be guided by the words of the Pennsylvania Superior Court when it stated that an elected representative is “not allowed to direct state-paid employees under his authority to conduct campaign/or fundraising work, during state paid time, for his

¹ The 25th Statewide Investigating Grand Jury issued a Presentment against an additional state representative, Sean Ramaley. The Presentment issued by the 26th Statewide Investigating Grand Jury included individuals who were also the subjects of a Presentment issued by this Grand Jury.

personal benefit.” Such actions secure “a private monetary advantage” for an elected representative because, “by having state employees work for him on his campaign and/or fundraising tasks while they were being paid by the state, he obtained the benefit of free campaign work funded by the taxpayers.”

Commonwealth v. Habay, 943 A.2d 732, 738 (Pa. Super. 2007).

While mindful of the ongoing investigation into the corruption of the Pennsylvania General Assembly, this Grand Jury has prepared the following Report, which demonstrates the systemic problems that permeate the Pennsylvania House of Representatives. The Grand Jury stresses that this Report is not based solely on the activities of those charged in this investigation, but rather on an overall view of the General Assembly.

II. HISTORICAL AND NATIONAL CONTEXT

In the words of Professor Alan Rosenthal,²

Pennsylvania, the Legislature, exists in a time warp. Whereas in the other 49 states, time seems to have changed and things have changed. Pennsylvania is still living back then. It’s still doing what all the states did in the 1950s and 1960s.

I don’t understand why. It’s not that you don’t have any communication systems here. You do hear about the outside world. There is television. It is pretty inexcusable, I think, if Legislators who are responsible for their institution, if they don’t understand – they passed the laws that prohibit this [use of public funds for campaign work]. I didn’t. You didn’t. They passed the law[. F]or them to be expected to obey the laws[] is not expecting a lot of your Legislature.

² Alan Rosenthal is a Political Science professor at Rutgers University. He has studied state legislatures for the past 40 years. As part of that process, Professor Rosenthal has taught about state legislatures, has consulted directly with state legislatures around the country, and has had numerous books published on topics related to state legislatures. His work has earned him accolades from, among other sources, the National Conference of State Legislatures. His testimony before this Grand Jury was highly instructive.

Pennsylvania's General Assembly, which predates even the First Continental Congress, is tasked by Article III of the Pennsylvania Constitution to consider and pass legislation, including "paying out public moneys." The unfortunate tendency of the legislative branch of government to expand itself beyond those core functions was understood by every state, including Pennsylvania, but that tendency was limited by the part-time nature of the state legislatures. For more than 150 years of our country's history, all of the state legislatures in this nation were part-time bodies, consisting of citizens who would gather for approximately two or three months every two years. The legislators would meet, take care of their core functions of making necessary laws and agreeing on budgetary issues, and return to their private pursuits. For their limited public service, they received limited compensation, or in few instances, no compensation.

Beginning in the 1960's, however, there was a general push toward more "professional" legislatures. State legislators in many states began to meet for longer periods of time, to hire more and more staff, and to increase the salaries of both the state legislators and the staff. Today, in many states, including California, Massachusetts, Illinois, Ohio, and Pennsylvania, the legislatures have become officially or practically full-time, with corresponding increases in the cost of maintaining the legislatures and staff.³

³ California sports the highest paid legislators in the nation at an approximate average salary of \$130,000 per year. No other state comes close to that. However, at \$78,314.66 per year (excluding perks and other benefits), Pennsylvania's rank-and-file legislators enjoy one of the highest salaries in the country. Various members of the legislative leadership make ever more money, up to \$122,254.19 per year for the Speaker of the House (excluding perks and other benefits). By contrast, state legislators in New Hampshire are paid \$100 per year. State legislators in New Mexico receive no annual salary; rather, they receive "per diem" distributions for the days they are in session, and nothing more. The state legislators in both New Hampshire and New Mexico are part-time.

Many witnesses who testified before us, and indeed many of those against whom the Grand Jury issued Presentments in this investigation, claim in essence that “no one’s guilty because everybody does it.” In terms of the practice of using state time and resources to do campaign work, the Grand Jury concedes that this is far from a new phenomenon. In the 1950’s and 1960’s, campaigning on state time was not abnormal according to Grand Jury testimony. At that time there also were few, if any, rules or regulations to prevent, discourage, or outlaw such behavior. However, as of the 1970’s and beyond, using state resources to do campaign work has been and is illegal in nearly all states, including Pennsylvania. The failure of the General Assembly to follow laws, which were in fact passed by the General Assembly, and which have been in place for nearly 40 years, demonstrates once again the truth of Professor Rosenthal’s observation of the “time warp” surrounding the Pennsylvania General Assembly.

To be sure, Pennsylvania’s has not been the only “time warp” state legislature in the country. In the 1980’s, the New York state legislature became mired in controversy for putting people on its payroll who did nothing but campaign work. Once revealed, there was public outcry and the practice was severely condemned. In connection with that scheme, the District Attorney of Manhattan charged the New York Senate minority leader with 564 counts of conspiracy, grand larceny, and other related charges. Shortly thereafter, in New Jersey there was a scandal that came to be referred to as “computer-gate,” under which Democrats in the state legislature were using their state computers for campaign activity. There, although the practice was severely condemned through a Grand Jury investigation, New Jersey law was too ambiguous to proceed with criminal charges at the time the conduct occurred. Not long after “computer-gate”, members of

the legislative staff in Washington state were caught doing campaign work on state time; there were no criminal charges but various individuals and entities were fined \$300,000. In each of those instances, after the use of state resources to perform campaign work was revealed, the respective legislatures took reactive steps to clean up their acts and eradicate such behavior. Despite those public condemnations in several states, similar activity was uncovered in Wisconsin in the early 2000's. In this instance, criminal indictments and convictions of legislators followed.

Professor Rosenthal described to the Grand Jury his reaction to the Wisconsin convictions:

My reaction there, quite honestly, was, what's wrong with these [legislators]? Don't they pay attention? This can't be done anymore. Yes, it was done in the 1950s and the 1960s. It was okay. But our standards have changed. The laws have changed. What [the public] demand[s] has changed, whether [the legislators] like it or not.

Accordingly, for anyone paying attention to the legislative landscape in the United States (or, according to Professor Rosenthal, anyone who has a television), it has been clear for decades that the use of public resources for political campaigns is wholly inappropriate, and in most cases, illegal. The Grand Jury is unaware of any "time warp" defense to criminal charges involving the use of state resources for campaign work; in any event, ignorance of the law is no excuse.

Simply put, under the Pennsylvania Constitution the Pennsylvania General Assembly exists to debate and enact laws. Both elected legislators and all of those individuals who work in the General Assembly are tasked with carrying out that basic task by representing the interests of their constituents.

Since the founding of our Commonwealth, however, these basic principles have been obscured, then ignored, and finally cast aside or buried by the overwhelming majority of the elected members and staff of the Pennsylvania House Democratic Caucus and House Republican Caucus. “Serving the constituents” metastasized into “serving myself may ultimately serve the constituents.” For some, including each and every one of those individuals charged in Presentments issued as part of this investigation, the mantra was perverted further into simply “serving myself.” This perversion of the basic principle of any legislature manifested itself in a variety of ways during this investigation. Some, but by no means all, of those perversions are listed later in this Report.

III. TAXPAYER-FUNDED POLITICAL CAUCUSES MUST END

One “time warp” issue raised by Professor Rosenthal is the creation, use, and maintenance of taxpayer funded partisan political caucuses in Pennsylvania. As currently constituted, each political party has a caucus in each chamber of the Pennsylvania General Assembly (House Democratic Caucus (HDC), House Republican Caucus (HRC), Senate Democratic Caucus (SDC), and Senate Republican Caucus (SRC)). These entities exist in the shadows of the law⁴, as the years go by eating up more and more taxpayer resources with little to no tangible benefit to the taxpayers of Pennsylvania. The taxpayers of Pennsylvania elect individual members to public office, not an amorphous creature called a “caucus” that consumes resources, is answerable to a select few, and delivers no tangible benefits to the taxpayers.

⁴ Even assuming for purposes of argument that Pennsylvania law allows the funding of partisan political caucuses, the Grand Jury recommends that such an antiquated system be abolished immediately. Other states, including but not limited to Virginia, function perfectly well without taxpayer funded political caucuses.

A. Number of Legislative Employees

Evidence presented to the Grand Jury established that there are currently 2805 staff people employed by the Pennsylvania General Assembly.⁵ The Grand Jury received conflicting information as to whether or not this number included contract employees. With 253 elected members (50 senators and 203 representatives), that equates to, on average, more than 9 support staff individuals for each state representative and 17 staff for each state senator. Despite the best efforts of numerous witnesses before the Grand Jury, nobody was able to justify such a large number of employees for this body. On the contrary, there was a virtual consensus among those who have worked inside the Legislature for many years that the number of employees could be significantly cut with no measurable decrease in the ability of each Member to perform his legislative duties and to serve his constituents.

For example, one former high-ranking member of the HDC told the Grand Jury that out of 911 staffers employed by his caucus,⁶ only about 350 of those employees were truly necessary for the daily operations of the Caucus. In other words, more than half of the HDC employees currently paid by the taxpayers are superfluous. The Director of Staffing and Administration for the HDC from 2001 through 2007 went even further, testifying that “You could probably operate, assuming it is a full-time Legislature, having hearings, you could probably operate on one-quarter to one-third of the staff if properly organized....” Another witness, who was employed by the HDC from 2001 through 2008, concurred with these assessments, testifying that “there is way too much staff, way

⁵ This number would include both Harrisburg and the hundreds of district offices. The House of Representative employs, excluding interns, 1918 staffers (HDC 911 staffers, the HRC 797 staffers, and 210 bipartisan staffers). The Senate employs, excluding interns, 887 staffers (SDC 317 staffers, SRC 403 staffers, and 167 bipartisan staffers).

⁶ This figure would include the district offices, as well as Harrisburg.

too many legislative assistants, way too many people that do duplicative work in all caucuses.”

These unnecessary employees, supported on the backs of Pennsylvania taxpayers, have resulted, at least in part, from a total lack of accountability in the process of adding staff in the Pennsylvania House of Representatives. For example, as accepted practice, if an elected member of the HDC wishes to increase the staffing level of his district office, he simply goes to the Leader and requests more staff, without having to provide any justification. In some instances, the reason for requesting additional staff members has been to compensate for the incompetence of existing staffers. Instead of firing those incompetent workers, “you would just add more people.” The Grand Jury is appalled by this practice.

This disturbing overstaffing does not exist solely within the HDC. The head of District Operations for the HRC estimated, when he testified before the Grand Jury, that anywhere from 20 to 25 percent of the legislative staff could be cut without significantly disrupting the core functions of the Legislature. Moreover, former House Republican Caucus staffer William Tomaselli, conducted a salary study. Mr. Tomaselli told the Grand Jury that of the 475 staffers employed by the HRC at the time of the salary study, approximately 289 would actually be needed to conduct legitimate legislative work.⁷ In other words, 186 HRC employees could be eliminated without adversely affecting the legislative process. According to Mr. Tomaselli, those excess 186 employees cost the taxpayers approximately \$11.2 million per year in salary and benefits.

⁷ These numbers refer only to the HRC employees in Harrisburg. The HRC also employs over one hundred additional staffers in its district offices throughout the Commonwealth.

The Grand Jury finds that the vast overstaffing problem is linked to the patronage system within the Legislature, which in turn is a symptom of the “time warp” in which the Pennsylvania General Assembly operates. Many staff members are hired at the request of a specific elected member, regardless of the prospective staff member’s qualifications (or utter lack of qualifications). Predictably, many of those individuals are not capable of performing the tasks for which they were hired. However, due to the nature of how they came into the job (i.e., through a politically powerful patron), the staff member’s position is secure, in fact often more secure than the positions of staff members who are more adept at their jobs but are less adept at navigating the shifting allegiances of a “time warp” patronage system. As a result, if the necessary work functions are to be accomplished, competent staff members must be hired in addition to the patronage hires. That process, over time, has contributed to the existence of hundreds of legislative employees who, although paid by the taxpayers to do legislative work, do campaign work on state time or with state resources, or other non-legislative work, instead of legitimate legislative work.

According to Mr. Tomaselli, one of the main problems is that much of the work done by legislative employees is either not legislative work or is duplicative of work done by another state agency or other employees of the Legislature. This theme was echoed by numerous witnesses before the Grand Jury. Some examples, by no means an exhaustive list, will help to illustrate the problem.

1. **Print Shops**

As set forth in more detail elsewhere in this Report, within each house of the General Assembly, there are two “caucuses,” one for each of the two major political parties. Each of the four caucuses operates as an independent entity, which maintains its own staff and, to a large extent, purchases its own equipment. While it is understandable that certain partisan issues are best addressed within a single caucus, many other issues are inherently nonpartisan, and therefore do not need to be held separate among the different caucuses.

For example, the Grand Jury received substantial evidence outlining the fact that since approximately 1980 the HRC and the HDC each maintain separate print shops.⁸ Each print shop, in turn, has its own staff and its own set of equipment. The equipment that each caucus has purchased for its individual print shop has cost millions of taxpayer dollars. The equipment required for each of the print shops is, in all meaningful respects, identical. By way of example, the HRC print shop contains four Shinohara presses, two of which were purchased at a cost of approximately \$550,000 - \$800,000 each; the other two are leased for a substantial monthly rate. Recently, the HRC also purchased a digital press, which cost approximately \$1 million. The HDC print shop contains 2 Shinohara presses, 2 newer Ryobi presses, and 4 digital Xerox machines.⁹ Whether motivated by a perceived need or simply a desire to not be outdone, when one of the House print shops acquires a particular piece of equipment, the other obtains the same item shortly thereafter. This has resulted in each House print shop containing essentially

⁸ Before that time, the House was served by a bipartisan print shop.

⁹ The equipment referred to here is limited to the most prominent machines for each print shop.

the same equipment, highlighting the fact that each print shop is fulfilling the same basic function as the other.

In terms of cost to the taxpayers, the Grand Jury learned that the combined salaries and benefits for employees of the HRC print shop in 2009 totaled \$1,807,584.40. The cost of supplies and other miscellaneous expenditures during 2009 totaled \$1,460,746, for a total operating budget of \$3,268,330.40. Although the Grand Jury has yet to obtain the exact amount of money expended in connection with the HDC print shop¹⁰, all of the evidence presented to the grand jury suggests that the number of employees, nature of the work, and type and quantity of equipment are basically the same for the HRC and HDC print shops.

While other legitimate purposes could surely be offered, the basic purpose of the legislative print shop is to print brochures, letterhead, stationary, and mass mailings to constituents for the members of the General Assembly.¹¹ There is nothing partisan about this work that would require more than one print shop to serve the entire House of Representatives.¹² To maintain separate print shops for the different caucuses is a gross misuse of public resources. The same work could be effectively accomplished with fewer staff and less equipment if the current HDC and HRC print shops were

¹⁰ That aspect of the investigation, as well as the investigation into the Senate print shop, remains ongoing.

¹¹ The Grand Jury was surprised to learn that the print shops discussed in this Report are not involved in printing or copying any legislation; that work is done in the State Capitol Building.

¹² It is difficult for the Grand Jury to imagine a scenario where a print job would contain material that was not appropriate for any member of the General Assembly, or its staff, to view. Any mailings or print jobs that took on a partisan slant would cross the line from legitimate legislative work to political activity, and would therefore not be appropriate for the publicly funded print shop in any event. The only reason put forth to the Grand Jury for maintaining separate shops was that the elected members typically want their print jobs finished immediately. Presumably, a print shop dedicated solely to one caucus will be more responsive to the requests of the members of that caucus. However, such feelings of individual entitlement among the members of the General Assembly must give way to the public interest. If that means a member must wait an extra 24 to 48 hours for a print job to be completed, so be it.

consolidated into a single entity, accessible to all members of the House. Should the legitimate workload exceed the resources available with a single shift of employees, the Grand Jury recommends a second shift of employees to use the same equipment, not duplicative print shops at the cost to the taxpayers of millions of dollars.

In contrast to the House, the Grand Jury learned that the Senate has one print shop that serves all of its members. That print shop contains, with few exceptions, the same type of equipment as the HDC and HRC print shops discussed earlier in this Report. The Senate print shop operates with a staff of approximately 11 workers. When new employees are hired for the Senate print shop, the hiring process is entirely non-partisan and overseen by the Secretary of the Senate.¹³

2. Information Technology

Similar to the situation with the print shops, the Grand Jury learned that each of the four caucuses maintains its own separate information technology (IT) department. In today's society, the use of computers and associated equipment is commonplace. Not a single person who testified before the Grand Jury gave a credible explanation as to why each caucus needed its own IT budget or IT staff. To the contrary, the Grand Jury finds that in fact the IT budget for the Pennsylvania House Democratic and Republican Caucuses was an ideal place to hide "questionable" (i.e. campaign) expenditures from the prying eyes of the taxpayers.

3. PennDOT

Going beyond the ill-advised parsing of non-partisan activities, as just described, the Grand Jury was also made aware of the use of legislative resources for a patently non-

¹³ The Grand Jury received absolutely no information that the operation of the Senate print shop suffers because it serves both Senate caucuses.

legislative function. To the great surprise of the Grand Jury, members of the Legislature have for years taken on the task of serving as an intermediary for constituents with regard to the Pennsylvania Department of Transportation (PennDOT). For constituents who have delayed in updating their vehicle registration, are dealing with a vehicle issue that requires unfamiliar paperwork to be filed, or who simply do not want to wait in line at PennDOT, a trip to their state representative often will serve as a substitute. Members of the legislative staff routinely will complete paperwork for constituents, place phone calls to PennDOT, and often even physically go to PennDOT to expedite the processing of the constituents' paperwork. This "service" is so ingrained that many representatives have one or more staffers in their district office who are designated as the "go to" people for PennDOT issues. Even worse, there are dozens of employees in the Capitol Building in Harrisburg whose sole function is to deal with PennDOT inquiries from constituents.

The House Republican Caucus (HRC) maintains a staff of approximately 20 employees in Harrisburg who deal specifically with PennDOT issues. Based on a study of the numbers from calendar year 2008, it is estimated that the PennDOT-related employees of the HRC process approximately 123,500 pieces of PennDOT work each year on behalf of constituents. The annual cost in salary and benefits for those employees is approximately \$895,500. Although the Grand Jury did not receive the annual cost for the HDC PennDOT operation, the HDC employs 14 full-time staffers whose sole function is to handle PennDOT work received, directly or indirectly, from constituents.¹⁴ The HDC PennDOT unit alone handles approximately 100,000 pieces of PennDOT work

¹⁴ Specifically, there are one (1) "PennDOT Supervisor," three (3) "Assistant PennDOT Supervisors," and ten (10) "PennDOT Specialists."

on an annual basis. A significant portion of that work, the Grand Jury was particularly disturbed to learn, comes from businesses, as opposed to individual constituents.¹⁵

In addition to the HDC and HRC staff dedicated to PennDOT issues, the Grand Jury also has learned that, in order to accommodate the large number of items received from the Legislature, PennDOT has created a separate 35 employee unit dedicated to handling nothing other than the paperwork received from the elected members of the General Assembly. The nature of the work received is, for the most part, routine license and registration renewals, and title work. The supervisor of this specialized unit confirmed that the items they receive from the General Assembly include paperwork from businesses as well as individual citizens. Not surprisingly, nothing about the work performed by this unit within PennDOT suggests that there is any need for state legislators to serve as intermediaries between their constituents and PennDOT.¹⁶ The above figures pertain only to the legislative workers in Harrisburg who are specifically tasked with handling PennDOT-related work; they do not include the employees of the hundreds of district offices who perform PennDOT-related work on behalf of

¹⁵ Businesses, including but not limited to car dealers, paving companies, and bakeries have taken advantage of these legislative resources in order to process their PennDOT paperwork. This reality contrasts with the image of an elderly constituent in a rural part of the state who is unable to complete his or her PennDOT paperwork without taxpayer provided assistance that some witnesses before the grand jury attempted to conjure in order to justify the PennDOT work.

¹⁶ The unit supervisor at PennDOT stated to Office of Attorney General agents that no preference is given to the processing of items received from members of the General Assembly. Furthermore, it was his opinion that using a state representative as an intermediary can sometimes delay the process, as compared to a citizen using an online renewal procedure or mailing their paperwork directly to PennDOT. This point of view conflicts with other testimony heard by the Grand Jury, which sought to justify the existence of PennDOT workers within the General Assembly by suggesting that they were able to expedite the processing of constituent paperwork. The Grand Jury does not need to resolve this conflict, as our overall conclusion is the same under either scenario: the processing of PennDOT items is not a proper legislative function.

constituents. None of this work, of course, has any legitimate connection to legislative duties.¹⁷ Yet, it is performed by legislative staff, at taxpayer expense.

PennDOT is a publicly created and funded entity that has the exclusive responsibility of processing all required paperwork pertaining to driver licensing, vehicle registration, and other issues pertaining to vehicles registered in Pennsylvania. Through the advent and development of advanced technology, it has become increasingly easier and faster for Pennsylvania drivers and vehicle owners to perform routine functions such as renewing a license or vehicle registration. For those items of paperwork that are more complicated to the average person, PennDOT has employees who are paid to answer questions and assist with the completion of required forms. If a citizen is in any way dissatisfied with PennDOT's resources, there are also private entities, such as AAA or other "tag services," that offer assistance with virtually every facet of the car ownership experience to their members.¹⁸ All of the foregoing leads to the inescapable conclusion that the Legislature has no legitimate justification for using its taxpayer-funded resources to assist constituents with their PennDOT issues.¹⁹ This practice must end immediately.

¹⁷ Indeed, the only "justification" offered by those witnesses who testified before the Grand Jury was that this service was designed to engender good will between the elected member and his constituents, thereby increasing the chance that said constituents would vote for that elected member in the future. This is precisely the type of politically-motivated activity that the public should not be forced to fund. Even if this work had purely altruistic motivations, it is not an appropriate use of legislative resources. The taxpayers already fund PennDOT, and should not be on the hook for such a duplication of services through the General Assembly.

¹⁸ These organizations are in at least as good of a position as a legislative staff member to assist a person with issues related to PennDOT. The critical difference is that they are paid by their individual members, who choose to spend their money for that purpose.

¹⁹ Of course, any elected official who feels strongly about continuing this service to his constituents would be free to fund such activity out of his campaign coffers, or his private funds.

B. Human Resources - Partisan vs. Non-partisan Staff

In another return to Professor Rosenthal's "time warp," currently most legislative staff members in Pennsylvania would best be characterized as "partisan." In other words, they are hired by one particular caucus in order to do the work of that caucus, and that caucus only. In the vast majority of cases, that means that the staff members have the same political leanings as the members of the caucus for which they work. Moreover, the hiring of "partisan" staff by each individual caucus means more opportunities for "ghost employees," i.e. employees paid by the state to perform campaign work or in fact to perform no work at all in exchange for political contributions or other campaign favors.²⁰ This partisan hiring of staff also occurs because of a severe imbalance between the power of an individual member and the power of leadership members of a particular caucus.

An excellent example of the peril to the taxpayers posed by partisan staffing is the former HRC Director of Human Resources, Bernadette Runk. Ms. Runk, who at the time of her grand jury testimony had 29 years of experience in the HRC Human Resources Department, told the Grand Jury, in part, that "[t]here are no organizational charts within the House Republican Caucus."²¹ In later testimony, when asked about whether she had any information from any source about the Republican IT Department awarding "comp time" for working on election days, Ms. Runk invoked her Fifth Amendment right against self-incrimination and refused to answer the question. Despite her paucity of

²⁰ One witness told the Grand Jury of an incident in 2007 when he was called into Republican House Minority Leader "office complex." According to this witness, shortly after taking office the Leader gave the witness a list of 8-10 names and demanded to know, "Who are they?" The Grand Jury recommends that, to the extent possible, all hiring for the General Assembly be performed by a bipartisan Human Resources Department.

²¹ The Grand Jury notes that multiple other witnesses who testified after Ms. Runk were able to produce any number of organization charts related to the HRC.

knowledge of basic Human Resources issues in the HRC, at the time of her retirement from the HRC Ms. Runk was paid \$112,840 annually by the caucus.²²

The Grand Jury finds that there is no legitimate legislative need for the overwhelming majority of staff employed by the Pennsylvania General Assembly to be hired on a partisan basis. If the majority of staff was bipartisan (as occurs in many states), there would be no need to have duplicative Human Resources staffs for both the HDC and HRC.

The Grand Jury also finds that other, currently partisan departments should or could be combined without any detriment to the taxpayers. For example, what purpose does a partisan Information Technology staff serve except to burden the taxpayers with more state employees than necessary? While there may be a limited need for partisan staff in each caucus,²³ the Grand Jury finds that one way to stop the “time warp” culture of the General Assembly is to remove the ability to hire staff from the select few individuals who compromise the leadership of the HDC and HRC.

IV. FULL-TIME vs. PART-TIME LEGISLATURE

As previously noted, state legislators in Pennsylvania are among the highest paid in the country. Their base annual salaries of \$78,314.66 (excluding perks and other benefits) would clearly correspond to a full-time position. Yet, the evidence presented to

²² Following her retirement on June 30, 2009, Ms. Runk was immediately re-hired by the HRC as a consultant at her previous rate of pay (\$4,340 bi-weekly) but only required to work 3 days per week instead of 5 days per week. Ms. Runk also was allowed to collect her pension annuity during this period of time. In justifying this consultancy, the HRC leader “declares this situation [Runk’s retirement] an emergency since RUNK’s departure will increase the workload of the remaining members of the Human Resources Department, such that it will severely impair service to the public.” The Grand Jury notes that having no plan of succession should not qualify as an “emergency.”

²³ Other departments to be considered for consolidation under bipartisan staffing would include Public Relations and Research, which employ approximately 179 people in both the HDC and HRC. Specifically, the HDC employs 31 people in the Legislative Communications Office and 22 people in the Legislative Research Office, while the HRC employs 57 people in the Public Relations Office and 69 people in the Research Office. The Grand Jury heard conflicting testimony about whether these departments should be partisan or non-partisan.

this Grand Jury has failed to convince us that the amount of legislative work performed in this Commonwealth demands a full-time legislature.²⁴

Among other evidence, this Grand Jury reviewed statistics, which were retrieved directly from the General Assembly's own website, reflecting the number of days per year that the Legislature is in session. For calendar years 2006 through 2009, the House spent the following total number of days in session: 2006 – 72; 2007 – 115; 2008 – 72; 2009 – 147.²⁵ In 2006, 2007, and 2008, the House had no session days in the month of August. In 2006 and 2008, the House also had no session days in the month of December. During the 5-month period of January through May of 2010, the House calendar lists 30 active session days. While we recognize that some legitimate legislative work occurs on days that the House is not officially in session, it is certainly not enough to bring the total number of days worked into the full-time arena. These numbers simply do not appear to justify full-time status.

Moreover, the nature of the activities undertaken on some of the session days would belie any contention that full-time status is appropriate. One of the more egregious examples presented to the Grand Jury involved the House “pretending” to do legitimate work by having floor debate on bills that had already passed the House. In other words, full floor debate occurred on certain bills during the preceding year. Those bills were put to a vote and passed the House, meaning that they were ready to move to the Senate for consideration. However, at the beginning of the next year's session,

²⁴ Certainly, if hours dedicated to political campaigns were factored in, our state legislators would not only be worthy of full-time status, many would also be entitled to overtime pay. However, as reflected in the Presentments issued by this body, campaign work is not to be counted as legitimate legislative work.

²⁵ These figures include both regular and “special” session days. The typical full-time employee works approximately 248 days per year (calculated at 5 days per week, 52 weeks per year, minus 12 holidays).

instead of forwarding those bills to the Senate, they were placed back onto the floor of the House for additional debate after the vote. This procedure was clearly designed to give the appearance of working, when in reality no legitimate work was being done.²⁶

On top of the foregoing, this Grand Jury notes that the Legislature, despite the efforts of many hard-working staffers and rank-and-file legislators, has essentially been operating as a part-time entity for years. In the eyes of this Grand Jury, it is beyond dispute that numerous legislative employees have for years spent an enormous amount of time working on political campaigns when they were supposed to be performing their legislative duties. Moreover, many state legislators also hold other full-time or part-time jobs, including members in various law firms throughout the Commonwealth or as directors of corporations. The Grand Jury finds that it necessarily follows that these legislators' dedication to legislative duties has not been, under any reasonable definition of the term, a full-time affair. This unfortunate reality leads to the inescapable conclusion that legislative duties do not require the full-time attention of the people tasked with accomplishing them. All campaign work on legislative time must be eliminated and this will result in a surplus of legislative work hours unless rapid, meaningful change occurs. The Grand Jury believes that moving to a part-time legislature would eliminate that

²⁶ The Grand Jury also received information about a HRC scheme for elected members to acquire additional *per diem* payments by periodically adding extra "token" days to the schedule of House session days. During the relatively few weeks when the House is in session each year, the members typically meet in Harrisburg on Monday, Tuesday, and Wednesday (sometimes only Tuesday and Wednesday) to vote on pending legislation, engage in floor debates, and conduct other legitimate functions of the legislature. The Thursdays of those session weeks are included on the schedule as "NV," or "non-voting" session days. As the name would imply, no voting occurs on those days. On those Thursday mornings, the tables in the large House Republican Caucus room at the Capitol are filled with donuts, eggs, and/or fruit plates, and a sign-in sheet is made available. Any member who appears in the caucus room and does nothing more than sign the sheet will receive full *per diem* payment for that Thursday.

surplus, as well as save the taxpayers of this Commonwealth an enormous amount of money in salaries and expenses for lawmakers and legislative staffers.

The concept of a part-time state legislature is not revolutionary. As described above, prior to the 1960's, the state legislatures were all part-time. Most were citizen legislatures that met for approximately 60 days every two years. It has only been in the past 50 years that state legislatures have begun to expand their numbers and, correspondingly, their salaries and other costs to the taxpayers. Even today, the states that have full-time, nearly year-round legislatures are in the small minority; only about 8 to 10 state legislatures would fit that definition. For the vast majority of states, their legislatures are limited, either constitutionally or otherwise, to approximately 2 to 3 months per year in session. Eliminating California, which has the highest paid state legislators, the average annual salaries for state lawmakers are in the range of \$35,000 to \$45,000. Were Pennsylvania to shift back to a part-time legislature with commensurate part-time salaries, it would stand to save in excess of \$10 million per year in salaries alone.²⁷ Such a shift could also reduce the number of staff required, resulting in additional savings to the taxpayers.

V. APPROPRIATION OF RESOURCES

The Grand Jury heard a great deal of disturbing testimony about the budget process as currently constituted in the state. The Grand Jury recognizes that the investigation is continuing, and so refrains from a detailed review of the testimony which it has heard.

²⁷ This number is clearly just a bare estimate, assigning an equal current salary of \$80,000 to each of the 253 state legislators, and then calculating the difference between that total and the total if each state legislator earned \$40,000 for part-time status. Although the figure is imprecise, it is instructive on the level of savings that could be achieved by reverting to part-time status.

Under the current structure in the General Assembly, the Leadership of a particular partisan caucus doles out virtually all resources to members, who buck the Leadership at their severe peril. The Grand Jury also learned during the investigation that the current system involves each Caucus receiving a lump sum in the budget, which is then divided up by the Leadership of each Caucus however they see fit. The current system creates excessive power and influence in leaders over rank and file members, which skews the entire process of representative democracy – members who should be representing the interests of their constituents instead focus on pleasing their party leaders in order to curry favor that can be parlayed into additional resources being directed to them and by extension, their constituents. While the Grand Jury recognizes that not every member of Leadership may abuse this power, the Grand Jury finds as a fact that many members of Leadership in both the House Democratic and Republican caucuses clearly have; moreover, such a “time warp” system of doling out taxpayer resources is rife with the potential for abuse, and must be eliminated.²⁸

The Grand Jury also finds that the current *per diem* payment system employed by the General Assembly is a combination of an elected member’s sense of entitlement and the “time warp” way of abusing taxpayer monies. Under the current system, members of the General Assembly receive a *per diem* payment for daily expenses (currently \$163).²⁹

²⁸ Another “time warp” system ripe for abuse is the so-called “Special Leadership Accounts,” which are accounts funded every year with millions of taxpayer dollars and controlled solely by the Leadership of each caucus. While that aspect of the Grand Jury investigation remains ongoing, without compromising the ongoing investigation the Grand Jury notes that it favors either eliminating the Special Leadership accounts entirely or, at the minimum, the disbursements from such accounts should be a matter of public record and open to public inspection.

²⁹ The Grand Jury learned that there are two ways for a member to calculate the *per diem* payment: the “High Low *Per Diem* Rate” and the “GSA Maximum *Per Diem* Rate.” Most legislators opt for the “High Low *Per Diem* Rate”, which allows \$163 per day (\$111 for lodging and \$52 for food) everywhere in the Commonwealth but in Philadelphia all year and Hershey between June 1 and August 31 (\$258 per day, with \$193 for lodging and \$65 for food).

This *per diem* payment is above and beyond their taxpayer-funded salary and other benefits and perks. The Grand Jury finds that legislative member's *per diem* payments should be eliminated or, at the minimum, reduced to actual expenses per day (all verified by receipts) with a relatively low cap on the total reimbursement allowed per day.

In addition, the Grand Jury makes the following recommendations without fear of compromising any ongoing investigations:

1. The budget planning process must be open and transparent.
2. The budget must contain, to the extent possible, all line item expenditures.

For example, a line item for "operation of the House [Democratic or Republican] Caucus" would be unacceptable.
3. All votes related to budget or appropriations matters must be by roll call vote; voice votes on such important matters rob the taxpayers of representative democracy and foster the maintenance and growth of the "time warp" culture.
4. If the budget is not passed by the constitutionally mandated deadline, all state legislators and the governor must forfeit all pay and *per diem* payments until the budget is passed. Any forfeited pay and/or *per diem* payments cannot be recouped in any way.
5. At the end of a budget year, all unused budget money must be returned to the state treasury.³⁰ Any such unused budget money could then be used for the next budget cycle or for emergency public works projects.

³⁰ This includes money currently kept in the "rainy day fund" for each caucus, which the Grand Jury recommends should be eliminated or, at a minimum, be reduced to an amount not to exceed one week of caucus operations.

A. Staff for Each Representative

The Grand Jury has concerns about testimony it received regarding the wide disparity between the number of staff and number of district offices for each representative. Each representative's district is configured every ten years (a process called reapportionment) so that each legislative district across the Commonwealth contains approximately the same number of individuals within each legislative district. Currently, each legislative district should serve approximately 60,000 residents.

However, even though each district contains approximately the same number of residents, the resources for each district vary widely, often by the legislator's seniority and/or leadership role. For example, most rank-and-file legislators have one district office and a small district office staff (usually 2 to 3 people). By contrast, during the height of his power Speaker John Perzel had (and continues to have) two district offices. Rep. H. William DeWeese had (and continues to have) four district offices. Some rank-and-file legislators have four full-time district offices; other legislators have multiple full-time district offices and multiple part-time, satellite district offices. All of these district offices, whether full-time or part-time, are paid for with taxpayer dollars.

The Grand Jury recognizes that even though legislative districts contain approximately the same number of residents, some districts (especially those in the western part of the Commonwealth) are much larger geographically than districts in Philadelphia. However, the Grand Jury finds that rather than have the taxpayers fund multiple district offices, legislators from geographically larger districts could (and should) have meetings or office hours in other venues, such as town halls, libraries,

schools (after regular school hours), or senior centers. In addition to saving taxpayers money by having to fund only one legislative district office per district,³¹ such a plan also has the virtue of having the legislator go to the people of his or her district, rather than having the constituent always going hat-in-hand to the seat of political power.

The Grand Jury finds that each representative should have one taxpayer funded district office and equal staff for that district office.³² As Professor Rosenthal noted, “[M]embers ought to be entitled, by virtue of being elected Legislators, to certain resources. All resources should not be distributed by the caucuses and by the party leaders in the caucuses.”

VI. TRANSPARENCY IN USE OF PUBLIC FUNDS

The Grand Jury finds that the lack of transparency regarding the General Assembly (especially regarding all expenditures of public funds) is one of the major reasons that the General Assembly remains in a “time warp.” Many of the Grand Jury’s recommendations either explicitly or implicitly support vastly increased transparency into the functioning of the legislature.

In addition to those recommendations discussed elsewhere in this Report, another way to increase transparency in the process would be to institute a ban on using the same vendors for both legislative and campaign purposes. Such a ban would greatly increase

³¹ The Grand Jury recognizes that currently each state representative receives a \$2,300 per month “Chief Clerk’s Allowance” for district office leases, utility services, and vehicle expenses except automobile insurance. The vehicle expenses cannot exceed \$650 per month of the \$2,300 per month. The “Chief Clerk’s Allowance” does not include staff salaries or benefits. In addition, each state representative receives a \$20,000 per year “Member’s Accountable Expense Allowance.” While such funds may be sufficient to fund additional district offices, the Grand Jury notes that just because the taxpayer’s money may be available does not mean it needs to be spent on additional district offices when other, less expensive alternatives are available.

³² The Grand Jury recognizes that the Leadership of a particular caucus (should taxpayer funded caucuses remain) may require some additional staff in Harrisburg to accommodate additional responsibilities which come with a leadership position.

the difficulty in having the legislative contract subsidize the campaign contract, as happened with GCR & Associates, Inc. and Aristotle International in the House Republican Caucus.

The Grand Jury also recommends an independent audit of all legislative expenses (including caucus expenses until taxpayer funded caucuses are abolished). This audit is intended to be a full, independent audit, not the “does the income column match the outflow column” audit performed currently. The results of such an independent audit should be available to the public.

VII. STRUCTURE MUST COMPLEMENT PURPOSE

As clear as it was throughout this investigation that members of the House were using legislative resources for campaign purposes, it was equally clear that certain structural aspects of the system contribute to the temptation to do exactly that.³³ There are some basic components of the legislative system that encourage elected members to focus on keeping their jobs instead of doing their jobs. Most fundamentally, the short duration of a representative’s elected term creates a dynamic that promotes a focus on politicking and re-election as opposed to legislating and serving the needs of one’s district. Accordingly, this Grand Jury would recommend an increase in the length of a state representative’s term from 2 years to 4 years.³⁴

As set by Article II, Section 3 of the Pennsylvania Constitution, a state representative serves for a term of 2 years. Multiple witnesses testified before the Grand Jury that efforts aimed at seeking election, or re-election, to a House seat typically begin

³³ The existence of said temptation in no way excuses the illegal use of legislative resources for campaign purposes.

³⁴ The Grand Jury recommends this change whether the General Assembly remain virtually full-time (as it functions now) or whether it returns to the part-time citizen legislature envisioned by the Founders and used in the majority of states in the United States today.

in earnest approximately one year before the general election. Moreover, logic dictates that, in order to accumulate adequate funds, efforts to raise money for an upcoming political campaign must begin well in advance of the campaign itself. Consequently, fundraising efforts for a newly elected state representative who intends to seek re-election would necessarily have to begin at or very close to the beginning of his 2-year term of office. Active campaigning for the next election would then commence when he was only about half-way through his term. If successful in his re-election bid, the whole process would immediately start over again, and repeat itself as long as the member intended to keep seeking re-election. Without exaggeration, then, a state representative is essentially always running for re-election. That feverish pitch to the election cycle cannot help but interfere with a representative's ability to focus his attention on doing the job to which he was elected. Without question, the current structure instead directs the representative's focus to trying to make sure he keeps that job.

The most apparent way to ensure that a representative has time to settle in and focus on the work of the people between elections is to lengthen the time between one election and the next. Therefore, instead of the existing 2-year term for state representatives, the Grand Jury believes a 4-year term would be more appropriate.³⁵ To lessen the damage which a craven legislator may do during a longer, four year term, the Grand Jury also recommends that a referendum process be implemented to allow for recall of a legislator before the expiration of his or her term. In addition to focusing on the increase in the length of a representative's term, the Grand Jury also recommends

³⁵ Not having received sufficient evidence or testimony pertaining to the state Senate, this Grand Jury makes no comment on whether their terms should be altered. By constitutional provision, a state senator sits for a term of 4 years.

amending Article III, Section 2 of the Pennsylvania Constitution to provide a term limit for all elected members of the General Assembly.³⁶

VIII. MISCELLANEOUS

In addition to the above areas, the Grand Jury finds that some other issues merit some mention in this Report.

1. **Compensatory time (“comp time”)** – As detailed in the Presentments issued in connection with this ongoing investigation, the Grand Jury finds that “comp time” was awarded on a haphazard basis, recorded (if at all) on a more haphazard basis, and is a process that is too subjective in practice to be a valid legislative tool. The Grand Jury recommends that all “comp time” in connection with the Pennsylvania General Assembly be eliminated effective immediately.

2. **Leave without pay (either with or without benefits)**³⁷ – As detailed in the Presentments issued in connection with this ongoing investigation, the use of “split time”³⁸ by the House Democratic Caucus and House Republican Caucus cannot be seen as anything other than a taxpayer subsidized inducement to do campaign work. The Grand Jury recommends that if a legislative staffer takes leave to work on a campaign, that staffer receives absolutely no legislative money, including but not limited to pay, any benefits (including but not limited to medical benefits), and no contribution to any retirement plans. Every expense for a campaign volunteer or campaign staffer should be paid by the campaign, not by the taxpayers of the Commonwealth of Pennsylvania.

³⁶ The Grand Jury finds that the “time warp” culture of the General Assembly is perpetuated and enhanced by a lack of term limits.

³⁷ This recommendation is not directed at other non-campaign related types of unpaid leave, including but not limited to leave under the Family and Medical Leave Act.

³⁸ As noted elsewhere, “split time” when a particular staffer would go on leave without pay and start splitting time between being paid by the caucus and a campaign committee.

3. **HDCC/HRCC Restrictions** – Many, if not most, of the recommendations in this Report deal with actions that should be undertaken by the General Assembly. However, the Grand Jury finds that the House Democratic Campaign Committee (HDCC) and House Republican Campaign Committee (HRCC) during the period under investigation were accomplices³⁹ in the misuse of taxpayer resources. In the House Republican Caucus, for example, John Hanley was simultaneously the Director of District Operations and the Executive Director of the HRCC.

At a minimum, both the HDCC and the HRCC should ban any legislative staffer from their respective premises during the normal legislative work day. This includes the mysterious and ever-shifting “lunch hour”, which according to Grand Jury testimony occurred anytime during the day and was in fact most often a “cover” for doing campaign work while being paid by the taxpayers.

The Grand Jury further finds that the campaign entities should not use any vendors or law firms that are utilized or in any way under contract to any part or subpart of the General Assembly.

4. **Ethics training** – The Grand Jury was shocked time and again as witness after witness testified that until recently they received no formal training on ethics. To the extent there was any discussion on what constituted legitimate legislative or illegal campaign work, many staffers either learned “on the job” or by being told not to discuss certain activities because they were illegal. This systemic failure to provide legislative staffers with even a basic knowledge of these types of activities is an abject failure of the caucus leadership and Human Resources departments. The Grand Jury finds that there

³⁹ Whether these accomplices were willing or unwitting is part of the ongoing investigation in this case.

should be standardized written ethics policies for the entire General Assembly and annual updates to the initial ethics training.

IX. LIMITED CONSTITUTIONAL CONVENTION

One of the Grand Jury's largest concerns related to this Report is that the General Assembly will remain in its "time warp" and meddle with, obfuscate, ignore, or kill every recommendation noted in this Report. Moreover, the Grand Jury has determined beyond any doubt that the General Assembly, if left to its own devices, is utterly incapable of reforming itself.⁴⁰ Simply put, those in power in the General Assembly have too much to lose by enacting the reforms contemplated in this Report and have proven themselves unable to perform their constitutional function: to serve the needs of their constituents, not themselves.

The Grand Jury believes that the only way to stem and begin to solve the systemic problems in the Pennsylvania General Assembly is to have many of the issues in this Report addressed by a limited constitutional convention. Some of the recommendations in this Report (for example, the increase in the term of a state representative and the implementation of term limits) can only be effected by amending the Pennsylvania Constitution. However, the Grand Jury recommends that the constitutional convention be limited in scope to avoid having the convention "hijacked" to address other concerns pushed by special interests.

Ironically, under the Pennsylvania constitution and Pennsylvania law the only body that can call a constitutional convention is the Pennsylvania General Assembly. In the strongest possible way, the Grand Jury calls upon the General Assembly to leave its

⁴⁰ While each House caucus has made changes since the start of the Grand Jury investigation, the Grand Jury finds that these reforms fail to address the underlying, "time warp" problems noted in this Report.

“time warp” of public corruption and pass legislation to create a limited constitutional convention to address the rampant public corruption of the General Assembly. The people of the Commonwealth of Pennsylvania, whom the elected legislators are supposed to serve, deserve no less.

X. RECOMMENDATIONS

After considering the testimony of over a hundred witnesses associated with the Pennsylvania General Assembly, including, but not limited to, witnesses with first-hand knowledge of the daily operations of both the House Democratic Caucus and the House Republican Caucus, as well as hundreds of thousands of pages of documentary evidence, this Grand Jury concludes, without any hesitation, that the current operational structure and ingrained procedures of the Pennsylvania House Democratic and Republican Caucuses are irretrievably broken and in desperate need of systemic change. The current hierarchy of the House is designed to bestow the vast majority of the power on a select few, to the detriment of the other members of the House, as well as the public.

Based on the above findings of fact, a majority of the Twenty-Eighth Statewide Investigating Grand Jury makes the following recommendations for legislative, executive or administrative action in the public interest.

- 1) The Grand Jury recommends that taxpayer funded political caucuses be eliminated.
- 2) With regard to a more equal distribution of power between the rank-and-file members and Leadership members in the House of Representatives, the Grand Jury recommends the following:
 - a) That the “Special Leadership Accounts” be eliminated or, at the minimum, the disbursements from such accounts should be a matter of public record and open to public inspection.
 - b) That a routine full, independent audit of all legislative expenses be conducted with the results of such an audit available to the public.

- c) That each state representative should have one taxpayer funded district office and equal staff for that district office.
 - d) A “Rank-and-File Member’s Bill of Rights” that explicitly states what each state representative should receive, including but not limited to equal staffing and office resources for the member’s district office.
- 3) The Grand Jury recommends that legislative members’ *per diem* payments should be eliminated or, at the minimum reduced to actual expenses per day (verified by receipts) with a relatively low cap on the total reimbursement allowed per day.
- 4) The Grand Jury recommends that the General Assembly become a true part-time legislature, with commensurate reductions in legislative salaries, staff, and staff salaries.
- a) The Grand Jury recommends a limited constitutional convention to increase the length of a state representative’s term from 2 years to 4 years.
 - b) The Grand Jury recommends a limited constitutional convention to provide term limits for all elected members of the Pennsylvania General Assembly.
 - c) The Grand Jury recommends that legislative hiring and staffing be performed by a bipartisan Human Resources Department based upon standardized, published job descriptions.
 - d) The Grand Jury recommends that the HDC and HRC print shops be combined.
 - e) The Grand Jury recommends that the HDC and HRC print shops, IT departments, and Human Resources departments be made bipartisan with commensurate reductions in staffing.

- f) The Grand Jury recommends that all legislative “PennDOT specialists” be eliminated.
 - g) The Grand Jury recommends that no staff or elected member of the General Assembly engage in “PennDOT” work as described in this Report.
- 5) With respect to staffing practices, the Grand Jury recommends the following:
- a) All “compensatory time” in connection with the Pennsylvania General Assembly should be eliminated. If an hourly staffer is required to work extra time, the staffer should be compensated with overtime pay.
 - b) The Grand Jury recommends that if a legislative staffer takes leave to work on a campaign, that staffer receives absolutely no legislative money, including but not limited to pay, any benefits (including but not limited to medical benefits), and no contribution to any retirement plans.
 - c) The Grand Jury recommends that there should be standardized written ethics policies for the entire General Assembly and annual updates to the initial ethics training administered by a bipartisan ethics oversight committee (at least until partisan political caucuses are eliminated).
- 6) With respect to the state budget, the Grand Jury recommends the following:
- a) The budget planning process must be open and transparent.
 - b) The budget must contain, to the extent possible, all line item expenditures. For example, a line item for “operation of the House [Democratic or Republican] Caucus” would be unacceptable.

- c) All votes related to budget or appropriations matters must be by roll call vote; voice votes on such important matters rob the taxpayers of representative democracy and foster the maintenance and growth of the “time warp” culture.
 - d) If the budget is not passed by the constitutionally mandated deadline, all state legislators and the governor must forfeit all pay and per diems until the budget is passed. Any forfeited pay and/or per diems cannot be recouped in any way.
 - e) At the end of a budget year, all unused budget money must be returned to the state treasury. Any such unused budget money could then be used for the next budget cycle or for emergency public works projects.
- 7) The Grand Jury recommends a ban on using the same vendors for both legislative and campaign purposes.
- 8) The Grand Jury recommends that all campaign entities (including but not limited to the HDCC and HRCC) should ban any legislative staffer from the campaign entity’s premises during the normal legislative work day, including during the “lunch hour.”

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

IN RE: : **SUPREME COURT OF PENNSYLVANIA**
: **6 M.D. MISC. DKT. 2008**
THE TWENTY-EIGHTH STATEWIDE :
: **DAUPHIN COUNTY COMMON PLEAS**
INVESTIGATING GRAND JURY : **NO. 10 M.D. 2008**
:
: **NOTICE NO. 4**

PRELIMINARY FINDINGS AND INTERIM ORDER

AND now this 23rd day of April, 2010, pursuant to 42 Pa.C.S.A. § 4552¹ and having examined Report No. 1 of the Twenty-Eighth Statewide Investigating Grand Jury which has made multiple recommendations which it believes will improve the structure and operation of the Pennsylvania General Assembly, the Court finds that the report is critical of one individual who was not indicted for a criminal offense; the Court believes as a matter of fundamental

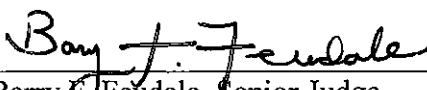
¹ § 4552. Investigating grand jury reports

- (a) **General rule.**- Any 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.
- (b) **Examination by court.**- The judge to whom such report is submitted shall examine it and the record of the investigating grand jury and, except as otherwise provided in this section, shall issue an order accepting and filing such report as a public record with the court of common pleas established for or embracing the county or counties which are the subject of such report only if the report is based upon facts received in the course of an investigation authorized by this subchapter and is supported by the preponderance of the evidence.
- (c) **Sealed report.**- Upon the submission of a report pursuant to subsection (a), if the supervising judge finds that the filing of such report as a public record may prejudice fair consideration of a pending criminal matter, he shall order such report sealed and such report shall not be subject to subpoena or public inspection during the pendency of such criminal matter except upon order of court.
- (d) **Appeal from refusal to file.**- Failure of the supervising judge to accept and file as a public record a report submitted under this section may be appealed by the attorney for the Commonwealth to the Supreme Court in the manner prescribed by general rules.
- (e) **Authorization of response by nonindicted subject.**- If the supervising judge finds that the report is critical of an individual not indicted for a criminal offense the supervising judge may in his sole discretion all the named individual to submit a response to the allegations contained in the report. The supervising judge may then in his discretion allow the response to be attached to the report as part of the report before the report is made part of the public record pursuant to subsection (b).

fairness that said individual should, if the individual so chooses, be able to submit a response to the specific critical assertions submitted in the report.

It is therefore ORDERED and DIRECTED that an appropriate agent of the Office of Attorney General shall personally and discreetly serve a certified copy of this order on the person identified by the Court with the attachments and redactions the Court deems appropriate; to allow the individual criticized in the report to file a response, if the individual chooses to do so. Proof of service and date shall be provided to the Court, and any response shall be filed and held under seal with the appropriate Clerk of Courts of the Dauphin County Court of Common Pleas, no later than Wednesday, May 19, 2010. Any response filed will in the Court's discretion be reviewed for a determination whether such response should be attached to the report before the report is made part of the public record.

BY THE COURT



Barry F. Feudale, Senior Judge
Supervising Judge of the 28th SWIGJ

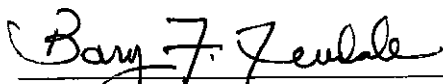
IN THE COURT OF COMMON PLEAS
DAUPHIN COUNTY, PENNSYLVANIA

IN RE: : SUPREME COURT OF PENNSYLVANIA
: 6 M.D. MISC. DKT. 2008
THE TWENTY-EIGHTH STATEWIDE :
: DAUPHIN COUNTY COMMON PLEAS
INVESTIGATING GRAND JURY : NO. 10 M.D. 2008
:
: NOTICE NO. 4

ORDER

AND NOW, this 23rd day of April, 2010, it is hereby ORDERED,
that the **Preliminary Findings And Interim Order**, be filed under seal with the Clerk of Courts
of Dauphin County until further Order of this Court.

BY THE COURT:



BARRY F. FEUDALE
Supervising Judge

IN THE COURT OF COMMON PLEAS
DAUPHIN COUNTY, PENNSYLVANIA

IN RE:

THE TWENTY-EIGHTH STATEWIDE

INVESTIGATING GRAND JURY

: SUPREME COURT OF PENNSYLVANIA
: 6 M.D. MISC. DKT. 2008
:

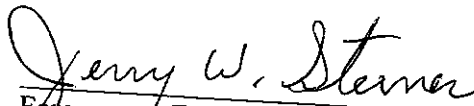
: DAUPHIN COUNTY COMMON PLEAS
: NO. 10 M.D. 2008
:

: NOTICE NO. 04

TO THE HONORABLE BARRY F. FEUDALE,
GRAND JURY SUPERVISING JUDGE:

REPORT NO. 1

We, the Twenty-Eighth Statewide Investigating Grand Jury, duly charged to inquire into offenses against the criminal laws of the Commonwealth, have obtained knowledge of such matters from witnesses sworn by the Court who have testified before us. We make the following findings of fact upon proof by a preponderance of the evidence and issue these recommendations for legislative, executive or administrative action in the public interest. By an affirmative majority vote of the full investigating Grand Jury, so finding with not fewer than twelve concurring, we do hereby make this Report to the Court.


Foreperson, Twenty-Eighth Statewide
Investigating Grand Jury
DATED: February 24, 2010

B. Human Resources - Partisan vs. Non-partisan Staff

An excellent example of the peril to the taxpayers posed by partisan staffing is the former HRC Director of Human Resources, Bernadette Runk. Ms. Runk, who at the time of her grand jury testimony had 29 years of experience in the HRC Human Resources Department, told the Grand Jury, in part, that “[t]here are no organizational charts within the House Republican Caucus.”²¹ In later testimony, when asked about whether she had any information from any source about the Republican IT Department awarding “comp time” for working on election days, Ms. Runk invoked her Fifth Amendment right against self-incrimination and refused to answer the question. Despite her paucity of

²¹ The Grand Jury notes that multiple other witnesses who testified after Ms. Runk were able to produce any number of organization charts related to the HRC.

knowledge of basic Human Resources issues in the HRC, at the time of her retirement from the HRC Ms. Runk was paid \$112,840 annually by the caucus.²²

²² Following her retirement on June 30, 2009, Ms. Runk was immediately re-hired by the HRC as a consultant at her previous rate of pay (\$4,340 bi-weekly) but only required to work 3 days per week instead of 5 days per week. Ms. Runk also was allowed to collect her pension annuity during this period of time. In justifying this consultancy, the HRC leader "declares this situation [Runk's retirement] an emergency since RUNK's departure will increase the workload of the remaining members of the Human Resources Department, such that it will severely impair service to the public." The Grand Jury notes that having no plan of succession should not qualify as an "emergency."

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

IN RE: : **SUPREME COURT OF PENNSYLVANIA**
: **6 M.D. MISC. DKT. 2008**
THE TWENTY-EIGHTH STATEWIDE :
: **DAUPHIN COUNTY COMMON PLEAS**
INVESTIGATING GRAND JURY : **NO. 10 M.D. 2008**
:
: **NOTICE NO. 4**

AFFIDAVIT OF BERNADETTE RUNK

1. My name is Bernadette Runk, and I retired in 2009 from my position as Director of Human Resources for the Pennsylvania House Republican Caucus ("Caucus").

2. My career with the Caucus began in July 1979 when I was hired for a staff position in the Human Resources Department.

3. Over the following 26 years of hard work, I was promoted to positions of increasing responsibility until finally being asked, in 2005, to serve as the Director of Human Resources.

4. When I finally left the Caucus in August 2009, I had devoted over thirty years of my professional life to developing the knowledge and skills needed to handle employment issues of the over 1,000 individuals employed by the Caucus at any given time.

5. My job as Director differed from typical human resource positions in the private sector with a comparable number of employees in that I had only a handful of staff (six, to be precise) to assist me in handling the employment issues of each and every department in the Caucus.

6. Also unlike private-sector positions, I was at the beck and call of every member of the Caucus, which included responding to questions and needs concerning their Harrisburg and district offices, and as Caucus leadership or members changed so did my bosses.

7. I was responsible for hiring, firing, and negotiating employment-related disputes in the Caucus departments and the members' offices, and when members retired I was in charge of finding new positions for their staff.

8. Over the years I handled thousands of complaints, assigned thousands of employees to various positions, and oversaw hundreds of wide-ranging personnel actions.

9. When I retired in 2009, I was making what I considered to be a good salary and one which, according to a survey conducted for the Caucus in 2007, was well within the range of salaries for those with similar jobs.

10. In the spring of 2009, I notified the Caucus that I intended to retire at the end of June (the end of the fiscal year) so that I could spend more time doing volunteer work.

11. Over the following three months I provided periodic reminders that I was retiring on June 30, 2009.

12. Shortly before my retirement, the Caucus asked me to continue working as a contract employee to assist my successor.

13. Because I felt obligated to leave my employer in the best shape possible, I agreed to continue working for a short period of time after my retirement date to assist with my successor's transition.

14. I formally retired from the Caucus on Tuesday, June 30, 2009, and the following day returned to work as a contract employee.

15. My contract with the Caucus did say that I was hired for "emergency" purposes, but it was a standard agreement with standard language that, I have been told, needed to be included so that my pension would not be negatively affected.

16. The contract stated that I would work full time until August 25, 2009, and that I would be paid the same salary that I was making before retiring.

17. The contract also stated that if my assistance was still needed after August 25, it would be for only three days per week.

18. I assume that if I had continued working at the Caucus after August 25 I would have only been paid for the three days that I actually worked and not a full salary, but I do not know because I did not work past August 25.

19. My post-retirement work with the Caucus began on July 1 and ended on August 25, a period of less than two months.

20. During the period that I worked for the Caucus after my retirement, I worked five days a week, did not collect my pension, and did not collect social security.

21. In 2008, prior to my retirement, I was subpoenaed to testify before the Twenty-Eighth Statewide Investigating Grand Jury.

22. At the time that I testified before the grand jury, I did not believe there to be organizational charts in the Caucus.

23. I was never asked by my bosses to create or maintain a Caucus-wide organizational chart.

24. With a staff of only six, I did not have an organizational chart for the Human Resources Department.

25. I did not maintain a Caucus-wide organizational chart because, from my perspective, any such chart would be out-of-date within weeks of its creation since the Caucus' organizational structure was constantly shifting with new positions being created, titles of positions being changed, and people leaving or moving to other positions.

26. Based on my knowledge and experiences in the Caucus, including witnessing the Caucus' internal fluctuations over the past quarter-century, it was, and remains, my opinion that it would have been futile to attempt to maintain a Caucus-wide organizational chart.

27. Also when I testified before the grand jury, I did invoke my right not to respond to a question concerning "comp" time.

28. I was originally more than willing to discuss any issue that might be raised by the Attorney General's office but, unlike some of the other people who testified, I was not invited to meet with prosecutors before my testimony and was never assured by the Attorney General's office that my testimony would not be used against me.


29. Because those assurances were not given to me, prior to going into the grand jury room I was advised by both my counsel and the supervising judge that I had a right not to answer certain questions, including questions that would reveal privileged information or that could elicit a response that may be used against me.

30. Once the proceedings began in the jury room, I found the situation extraordinarily stressful and intimidating, and I became very concerned when I was accused of certain things about which I knew very little.

31. Under those conditions, I welcomed and heeded the advice of my counsel to invoke my right not to answer the question posed to me by the Attorney General's office, and would do so again if ever faced with a similarly intimidating situation.

This affidavit is subject to the penalties for unsworn falsification to authorities under 18 Pa.C.S. § 4904.

May 19, 2010


Bernadette Runk

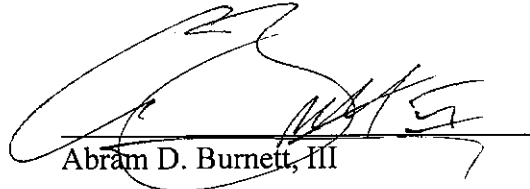
CERTIFICATE OF SERVICE

I certify that I am on this day serving the affidavit upon the person and in the manner indicated below. The manner of service satisfies the requirements of Pa.R.Crim. P. 575-576.

Service by hand delivery:

Frank G. Fina, Esquire
Chief Deputy Attorney General
Office of Attorney General
16 Floor Strawberry Square
Harrisburg, PA 17120

May 19, 2010



Abram D. Burnett, III

K&L|GATES

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May 19, 2010

Via Hand Delivery

Hon. Barry F. Feudale, Sr. Judge
c/o Terri R. Cook
Executive Secretary for the Grand Jury
Office of Attorney General
Appeals and Legal Services Section
16th Floor, Strawberry Square
Harrisburg, PA 17120

RE: Report No. 1 of the Twenty-Eighth Statewide Investigating Grand Jury

Dear Judge Feudale:

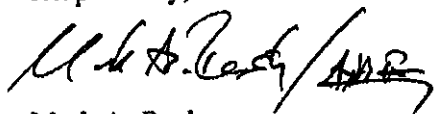
We represent Ms. Bernadette Runk, who provided us with a copy of the Court's April 23, 2010 order allowing her to respond to certain statements made in a report drafted for the Twenty-Eighth Statewide Investigating Grand Jury.

Ms. Runk is grateful to you for the opportunity to review and respond to those statements before they are made public. We have enclosed her response in the form of an affidavit that provides Ms. Runk's perspectives on the events discussed in the report. We hope that you will include Ms. Runk's response with the report and make it a part of the public record, and believe that doing so will serve the interests of justice by providing additional information on a subject that may well be misconstrued by the general public.

If there is anything in Ms. Runk's response that you find objectionable, we respectfully request that you provide her with an opportunity to edit the response to address your concerns.

Again, thank you for providing Ms. Runk with this opportunity.

Respectfully,



Mark A. Rush

Enclosure

cc: Frank G. Fina, Esq.

Alabama: Ala. Code § 13A-10-2 (1994) (obstructing governmental operations)	Class A Misdemeanor
Alaska AS § 11.56.850 (Official Misconduct)	Class A Misdemeanor
Arizona: Ariz. Rev. Stat. § 13-2402 (2001) (obstructing government operations)	class 1 misdemeanor
Arkansas: Ark. Code Ann. § 5-54-102 (Michie 1997 & Supp. 2002) (obstructing governmental operations)	If by use of physical force, class A misdemeanor; otherwise class C misdemeanor
California: Ann.Cal.Penal Code § 96.5 § 96.5. Perversion or obstruction of justice	max 1 year imprisonment
Colorado: Colo. Rev. Stat. § 18-8-102 (1999) (obstructing government operations)	class 3 misdemeanor
Connecticut: C.G.S.A. sec. 53a, et seq. (Witness/juror tampering, hindering prosecution)	Class C and D felonies depending on degree
Delaware: 11 Del.C. sec. 1244 (Hindering Prosecution)	Class A misdemeanor (class G felony if hinder prosecution of felony)
District of Columbia: D.C. Code Ann. § 22-722(a)(6) (2001 & Supp. 2003) (prohibited acts)	3 to 30 years, \$10,000 max. fine, Class A felony
Florida: FSA sec. 838.022 (Official Misconduct)	3rd Degree Felony
Georgia: Ga. Code Ann., § 16-10-1 (Violation of Oath by Public Officer)	1 to 5 years imprisonment
Hawaii: Haw. Rev. Stat. § 710-1010 (1999 & Supp. 2002) (obstructing government operations)	misdemeanor
Idaho: I.C. Sec. 18-1351 (Bribery and Corrupt Influence)	misdemeanor, \$1,000, up to 1 year imprisonment
Illinois: 720 ILCS 5/33-3 (Official Misconduct)	Class 3 felony
Indiana: IC 35-44-1-2 (Official Misconduct)	Class D felony
Iowa: I.C.A. § 721, et seq (Official Misconduct)	Serious misdemeanor or Class D Felony, depending on conduct
Kansas: K.S.A. 21-3902 (Official Misconduct)	Class A misdemeanor
Kentucky: Ky. Rev. Stat. Ann. § 519.020 (Michie 2003) (obstructing governmental operations)	Class A misdemeanor
Louisiana: LSA-R.S. 14:134 (Malfeasance in Office)	up to \$5,000 fine and up to 5 years imprisonment with or without hard labor

Maine: Me. Rev. Stat. Ann. tit. 17-A, § 451 (West 1983) (obstructing government administration) PERJURY???	Perjury?? – Class C Crime
Maryland: Md. Code Ann., Crim. Law § 9-306 (2002) (obstruction of justice)	Misdemeanor, Up to 5 years, \$10,000
Massachusetts: M.G.L.A. 268A § 2 (corrupt gifts, corruption of witnesses, and offers or promises to influence official acts)	Up to \$5,000 fine and up to 3 years imprisonment
Michigan: Mich. Comp. Laws § 750.478a (Supp. 2003) (intimidation, hindering, or obstruction of public officer or employee)	Misdemeanor, Up to 2 years, \$1,000
Minnesota: M.S.A. § 609.43 (Misconduct of Public Officer or Employee)	Up to \$3,000 and 1 year imprisonment
Mississippi: Miss. Code Ann. § 97-9-55 (2000) (intimidating judge, juror, witness, attorney, etc., or otherwise obstructing justice)	1 month to 2 years, \$500
Missouri: Mo. Rev. Stat. § 576.030 (1995) (obstructing government operations)	Class B misdemeanor
Montana: MCA 45-7-401 (Official Misconduct)	\$500 fine, up to 6 months imprisonment
Nebraska: Neb. Rev. Stat. Ann. § 28-901 (1995) (obstructing government operations)	Class 1 Misdemeanor, Statute similar to PA's (based on Model Penal Code Sec. 242.1)
Nevada: Nev. Rev. Stat. 197.190 (2001) (obstructing public officer)	misdemeanor
New Hampshire: N.H. Rev. Stat. Ann. § 642:1 (1996) (obstructing government administration)	misdemeanor
New Jersey: N.J. Stat. Ann. § 2C:29-1 (West 1995) (obstructing administration of law or other governmental function)	Crime of 4 th degree if interfering with investigation or prosecution of crime, otherwise disorderly persons offense. Text of statute seems to be similar to PA, and is similar Model Penal Code 242.1
New Mexico: N. M. S. A. 1978, § 30-23-2 (Paying or Receiving Public Moneys for Services Not Rendered)	Fourth Degree Felony
New York: N.Y. Penal Law § 195.05 (McKinney 1999) (obstructing governmental administration in the second degree)	Class A misdemeanor

North Carolina: N.C.G.S.A. Ch. 14, Subch. VIII, Art. 31 (Misconduct in Public Office)	misdemeanor
North Dakota: N.D. Cent. Code § 12.1-08-01 (1997) (physical obstruction of government function)	Class A misdemeanor
Ohio: Ohio Rev. Code Ann. § 2921.31 (Anderson 2002) (obstructing official business)	Misdemeanor of second degree, if risk of physical harm, felony of fifth degree
Oklahoma: 21 Okl.St. Ann. § 267 (Preventing Officer's Performance of Duty)	misdemeanor
Oregon: Or. Rev. Stat. § 162.235 (1999) (obstructing governmental or judicial administration)	Class A misdemeanor
Pennsylvania: 18 Pa. Cons. Stat. § 5101 (1983) (obstructing administration of law or other governmental function)	Misdemeanor of second degree
Rhode Island R.I. Gen. Laws § 11-32-3 (2002) (obstruction of the judicial system)	Up to 5 years, \$5,000
South Carolina: Code 1976 § 8-13-1520 (Penalties for Ethics, Government Accountability)	misdemeanor, up to 1 year and \$5,000
South Dakota: SDCL § 22-11-3 (Obstructing certain public officers or employees)	Second degree misdemeanor
Tennessee: T. C. A. § 39-16-402 (Official Misconduct)	Class E felony
Texas: V.T.C.A., Penal Code § 39.02 (Abuse of Official Capacity)	graded on the value/amount of violation: starting with Class A misdemeanor under \$1,500, up to first degree felony if \$200,000 or more
Utah: Utah Code Ann. § 76-8-301 (1999) (interference with public servant)	Class B misdemeanor
Vermont: Vt. Stat. Ann. tit. 13, § 3015 (1998) (obstruction of justice)	Up to 5 years, \$5,000
Virginia: Va. Code Ann. § 18.2-460 (Michie 1996) (obstructing justice)	Class 1 misdemeanor
Washington: RCWA 9A.80.010 (Official Misconduct)	Gross misdemeanor
West Virginia: W. Va. Code, § 61-5-28 (Failure to perform Official Duties)	misdemeanor, fine not to exceed \$100
Wisconsin: W.S.A. 946.12 (Misconduct in Public Office)	Class I Felony
Wyoming: Wyo. Stat. Ann. § 6-5-305 (Michie 2003) (obstructing or impeding justice)	Up to 10 years, \$5,000