

**[J-2-2013][M.O. – Castille, C.J.]**  
**IN THE SUPREME COURT OF PENNSYLVANIA**  
**MIDDLE DISTRICT**

IN RE: THIRTY-THIRD STATEWIDE	:	No. 85 MM 2012
INVESTIGATING GRAND JURY	:	
	:	Appeal from the Order of the Dauphin
	:	County Court of Common Pleas at No.
	:	1325 MD 2010 (Notice No. 21) dated
	:	April 24, 2012
	:	
PETITION OF: PENNSYLVANIA	:	
TURNPIKE COMMISSION	:	ARGUED: March 5, 2013

**CONCURRING OPINION**

**MR. JUSTICE SAYLOR**

**DECIDED: February 18, 2014**

I join Parts I, III, and IV of the majority opinion, as well as the result.

As to Part II, concerning appellate jurisdiction, I remain with my position as set forth in my statement dissenting to the Order granting the Turnpike Commission's petition for review. See In re Thirty-Third Statewide Investigating Grand Jury, 616 Pa. 414, 414-16, 48 A.3d 1217, 1217-18 (2012) (Saylor, J., dissenting). In particular, I still am not aligned with the notion that public employees should be treated differently from those in private ventures, such as newspaper reporters, relative to the availability of interlocutory appellate review of a directive to produce documents for review in investigating grand jury proceedings and/or the refusal of a supervising judge to issue a protective order. Majority Opinion, slip op. at 10 (quoting Pa. Gaming Control Bd. v. OAG, 615 Pa. 590, 596, 44 A.3d 1134, 1137-38 (2011) (Castille, C.J., dissenting)). See generally In re Thirty-Third Statewide Investigating Grand Jury, 616 Pa. at 416, 48 A.3d at 1218 (Saylor, J., dissenting) ("For my part, I am uncomfortable saying that the very

important confidentiality and privilege concerns of the newspaper organization at stake in [another grand jury investigation], for example, are any less important than those of the Commonwealth agency seeking to invoke collateral order review here.”).<sup>1</sup> In either event, I believe, the practice of limiting appeals to those from contempt orders is corollary to the strong public policy of fostering expeditious, confidential grand jury investigations and to the interest in developing adequate factual records. See In re Twenty-Fourth Statewide Investigating Grand Jury, 589 Pa. 89, 97-98, 907 A.2d 505, 509-10 (2006). To the extent the vindication of such aims require consequence-laden risks on the part of those wishing to resist grand jury subpoenas, I do not see a compelling basis for differential treatment of public versus private employees relative to the ramifications of their refusals.

Moreover, as the majority recognizes, the Turnpike Commission’s position that its attorneys are not beholden to the public as their client “obviously cannot prevail,” Majority Opinion, slip op. at 34, and could not prevail from the outset. As such, in my view any peril which would have been suffered by the Commission’s employees or individual commissioners as a result of withholding documents from the Attorney General in connection with the investigating grand jury proceedings simply would not have been a sensible risk in the first instance.

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<sup>1</sup> My perspective, in this regard, is with due consideration for the important role of a “vigorous free press” in a democratic society. In re Dauphin County Fourth Investigating Grand Jury, 610 Pa. 296, 327 n.6, 19 A.3d 491, 509 n.6 (2011).