

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

**In re: FORTIETH STATEWIDE INVESTIGATING GRAND JURY
Application of: Philadelphia Media Network, PBC, *et al.***

**Supreme Court Docket Number: 106 WM 2016
Trial Court: Allegheny County Court of Common Pleas
Trial Court Docket Number: CP-02-MD-571-2016**

**ATTORNEY GENERAL'S RESPONSE TO
APPLICATION TO INTERVENE SEEKING PUBLIC ACCESS TO
GRAND JURY REPORT, DOCKET SHEETS, AND FILINGS**

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Date: July 5, 2018**

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JOSH SHAPIRO, Attorney General of Pennsylvania, respectfully takes no position on the request to intervene, but agrees with the request to lift the temporary stay entered on June 20, 2018, and permit the public to see the grand jury’s report on child sex abuse in Pennsylvania dioceses. The Attorney General further agrees that, upon release of the report, the associated dockets and filings in this Court should also be opened to the public. In support of this request, the Attorney General submits:

- 1) As this Court noted in its published June 25 opinion concerning the stay, this grand jury was convened in April 2016. The grand jury promptly undertook an investigation of child sex abuse, and extensive efforts to cover it up, in several dioceses of the Catholic Church across the Commonwealth of Pennsylvania.

2) As the Supervising Judge noted in his published June 5 opinion, the grand jury heard from dozens of witnesses and reviewed over half a million pages of internal documents from diocesan archives. Bishops of all of the six dioceses covered by the investigation were provided the opportunity to appear before the grand jury; five chose to submit written statements, and one testified in person.

3) The grand jury, exercising its duty under 42 Pa. C.S. § 4552(a), voted to submit a report to the Supervising Judge in order to share its findings with the public at large.

4) The Supervising Judge, exercising his duty under § 4552(b), determined that the report was supported by a preponderance of the evidence credited by the grand jury. The Supervising Judge further, exercising his duty under § 4552(e), determined that the report could be construed as critical of some unindicted individuals, and therefore granted them all the right to file responses to be made public as part of, and at the same time as, the report. The Supervising Judge placed no restrictions of any type on the content of the response right.

5) Not content with that unrestrained right of response, many individuals filed challenges with the judge, insisting that they were also entitled to present their own (mostly unspecified) evidence to the grand jury, to confront grand jury witnesses, or to secure a rewrite of the report by the court, in accordance with their

preferred view of the facts. The Supervising Judge denied these challenges in a published opinion.

6) The grand jury statute provides a right to appeal to this Court from a refusal by a grand jury judge to permit publication of a report. The statute provides no parallel right to individuals who would prefer to *prevent* publication of a report. Nevertheless, the Supervising Judge here certified the issue for appeal to this Court. As a result, this Court has been faced with multiple petitions for review.

7) Various press organizations have now joined the matter, seeking to intervene in order to assert the public's interest in finally seeing the report, now that the grand jury's work is done, the Supervising Judge has approved its publication, and all affected individuals have been accorded a full right of response. While the Attorney General takes no position on the intervention request, he does strongly support the ultimate relief requested: public review and discussion of the report, along with any responses that the challengers choose to append to it.

8) The Attorney General has consistently sought conduct of grand jury proceedings in accordance with due process. The Commonwealth encouraged the judge's decision to provide a wide array of individuals with all relevant portions of the report, and to permit them ample time to file unrestricted responses.

9) In the same fashion, the Commonwealth did not oppose a brief stay of the issuance of the report, which was scheduled for release on June 22. By that date,

the Court had only just received many of the petitions for review, and had not yet received the complete report itself or the Commonwealth's responses to many of the petitions.

10) Now the situation has changed. All necessary filings are before the Court. They make clear that further delay in release of this long-awaited report cannot be justified.

11) As the Supervising Judge explained, the grand jury is an *investigating* body, not an adjudicating court. Its reports carry no force of law; they change the legal rights of no person or entity; they are binding on no one. Instead, a grand jury report simply reflects the views and opinions of a group of citizens called together by law to participate in a process developed and handed down over centuries of our legal tradition. The power of a report is simply the power to persuade.

12) Given the nature of a grand jury report, the challengers have failed completely to explain why their right of unrestricted response is insufficient to comply with due process and permit immediate release of the report here. Their responses will function in the same way as the report – by speaking directly to the citizenry. The only “adjudicating” body is the public itself.

13) In some ways, in fact, the challengers have greater latitude to address these questions than does the grand jury itself. The challengers are not limited to whatever response they choose to file for attachment and publication with the report.

They are free to go further – to make any statements they wish, to appear in any forum, to go before any camera or microphone. That is not true for the grand jury. The jurors have been discharged and disbanded, and are bound by their secrecy oath. The report itself is their last word.

14) On the other hand, the trial-type “rights” claimed by the challengers are not only illusory, as explained by the Supervising Judge; they are also of no certain value. The grand jury would have been under no obligation to credit anything said by these challengers. Nor would it have been required to mention any of the challengers’ claims in its report. Had all the challengers actually chosen to testify under oath before the grand jury (a prospect that, experience teaches, seems questionable), they might well only have prejudiced their position in the eyes of the jurors. No such risks accompany their unlimited right of response.

15) The alternative of judicial rewrite is even less compelling. If courts were to lay claim to the power to rewrite grand jury reports, overruling language approved by the jurors, then reports would no longer *be* grand jury reports; they would be judge reports. Every recitation or recommendation in a report would belong to the judge, who would either have composed them or concurred in them. But that has never been and should not be the role of the judiciary in the grand jury process. The court supervises proceedings; it does not dictate conclusions. The challengers’ arguments, therefore, would require either the transmutation of the

grand jury into a judicial court of decision, or the transmogrification of the judiciary into a panel of grand jurors.

16) The challengers' demands would also (and not by accident) essentially eradicate the grand jury report as an instrument of accountability for public and private institutions. There are apparently those who would welcome such a result, but not the public at large. Grand jury reports have played a vital role in highlighting important issues, including the Turnpike Commission report, the Harrisburg incinerator report, the Gosnell abortion mill report, and the Philadelphia Department of Human Services report. Pennsylvania citizens are unlikely to believe they would be well served by elimination of such public reports.

17) Of course, reasonable grand jury reforms may well be appropriate. To the extent this Court may wish to reassess grand jury procedures, however, this case is not the proper vehicle for doing so. Any changes contemplated would likely require a mix of rule and legislative amendments, and should be considered only in due course with proper study. Indeed the Court has publicly announced the creation of a task force that is presently conducting exactly such an inquiry.

18) This report, in contrast, should not be delayed. As the media organizations' petition confirms, this is a matter of exceptional public interest. One of the bishops whose diocese is a subject of the report has already openly and decisively called for its release. Hundreds of victims, thousands of parishioners, and

many members of the community are awaiting the report. The longer it is held, the greater the risk of undermining public confidence in the judicial system.

19) For all these reasons, the Attorney General opposes the press petitioners' alternative suggestion that the report be redacted to remove all references to the challengers. As the public documents in this matter demonstrate, the challengers have the unconstrained ability to present their claims both as official responses to the report and through any other means they elect. That is the process that is due them. Redaction would only further undermine confidence in the process, and could suggest the appearance of preferential treatment of particular citizens of the Commonwealth.

20) Once the report has been published, the docket sheets and filings should also be made public. To date, despite attacking an Act of the General Assembly, signed into law by the Governor and applicable to all citizens of the Commonwealth, the challengers have sought to litigate through the filing of sealed pleadings and motions, unseen and unheard by the members of the general public and by the governmental officials responsible for crafting the law of the Commonwealth.

21) The institution of the grand jury, no less than this particular grand jury report, is a matter of great public attention. Continued secrecy over the challenges to that institution may itself undermine confidence by suggesting the appearance that

certain citizens are granted the privilege of litigating out of the public eye despite the impact of the litigation on the rights of all citizens.

WHEREFORE, the Attorney General respectfully requests that this Court lift the stay, permit the prompt public filing of the Fortieth Statewide Investigating Grand Jury's Report No. 1, and unseal the associated docket sheets and filings.

Respectfully submitted,

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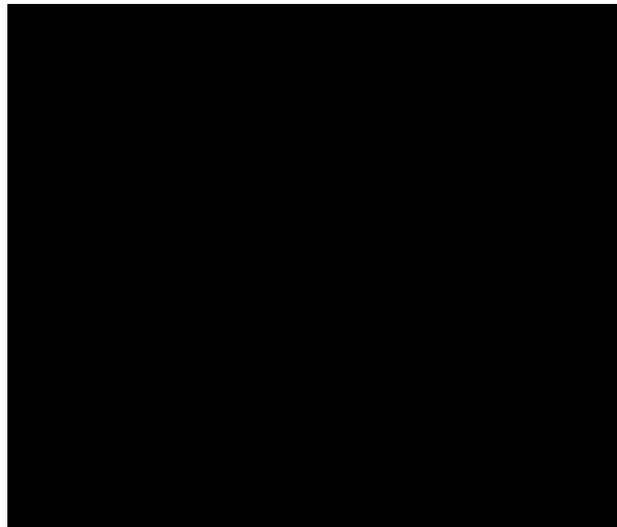
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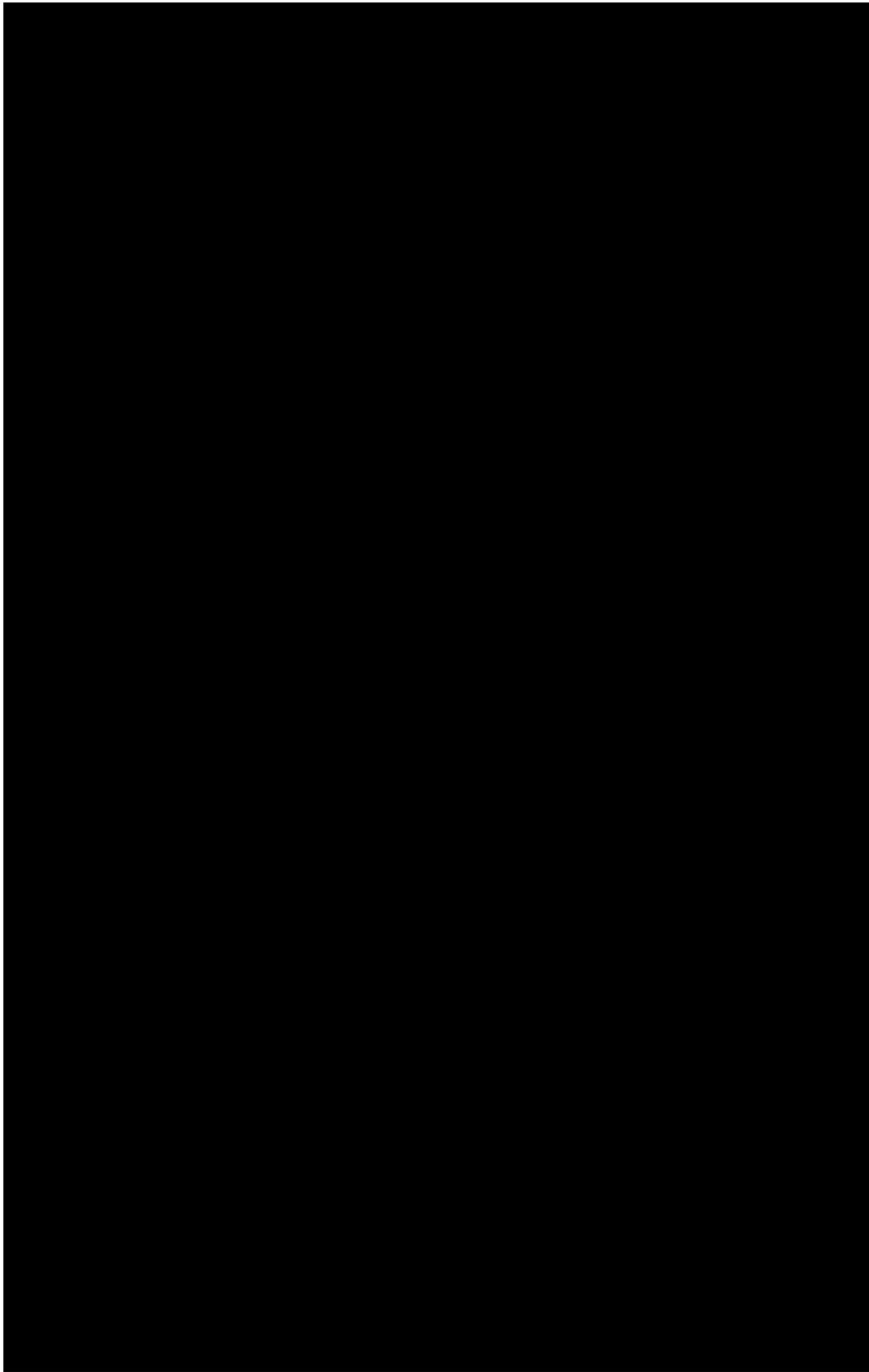
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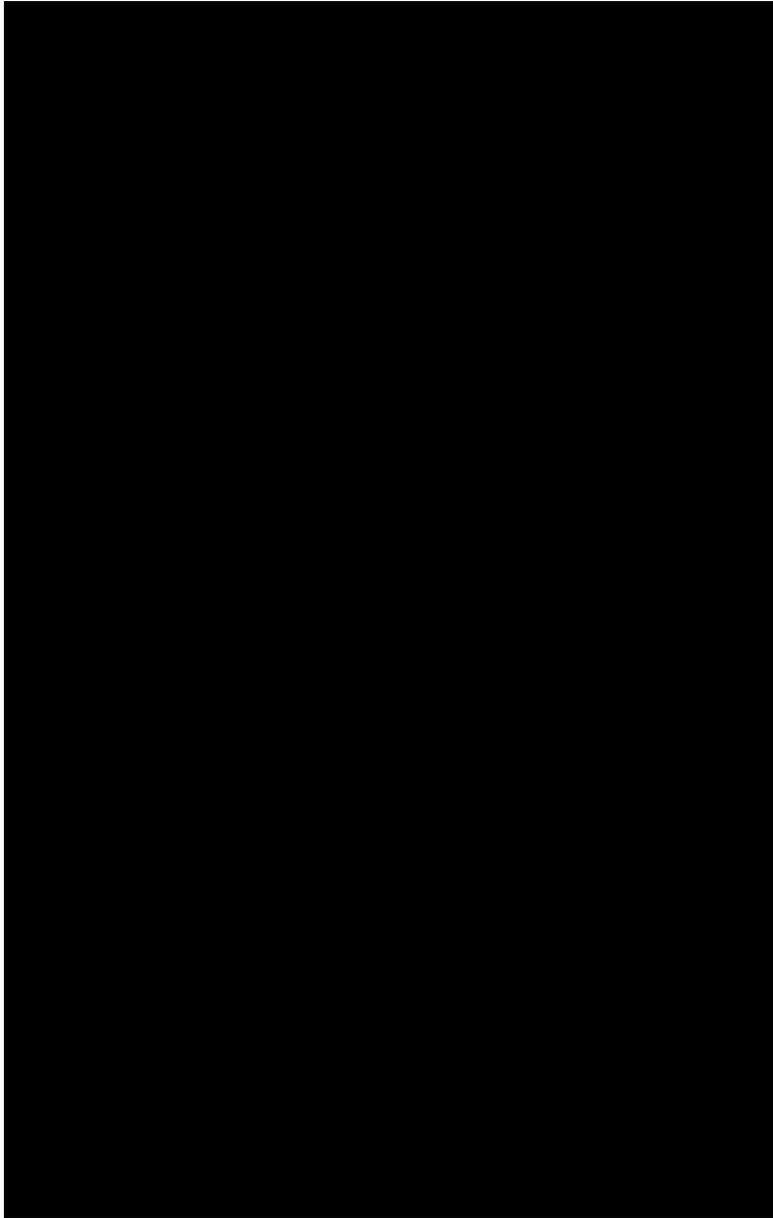
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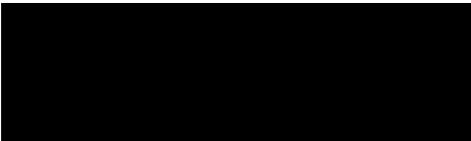
I hereby certify that I am this day serving a copy of the foregoing document upon the persons below by electronic and first class mail:

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**CERTIFICATE OF COMPLIANCE
WITH RULE 127**

This brief complies with Pa. R. App. P. 127(a) and the provisions of the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania*, which require that confidential information and documents be filed differently than non-confidential information and documents.

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