

IN THE SUPREME COURT OF PENNSYLVANIA  
WESTERN DISTRICT

IN RE: FORTIETH STATEWIDE : No. 104 WM 2018  
INVESTIGATING GRAND JURY :  
: :  
: :  
: :  
PETITION OF: T.S. :

---

**BRIEF OF PETITIONER**

---

~~- FILED UNDER SEAL -~~ \*

---

*Filed by:* \_\_\_\_\_

Blair H. Hindman  
Blair Hindman Law Firm  
415 Wood Street  
Clarion, PA 16214  
Tel: (814) 226-5297  
Fax: (814) 226-4099  
Pa. Attorney Registr. No.: 81503  
(Attorney for Petitioner)

**\* THIS VERSION IS REDACTED PURSUANT TO COURT ORDER \***

## TABLE OF CONTENTS

---

TABLE OF AUTHORITIES .....	ii
I. PREFACE .....	1
II. STATEMENT OF JURISDICTION .....	1
II. ORDERS IN QUESTION .....	2
III. STATEMENT OF SCOPE & STANDARD OF REVIEW ....	4
IV. STATEMENT OF THE QUESTIONS INVOLVED .....	4
V. SUMMARY STATEMENT OF THE CASE .....	5
VI. SUMMARY OF ARGUMENT .....	8
VII. ARGUMENT OF PETITIONER .....	10
IX. CONCLUSION AND RELIEF SOUGHT .....	24
PROOF OF SERVICE .....	27
PUBLIC ACCESS POLICY CERTIFICATION .....	28

Note: Petitioner acknowledges Pa.R.A.P. 2111(b) directing that opinions in the lower court be appended to appellant's brief. Because of the expedited nature of the proceedings, manner of service, and because the lower court's opinion is already before the Court, including as attachment "B" to Petitioner's petition, it is not reproduced again, herein.

## TABLE OF AUTHORITIES

### Case Law:

<u>Ash v. Continental Insurance Co.</u> , 932 A.2d 877 (Pa. 2007) .....	4
<u>Com. Dep't. of Transportation v. Exxon</u> ,	
20 Pa. Common. Ct. 537, 342 A.2d 497 (1975) .....	13
<u>Com. v. Gallagher</u> , 924 A.2d 636 (Pa. 2007) .....	10, 13
<u>Com. v. Maldonado</u> , 576 Pa. 101, 838 A.2d 710 (2003) .....	16, 17
<u>Carlacci v. Mazaleski</u> , 569 Pa. 471, 798 A.2d 186 (1992) .....	20
<u>Com. v. Motto</u> , 611 Pa. 95, 23 A.3d 989 (2011) .....	20
<u>Fiore v. Com. Bd. of Finance and Rev.</u> ,	
534 Pa. 511, 633 A.2d 1111 (1993) .....	17
<u>Hatchard v. Westinghouse Broadcasting Co.</u> ,	
516 Pa. 184, 532 A.2d 346 (1987) .....	16, 17
<u>Hunsicker v. Pa. State Police</u> , 93 A.3d 911 (Pa.Cmwth. 2014)	20
<u>In re: Investigating Grand Jury of Phila. Cty.</u> ,	
495 Pa. 186, 433 A.2d 5 (1981) .....	13
<u>In re: J.B., et al</u> , 107 A.3d 1 (Pa. 2014) .....	16, 18
<u>Matthews v. Eldridge</u> ,	
424 U.S. 319, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976) .....	17
<u>Meas v. Johnson</u> , 185 Pa. 12, 39 A. 562 (1898) .....	16
<u>Paul v. Davis</u> , 424 U.S. 693, 96 S.Ct. 1155, 47 L.Ed. 2d 405 (1976)	14
<u>R. v. Com. Dep't. of Public Welfare</u> ,	
535 Pa. 440, 636 A.2d 142 (1994) .....	18

### Constitutions:

Pennsylvania Constitution .....	8, 14, 15, 16, 17
United States Constitution .....	14, 15, 16, 17

### Statutes:

1 Pa.C.S. § 1922 .....	11
1 Pa.C.S. § 1928 .....	11
42 Pa.C.S. § 103 .....	13
42 Pa.C.S. § 323 .....	13
42 Pa.C.S. § 722 .....	1
42 Pa.C.S. §726 .....	1
42 Pa.C.S. § 4541 .....	4, 21, 22, 23
42 Pa.C.S. § 4552 .....	6, 11
42 Pa.C.S. §§ 9799.10 – 9799.41 .....	18
65 P.S. § 67.708 .....	19, 20

### Rules of Court:

Pa.R.A.P. 3331 .....	1
----------------------	---

## **I. PREFACE**

The Attorney General has created a sense of urgency in the rush to release Grand Jury Report No. 1. The claims of misconduct investigated by the Grand Jury are not new, though, but date back decades and, in some instances apparently half a century, according to media reports. The Commonwealth has conducted its investigation, under seal and out of the public eye, for over two years. Yet, despite this background, the Commonwealth faults petitioners for delay, while they have been afforded barely two months to review aspects of the Report and, then, to attempt to cogently litigate unquestionably important constitutional and other legal challenges to the Report and the grand jury process. Consistent with the sense of urgency, petitioners have been asked to fully brief these important issues in barely three days - an impossible task, at least for undersigned counsel. Petitioner asks the Court to take this into account in its review.

## **II. STATEMENT OF JURISDICTION**

The Court has jurisdiction over this matter pursuant to 42 Pa.C.S. § 722. This appeal is before the Court in accordance with Pa.R.A.P. 3331. The Court also has jurisdiction over all aspects of this appeal under its powers vested by 42 Pa.C.S. §726.

III. ORDERS IN QUESTION

ORDER

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

---

ORDER

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

#### IV. STATEMENT OF SCOPE AND STANDARD OF REVIEW

At issue before the Court is the interpretation, application and constitutionality of the Grand Jury Act, 42 Pa.C.S. § 4541, *et seq.*. As the issues involve questions of law, the Court's standard of review is *de novo* and scope of review is plenary. See, e.g., Ash v. Continental Insurance Co., 932 A.2d 877, 879 (Pa. 2007).

#### V. STATEMENT OF THE QUESTIONS INVOLVED<sup>1</sup>

1. Whether the supervising judge erred in determining that he lacked the authority to redact the Report, in that the absence of an explicit prohibition in the law against such redaction vests discretion with the supervising judge to, at the least, remove any mention of Petitioner's name?<sup>2</sup>

Suggested Answer: YES

2. Alternately, if this Court concludes that the Investigating Grand Jury Act does not afford such discretion to the supervising judge, whether that act is unconstitutional, as it deprives Petitioner and other similarly uncharged individuals of due process afforded by the federal and state constitutions, as well as the right to reputation guaranteed by the Pennsylvania constitution?

Suggested Answer: YES

3. Whether the Grand Jury Act violates the federal and state constitutional rights to due process, as well as the

---

<sup>1</sup> As phrased by the Court in the Order of July 6, 2018.

<sup>2</sup> Petitioner seeks more than redaction of Petitioner's name, especially since Petitioner's initials have been disclosed. If not total non-disclosure of all information involving Petitioner, at the least, Petitioner seeks redaction of any reference to Petitioner, which would include name, initials, biographical information and any other information which could reasonably lead to discovery of Petitioner's identity.

Pennsylvania right to reputation to the extent it does not afford Petitioner and similarly situated uncharged individuals the right to see and challenge evidence presented against them?

Suggested Answer: YES

VI. SUMMARY STATEMENT OF RELEVANT FACTS AND PROCEDURAL HISTORY

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED].

There are other problems with the claims against Petitioner that are not reflected in the Report, and there are other problems with aspects of the Report that are not addressed in this brief, because of limited time to do so and because the issues presented



are matters of statutory construction and constitutional interpretation.

Pursuant to the Grand Jury Act (sometimes referred to as "the Act"), 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, which the supervising judge may then in his discretion allow the response to be attached to the report before it is made part of the public record. (42 Pa.C.S. § 4552(e).) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Undersigned counsel received said correspondence on or about May 11, 2018. There is no explicit provision in the Act for an unindicted subject to see or challenge the evidence presented to the Grand Jury, only that a response may be submitted, if permitted by the supervising judge.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

On June 5, 2018, the lower court issued an opinion and order denying a number of motions for pre-depravation hearings, as well as an order denying a stay and directing release of the Report on June 23, 2018.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Pursuant to the Court's Order of July 6, 2018, this brief follows.

**VII. SUMMARY OF ARGUMENT**

Unique to allegations of sexual assault, when these allegations are made known against a person, irreparable harm is done to the person's reputation, even if criminal charges are not filed. If the information contained in the Report is marked with the imprimatur of the court and disseminated to the public by the Commonwealth, unindicted subjects of the Report will likely suffer serious and irreparable harm including, but not necessarily limited to, irreparable harm to reputation, vilification and ostracism, as well as possible economic and other damages. As a result, dissemination of information about the unindicted subjects of the Report will suffer harm to their reputations and, essentially, be punished, without sufficient constitutional due process and protections of their rights to protection of the reputations afforded by the Pennsylvania Constitution.

Petitioner believes the supervising judge is vested with discretion to

limit disclosure of aspects of the Report. The lower court disagreed, determining instead that no such discretion is afforded by the Grand Jury Act. However, if the lower court is correct, i.e., in essence that the judiciary is not afforded such discretion, then, the Grand Jury Act is unconstitutional, as it violates unindicted subjects' state and federal due process rights and state right to protection of one's reputation. Furthermore, if defamatory information about an unindicted subject of a grand jury report is made public, the Act is unconstitutional as it deprives the subject of the opportunity to review and challenge the evidence ostensibly forming the foundation for the defamatory conclusions in such a report.

Public disclosure of allegations against unindicted subjects of a grand jury report, based upon layered hearsay and untested evidence, serves to punish without the protection of constitutional rights and without a judicial determination of guilt. The Commonwealth would argue that guilt is for the public to decide, but that's not how our system of justice is meant to work, and the state and federal constitutions afford, not only petitioners, but all of us, protection from that. The Court should find that discretion exists to order redaction of aspects of the Report, in particular that involving Petitioner, or in the alternate, determine that aspects of the Grand Jury Act are unconstitutional.

VIII. ARGUMENT OF PETITIONER

1. The Supervising Judge Erred in Determining that He has no Discretion to Limit Public Disclosure of the Report

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] the Grand Jury Act does not

explicitly provide that a supervising judge has discretion to redact or otherwise order non-disclosure of aspects of a grand jury report; however, Petitioner also believes that the supervising judge is vested with such discretion by implication in the Act, as well as by statute conferring judicial authority in the lower court.

As this issue presents a question of statutory construction, a number of fundamental principles apply. First, when the words of a statute are not explicit, the reviewing court should look to other factors to ascertain the intent of the legislature. See, e.g., Com. v. Gallagher, 924 A.2d 636, 638 (Pa. 2007). Further, there are strong presumptions about statutes which include that the legislature does not intend an unreasonable result, that the statute be effective and certain, and that the statute not violate the federal

or state constitutions. 1 Pa.C.S. § 1922(1)-(3). Additionally, while the Grand Jury Act provides the mechanism for the conduct of certain criminal investigations, its provisions are not penal in nature, *per se*; therefore, the provisions of the Act, shall be liberally construed to effect its object and to promote justice. 1 Pa.C.S. § 1928.

The Grand Jury Act explicitly vests the supervising judge with discretion to allow a named, unindicted individual to submit a response to the allegations in the report and whether to allow the response to be attached to the report and made part of the public record. 42 Pa.C.S. § 4552(e). The Act also directs the supervising judge to file a grand jury report as a public record, only if the report is based upon facts received in the course of the investigation and is supported by the preponderance of the evidence, necessarily implying an exercise of the supervising judge's discretion in this regard. 42 Pa.C.S. § 4552(b).

The Act is silent, though, as to whether the supervising judge has the authority and discretion to not disclose, not unseal, or to redact *portions* of a grand jury report. This begs the question as to what happens in a case, such as this, which is as far-reaching and apparently involves so many unindicted subjects, and in which some of the Report should not be disclosed. Petitioner believes the Commonwealth would suggest that it's an all-or-nothing proposition and a report shall be unsealed if, as a whole,

the report is founded upon a preponderance of the evidence. Petitioner, on the other hand, believes that discretion exists, although not explicitly so, to order that aspects of a report not be disclosed, as such discretion is implied by the Act and it is part of the authority vested in the judiciary, in particular, in the supervising judge. If no such discretion exists, though, and certain information about unindicted subjects is released, the Act works an unconstitutional deprivation of due process and impairment of reputation.

To the issue of the statute before the Court, one must look at the manner in which the allegations involving Petitioner are couched in the Report, i.e., that documents, namely church records, include allegations of misconduct by Petitioner. By making the claims in this manner in the Report, the Commonwealth easily meets its burden of proof of by a preponderance of the evidence. The underlying allegations of misconduct are never tested, though, and the burden of proof, as to the allegation of misconduct on the part of Petitioner, is not met, but the result is the same.

So, in accordance with principles of statutory construction, Petitioner believes the supervising judge is vested with authority and discretion to not disclose or to redact *aspects* of the Report to prevent such an unreasonable and unconstitutional result. Furthermore, a liberal construction of the Act is required to promote a just result in cases like Petitioner and similarly situated persons.

Moreover, the legislature has vested the judiciary with the power to do all things that are reasonably necessary for the proper execution and administration of their functions within the scope of their respective jurisdiction. 42 Pa.C.S. § 103(a). Every court shall also have the power, *inter alia*, to make such orders as the interest of justice may require. 42 Pa.C.S. § 323. The power vested in the judiciary should extend to the lower court to allow the supervising judge the ability to properly execute the duties inherent in the position and to arrive at the result that justice requires.

Courts have found discretion, authority and other statutory elements where not explicitly provided in the statute. See, e.g., Com. Dep't. of Transportation v. Exxon, 20 Pa. Common. Ct. 537, 542, 342 A.2d 497, 501 (1975) (*discretion afforded to trial judge because statute silent on method of resolving factual disputes*); In re: Investigating Grand Jury of Phila. Cty., 495 Pa. 186, 433 A.2d 5 (1981) (*authority to enforce orders through civil contempt implicit*); Com. v. Gallagher, 924 A.2d 636. (Pa. 2007) (*determination of mens rea when not explicit in statute*). Likewise, the Court should find that the lower court has discretion to limit public access to aspects of the Report, to ensure that the protection of the constitutional rights of unindicted subjects of a grand jury report.

In conclusion, Petitioner respectfully believes the lower court erred



when the court determined that no such discretion exists. Rather, Petitioner believes the supervising judge is vested with the discretion to keep sealed, order non-disclosure, and/or order redaction of aspects of the Report. Furthermore, this discretion should certainly be exercised in Petitioner's favor. All references to Petitioner including, but not limited to, Petitioner's name and all of Petitioner's other biographical information, and any other information which, if disclosed, could reasonably lead to the disclosure of Petitioner's identity, should remain sealed, and be removed or redacted from the final version of the Report that is to be unsealed and made part of the public record.

2. **In the Alternate, if the Supervising Judge is Without Discretion to Limit Public Disclosure of the Report, the Grand Jury Act is Unconstitutional, as the Act Serves to Deny Unindicted Subjects Due Process Afforded Them by the Pennsylvania and Federal Constitutions and the Right to Protection of Their Reputations Afforded by the Pennsylvania Constitution**

If the Court agrees that the supervising judge is without discretion to

[REDACTED]

[REDACTED], then the Grand Jury Act is unconstitutional, as it deprives Petitioner, and other similarly unindicted subjects of the Report, the due process afforded by the Fourteenth Amendment to the United States Constitution and Article I Section 9 of the

Pennsylvania Constitution, and protection of reputation rights afforded by Article I, Sections 1 & 11 of the Pennsylvania Constitution, as there is no means for the judge to ensure that those rights are protected.

Reputational interests, alone, have been found to be insufficient to invoke federal due process guarantees. See, e.g., Paul v. Davis, 424 U.S. 693, 96 S.Ct. 1155, 47 L.Ed. 2d 405 (1976). But this case involves more than tarnished reputation. The nature of the accusations are different from accusations of other forms of wrongdoing, and the publicity and sentiment surrounding the case is great, as claimed by the Commonwealth in its zeal to quickly release the Report.

Release of the Report will result in serious and irreparable harm to many, including Petitioner, including irreparable harm to their reputations, vilification, ostracism, and the potential for economic and other damages. The combination of any number of these harms constitutes a form of punishment sufficient to trigger the protections afforded by the federal constitution.

Paraphrasing the Court, if allegations of sexual misconduct contained in the Report are unsealed and made public, it will constitute a significant imposition beyond the mere tarnishing of one's reputation, as it threatens the impairment and foreclosure of the associational or employment of persons who may not truly be the risk to the public that the Report would

otherwise indicate. (See Com. v. Maldonado, 576 Pa. 101, 838 A.2d 710, 714 (2003) (*addressing Meghan's Law notifications*.) Petitioner believes, therefore, that the federal test for harm which triggers due process requirements under the United States Constitution. Nevertheless, Petitioner is afforded even greater and certain due process protection by the Pennsylvania Constitution.

Although it is absent from the federal constitution, the right to reputation is a fundamental right in Pennsylvania. In re: J.B., et al, 107 A.3d 1, 16 (Pa. 2014). The right is explicit in the Pennsylvania Constitution:

**Article I. DECLARATION OF RIGHTS**

**§ 1. Inherent rights of mankind**

That the general, great and essential principles of liberty and free government may be recognized and unalterably established, WE DECLARE that - -

All men are born equally free and independent, and have certain inherent and indefeasible rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing and protecting property and reputation, and of pursuing their own happiness.

In fact, the Declaration of Rights in the state constitution "places reputation 'in the same class with life, liberty and property.'" Hatchard v. Westinghouse Broadcasting Co., 516 Pa. 184, 194, 532 A.2d 346, 351 (1987) (citing Meas v. Johnson, 185 Pa. 12, 19, 39 A. 562, 563 (1898).) Reputation is one of the fundamental rights that cannot be abridged without

compliance with state constitutional standards of due process and equal protection. Hatchard, 516 Pa. at 193, 532 A.2d at 350 (citing Wolfe v. Beal, 477 Pa. 477; 384 A.2d 1187 (1978).) Our Constitution drives the point home, by further providing that everyone, for injury done to their reputation, “shall have remedy by due course of law, and right and justice administered without sale, denial or delay.” Pa. Const. Art. I, § 11.

The question then becomes what constitutes due process in this context. Generally, the fundamental right of due process is the opportunity to be heard at a meaningful time and in a meaningful manner. Maldonado, 838 A.2d at 714 (citing Matthews v. Eldridge, 424 U.S. 319, 333, 96 S.Ct. 893, 902, 47 L.Ed.2d 18 (1976)). There is no general definition of procedural due process applicable to every situation, though. See, e.g., Fiore v. Com. Bd. of Finance and Rev., 534 Pa. 511, 516, 633 A.2d 1111, 1114 (1993). While incapable of exact definition, procedural due process requires more than simply notice and a hearing, it also includes the right to an orderly, regular proceeding appropriate to the nature of the case. Id. at 517, at 1114.

Due process is especially important to protect a person's reputation from allegations of sexual misconduct. Indeed, the Court has recognized the insidious nature of such allegations and how crimes of this nature are different from others. For example, in a case limiting application of

SORNA<sup>3</sup> lifetime registration requirements for juveniles, the Court noted that “the common view of registered sexual offenders is that they are particularly dangerous and more likely to reoffend than other criminals.” In re: J.B., et al, 107 A.3d 1, 17 (Pa. 2014). The Court held that SORNA’s presumption of recidivism and lifetime registration requirements, with no meaningful opportunity to challenge the presumption, encroached upon a juvenile’s protected right to reputation. Id. at 17, 18.

While the Grand Jury Report does not involve lifetime registration as required by SORNA, in some respects, the effect on an unindicted subject’s reputation is similar. Further, as in In re: J.B., et al, Petitioner and others are left without a meaningful means of challenging the conclusions in the Report. Moreover, in the SORNA context a conviction was necessary before the person was subjected to the requirement of registration and the resulting diminution of reputation. In the instant circumstances, the *alleged* report of an accusation, alone, is enough to ruin a reputation when the conclusion is reached – or inferred – by a grand jury in its official report.

In another case involving a challenge based the harm to reputation, the Court found that when dealing with a person’s reputation, the Court’s “inquiry must necessarily focus on the extent to which the information contained in an indicated report is readily available and/or ascertainable”

---

<sup>3</sup> Sex Offender Registration and Notification Act, 42 Pa.C.S. §§ 9799.10 – 9799.41.

and the circumstances which the accused's identity will be revealed. R. v. Com. Dep't. of Public Welfare, 535 Pa. 440, 453, 636 A.2d 142, 149 (1994). In that case, arising from an indicated report of child abuse, the Court ruled against the accused, finding that his "identity is disclosed to a small number of persons in a very narrow range of situations with the understanding that it will not be revealed to any unauthorized individuals. Therefore, any adverse effects on his reputation are very limited." Id. at 456, at 150. The Court also found, important and pertinent to the instant case,<sup>4</sup> that the accused was apprised of the evidence used to prove the government's case and was afforded the opportunity to challenge it. Id. at 457, at 150. Petitioner and others similarly situated enjoy none of these important and necessary protections to their reputation and to ensure them constitutionally sufficient due process.

The Commonwealth makes much of the fact that the Grand Jury is an investigative body. Hence, the Report must necessarily be an *investigative report*. Investigative reports are often not made part of the public record. For example, the Right-to-Know Law generally excludes police investigative reports from public access, including, but not limited to, complaints of potential criminal conduct; a record that if disclosed would reveal the institution, progress or result of a criminal investigation, except

---

<sup>4</sup> In particular, it is relevant to Issue No. 3, *infra*.

for the filing of criminal charges; or records that if disclosed would deprive a person of the right to an impartial adjudication. 65 P.S. § 67.708(b)(16)(i), (vi)(A) & (B); see also, e.g., Hunsicker v. Pa. State Police, 93 A.3d 911 (Pa.Cmwlt. 2014). The investigative exemptions under the Right-to-Know Law are instructive to the issue of public disclosure of reports of unindicted subjects of an investigative grand jury. In particular, the investigative exemptions present the question why full disclosure of the Report is warranted, in the first place.

Further, protection of reputation goes so far as to require expungement of certain arrest records. "There is a long-standing right in this Commonwealth to petition for expungement of a criminal arrest record, a right that is an adjunct of due process." Com. v. Motto, 611 Pa. 95, 101, 23 A.3d 989, 993 (2011) (citing Carlacci v. Mazaleski, 569 Pa. 471, 798 A.2d 186, 188 (1992)). When prosecutions are terminated without conviction or acquittal, then courts are vested with discretion and charged to balance the individual's right to be free from the harm attendant to maintenance of the arrest record against the Commonwealth's interest in preserving such records. See, e.g., Motto, *supra*. Once again, the unindicted subject of a grand jury report enjoys no such right, absent exercise of discretion by the supervising judge.

3. The Grand Jury Act is Unconstitutional, as the Act Serves to Deny Unindicted Subjects Due Process Afforded Them by the Pennsylvania and Federal Constitutions and the Right to Protection of Their Reputations Afforded by the Pennsylvania Constitution by Not Affording Them the Opportunity to See and Challenge Evidence Against Them

The Grand Jury Act does not afford Petitioner, and other similarly unindicted subjects, the right to see and challenge evidence presented against them. Because of the nature of the allegations and the harm that would assume if the Report is released, Petitioner's constitutional rights are not adequately protected by the right, under the Grand Jury Act, to simply file a response, even if the supervising judge, in his discretion, orders it to be appended to the Report. While counsel is not prone to briefing matters by incorporation, constraints of time dictate that Petitioner's arguments, *supra*, are relevant to this issue and are incorporated hereunder.

Petitioner's federal and state constitutional rights including, but not necessarily limited to, the constitutional rights to due process, require, at the very least, that Petitioner be afforded the opportunity to fully review and challenge the evidence ostensibly supporting the allegations against Petitioner in the Report. Petitioner, therefore, should be provided with copies of all police reports, documentation provided to the Commonwealth by the church, and copies of any other evidence submitted to the Grand Jury related to the allegations lodged against Petitioner in the Report.



Without this information, Petitioner is unable to fully and knowledgably respond to the allegations contained in the Report, and any right to respond becomes less meaningful. There is no reasonable manner, and possibly no other manner at all, available to Petitioner to obtain said information, certainly within the time allotted for responding to the Report, unless the Commonwealth is ordered to provide said information to Petitioner. Not only should Petitioner be afforded the opportunity to review and respond to the evidence before the Grand Jury, due process requires that Petitioner be entitled to challenge the evidence in some form or fashion not permitted by the Act. Without full due process of law, Petitioner is entitled to have the information involving [REDACTED] [REDACTED] Petitioner, not included and disclosed as part of the Report, which is unsealed and disseminated to the public.

The Commonwealth claims that adjudication rests with the public and the power of the Grand Jury is the power to persuade. Indeed, the Grand Jury holds the power of persuasion; however, as the Act is being applied, the Grand Jury's power of persuasion is unconstitutionally tilted in favor of the Commonwealth. Once the allegations against petitioners, whether right or wrong, true or false, accurate or misleading, complete or incomplete, are embossed with the imprimatur of the Grand Jury and released to the public, there will be no further adjudication by the public, persuasion will be

complete, harm will be done and reputations destroyed, whether warranted or not.

Moreover, the Commonwealth is also wrong to claim that the "only 'adjudicating' body is the public itself", as this statement implies some form of vigilantism, and ignores the power, purpose and function of the supervising judge and, most importantly, this Court. The Commonwealth's claim that petitioners somehow possess greater latitude to address the claims is disingenuous for a number of reasons. Not only have petitioners been deprived access to the information presented to the Grand Jury, the Grand Jury's conclusions in the Report are cloaked in the power of the state, which is difficult, if not impossible, for an individual to counter or overcome, especially in cases involving claims of the nature at issue herein. Petitioner seeks to enforce the rights assured and protected by the federal and state constitutions, nothing more, but nothing less. Petitioner does not seek "judicial rewrite"; rather Petitioner seeks, *inter alia*, non-disclosure or redaction of all references to Petitioner from the unsealed version of the Report. To the extent that the supervising judge does not have discretion under the statute to remove or redact information from the unsealed and public version of the Report, Petitioner believes the Grand Jury Act, 42 Pa.C.S. § 4541, *et seq.*, is for that reason and because unindicted subjects are not afforded the opportunity to review and

challenge evidence presented against them – only the conclusions reached.

**IX. CONCLUSION AND RELIEF SOUGHT**

In conclusion, in its zeal to point fingers and assess blame for apparently decades-old allegations, the Commonwealth fails to realize – or acknowledge – that Petitioner and others similarly situated are people, deserving, at the least, of certain fundamental constitutional protections. The Commonwealth casts a wide net, without regard for those who are innocent, bringing its unmatched power and treasure to overwhelm anyone who dare present a challenge. The Court is the only thing standing in the Commonwealth's way, and the Court's protection of petitioners' constitutional rights serves to protect all persons' important and fundamental constitutional rights from the otherwise unbridled power of the state. Every citizen of the Commonwealth deserves and should demand that they be afforded the same rights and protections as petitioners are seeking, when the power of the Commonwealth is brought to bear.

[REDACTED]

[REDACTED]

[REDACTED]

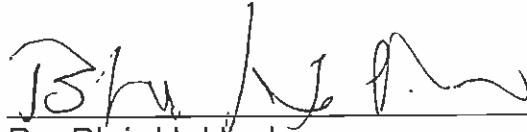
[REDACTED] That's not the way things should work.

Petitioners should not bear the burden resulting from [REDACTED] [REDACTED] a flawed process. Indeed, reforms are necessary, as this case highlights, and this case is "the appropriate vehicle" to begin to correct the flaws in the grand jury process.

Petitioner therefore respectfully requests your Honorable Court deem that the supervising judge of the lower court has discretion to, and shall so order that information regarding Petitioner, in the Report, not be disclosed or otherwise be redacted from the Report, including, but not necessarily limited to, Petitioner's name, initials, all biographical information, and any other information which could reasonably lead to the discovery of Petitioner's identity. In the alternate, Petitioner requests the Court find the Grand Jury Act to be unconstitutional, as applied to unindicted subjects of the Report, and, either, order non-disclosure or redaction of all information regarding Petitioner from the Report, including but not limited to, Petitioner's name, initials, all biographical information, and any other information which could reasonably lead to the discovery of Petitioner's identity; or, in the alternate, direct the lower court to provide Petitioner with sufficient, constitutional due process, including, but not necessarily limited to, the right to view, receive and challenge all information and evidence against Petitioner. Petitioner also requests the Court award Petitioner any other relief the Court deems just under the circumstances.

RESPECTFULLY SUBMITTED BY:  
THE BLAIR HINDMAN LAW FIRM

Date: July 10, 2018

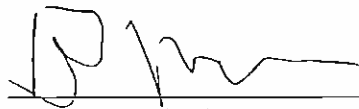
A handwritten signature in black ink, appearing to read "Blair H. Hindman", written over a horizontal line.

By: Blair H. Hindman  
Supreme Court I.D. No. 81503  
415 Wood Street  
Clarion, PA 16214  
Tel: (814) 226-5297  
*(Attorney for Petitioner)*

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

**This filing complies because this is a sealed docket and sealed filing and sections seven and eight of the Public Access Policy do not apply to cases that are sealed.**

Date: July 10<sup>th</sup>, 2018



---

Blair H. Hindman  
Supreme Court No. 81503  
Blair Hindman Law Firm  
415 Wood Street  
Clarion, PA 16214  
Tel: (814) 226-5297

IN THE SUPREME COURT OF PENNSYLVANIA  
WESTERN DISTRICT

IN RE: FORTIETH STATEWIDE : No. 104 WM 2018  
INVESTIGATING GRAND JURY :

---

PROOF OF SERVICE


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

**Service by Facsimile to:**

The Honorable Norman A. Krumenacker, III  
Supervising Judge, Fortieth Statewide Investigating Grand Jury  
Cambria County Court of Common Pleas  
200 S. Center Street  
Ebensburg, PA 15931  
Tel: (814) 472-1415  
Fax: (814) 472-1498

-----  
Daniel J. Dye, Esquire  
Senior Deputy Attorney General  
Criminal Law Division  
Criminal Prosecutions Section  
Office of Attorney General  
Strawberry Square, 16<sup>th</sup> Floor  
Harrisburg, PA 17120  
Tel: (717) 783-6273  
Fax: (717) 705-7246  
*(Attorney for the Commonwealth)*

Date: July 10, 2018

  
By: Hayley Seltz  
for Blair H. Hindman  
Blair Hindman Law Firm  
415 Wood Street  
Clarion, PA 16214