

CAUSE NO. D1DC 2005 900725

THE STATE OF TEXAS * IN THE DISTRICT COURT OF
 *
V. * TRAVIS COUNTY, TEXAS
 *
THOMAS DALE DELAY * 331ST JUDICIAL DISTRICT

PETITION FOR DISCLOSURE OF INFORMATION, TRANSCRIPTIONS AND RECORDINGS MADE IN CONNECTION WITH GRAND JURY PROCEEDINGS

Article 20.02(a) of the Texas Code of Criminal Procedure provides that the proceedings of the Grand Jury shall be secret.

Article 20.02(d), however, provides that the Court may order the disclosure of information on a showing by the Defendant of a particularized need or as a matter preliminary to a judicial proceeding.

Particularized Need

The Defendant has a particularized need for disclosure of information, transcriptions, and recordings of Grand Jury Proceedings. Members of at least two Travis County Grand Juries who have considered the Delay matter, one declining to indict and one issuing an indictment, have contacted the Austin American Statesman and the Associated Press as well as KLBK Radio. These media interviews have raised the issue of significant irregularities in the presentation of evidence by the Travis County District Attorney's office. Further, these interviews raise the issue of the Travis County District Attorney's office illegally participating in the deliberations of the Grand Jury. See Attachment A, Motion to Quash the Indictment on the Basis of Prosecutorial Misconduct and Attachment B, Dick DeGuerin letter to Ronnie Earle dated October 11, 2005

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Heather Rodriguez
DISTRICT CLERK
TRAVIS COUNTY, TEXAS

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Matter Preliminary to a Judicial Proceeding

The Defendant seeks a hearing on his Motion to Quash the Indictment Based on Prosecutorial Misconduct in connection with the Grand Jury Proceedings. He seeks disclosure of the Grand Jury proceedings in order to develop evidence of misconduct. This evidence can only be discovered if the Grand Jurors and the Travis County District Attorney's Office are released from the secrecy requirement of Article 20.02.

THE DEFENDANT REQUESTS THAT THE COURT FREE THE GRAND JURY OF 167TH DISTRICT COURT THAT ISSUED THE FIRST DELAY INDICTMENT; THE GRAND JURY OF THE 390TH DISTRICT COURT THAT FOUND THERE WAS NOT EVIDENCE TO INDICT TOM DELAY; AND THE GRAND JURY OF THE 403RD DISTRICT COURT THAT ISSUED THE MOST RECENT INDICTMENT OF TOM DELAY TO DISCUSS THE GRAND JURY PROCEEDINGS.

FURTHER, THE DEFENDANT REQUESTS THAT THE COURT RELIEVE THE TRAVIS COUNTY DISTRICT ATTORNEY'S OFFICE FROM THE SECRECY REQUIREMENT SO THAT THEY MAY BE QUESTIONED UNDER OATH IN A JUDICIAL PROCEEDING.

Respectfully submitted,

DeGUERIN DICKSON & HENNESSY



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CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of **Defendant's Petition for Disclosure of Information, Transcriptions and Recordings Made in Connection with Grand Jury Proceedings** has been served on the following by facsimile:

District Attorney Ronnie Earle, fax #512-854-9695

Attorneys for Defendant Jim Ellis
J. D. Pauerstein, fax #210-354-4034
Mark Stevens

Attorney for Defendant John Colyandro
Joe Turner, fax #512-474-8252

on this the 11th day of October, 2005.



Dick DeGuerin

CAUSE NO. D1DC 2005 900725

THE STATE OF TEXAS	*	IN THE DISTRICT COURT OF
	*	
V.	*	TRAVIS COUNTY, TEXAS
	*	
THOMAS DALE DELAY	*	331 ST JUDICIAL DISTRICT

ORDER ON CONGRESSMAN TOM DELAY'S PETITION FOR DISCLOSURE OF
INFORMATION, TRANSCRIPTIONS, AND RECORDINGS MADE IN
CONNECTION WITH GRAND JURY PROCEEDINGS

UPON PRESENTATION of the above and foregoing Defendant's Petition for Disclosure of Information, Transcriptions and Recordings Made in Connection with Grand Jury Proceedings, the same is GRANTED.

SIGNED in Austin, Travis County, Texas on this the day of October, 2005.

JUDGE PRESIDING

THE STATE OF TEXAS

V.

THOMAS DALE DELAY

§ IN THE DISTRICT COURT OF
§
§
§ TRAVIS COUNTY, TEXAS
§
§
§ 331ST JUDICIAL DISTRICT

DEFENDANT'S MOTION TO QUASH THE INDICTMENT ON THE BASIS OF PROSECUTORIAL MISCONDUCT

Congressman Tom DeLay ("Defendant") respectfully files this Motion to Quash the Indictment and would show the Court as follows:

1. On Wednesday, September 28, 2005, Congressman Tom DeLay was indicted on one count of conspiracy to violate the Texas election code and the 167th Grand Jury, its term expired, was discharged.

2. That night or early the next day, District Attorney Ronnie Earle determined that the indictment, which caused the immediate removal of Tom DeLay as Majority Leader of the U.S. House of Representatives, charged a crime that did not exist in Texas law.

3. During the five-day period of September 29, 2005 to October 3, 2005 Ronnie Earle and his staff engaged in an extraordinarily irregular, and desperate attempt to contrive a viable charge and get a substitute indictment of Tom DeLay before the expiration of the Statute of Limitations on October 3, 2005. During the course of this time period, Ronnie Earle and his staff committed the following acts of prosecutorial misconduct:

a. unlawfully participated in Grand Jury deliberations and attempted to browbeat and coerce the 390th Grand Jury, before it had formalized its No Bill decision, to change its decision so that there would be no public knowledge that a No Bill had been found.

b. unlawfully attempted to cover up and delay public disclosure of a No Bill voted by the 390th grand jury that would have revealed that his, Earle's, first presentation of a new, contrived charge of Money Laundering had been rejected.

c. unlawfully incited the foreman of the 167th grand jury, John Gibson, to violate his grand jury oath of secrecy by talking publicly, and on the record, to the media, in an effort to bias the public and sitting grand jurors.

d. unlawfully, and in direct violation of the secrecy law, discussed ongoing grand jury matters with a few members of the discharged 167th grand jury to get their opinion of what they might have done had they known the indictment rendered by the 167th had no basis in law.

e. unlawfully, upon information and belief, submitted this "additional information" that he gathered "over the weekend," to yet another grand jury, the 403rd, to persuade them to issue a replacement indictment. Such "additional information" is not evidence and thus its use before a grand jury violates Tex. Crim. Proc. Code art. 27.03, that prohibits a prosecutor from participating in a grand jury's deliberations by discussing the pros and cons of whether they should issue an indictment.

WHEREFORE, TOM DELAY MOVES THE COURT TO SET ASIDE THE INDICTMENT THAT WAS THE PRODUCT OF PROSECUTORIAL MISCONDUCT AND A DIRECT VIOLATION OF TEXAS LAW.

Respectfully submitted,

DeGUERIN DICKSON & HENNESSY

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CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of **Defendant's Motion to Quash the Indictment on the Basis of Prosecutorial Misconduct** has been served on District Attorney Ronnie Earle by facsimile on this the ____ day of October, 2005.

Dick DeGuerin

NO. D1DC-05-900725

THE STATE OF TEXAS

V.

THOMAS DALE DELAY

§ IN THE DISTRICT COURT OF
§
§
§ TRAVIS COUNTY, TEXAS
§
§
§ 331ST JUDICIAL DISTRICT

ORDER

UPON PRESENTATION of the above and foregoing **Defendant's Motion to Quash the Indictment on the Basis of Prosecutorial Misconduct**, the same is GRANTED, and the indictment herein is QUASHED and DISMISSED.

SIGNED in Austin, Travis County, Texas on this the ____ day of October, 2005.

JUDGE PRESIDING

DEGUERIN DICKSON & HENNESSY

ATTORNEYS AT LAW

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October 1, 2005

Honorable Ronald Earle, District Attorney
Travis County District Attorney's Office
509 W. 11th St.
Austin, Texas 78701

Re: State v. DeLay, Case No. DIDC-05-900725 (Re-indictment)

Dear Mr. Earle:

This letter is intended as a courtesy to give you fair notice that I have requested subpoenas for you, Rosemary Lehmborg and Rick Reed seeking testimony concerning the events that occurred during the five day period from September 29 to October 3, 2005. The subpoenas seek all documents, notes, telephone records, and other relevant materials that you or your staff may have in your possession relating to the events that transpired during that period.

I am determined to put of record the steps taken by you and your staff to obtain a replacement indictment against my client, Tom DeLay during the five day period mentioned above. The first indictment for "conspiracy to violate the Texas Election Code," charged a crime that did not exist in Texas law. I have filed a motion to dismiss the later indictment on the grounds of prosecutorial misconduct and with those subpoenas seek evidence in support of that motion. I will soon file additional motions.

In the meantime, however, it would expedite our inquiry if you would agree to an immediate deposition to answer the questions set out below, and, given the highly public nature of this matter, I believe it would be in the interest of justice. Since it appears you have already violated the grand jury secrecy laws (by discussing pending grand jury matters with citizens who were no longer serving as grand jurors and by encouraging form Grand Jury Foreman William Gibson to speak to the press) your answers to questions about those conversations are not protected. Foreman William Gibson's extensive public discussion of the case,

ATTACHMENT B

which he says you approved, has already revealed information about Grand Jury deliberations. The media has reported several conversations with grand jurors on these matters; thus you should not hide behind the grand jury secrecy law.

These are the questions I believe you (you means yourself or any member of your staff) should answer:

Question 1: Did you, upon learning that the 390th grand jury had decided on Friday, September 30th, to issue a No Bill become visibly angry and attempt to persuade them to change their decision? Did you encourage them to issue, instead of the No Bill, a report stating that they had only decided to Pass the matter? If so, why did you do that?

Question 2: Over the last year you have immediately, and publicly, disclosed True Bills of Indictment in the TRMPAC case and related matters. Why did you not publicly disclose the No Bill that was formalized by the 390th grand jury on Friday, September 30th?

Question 3: On Monday, October 3, 2005, a newly empanelled grand jury, the 403rd, issued a True Bill at your behest before they had even completed their orientation as new grand jurors. You immediately released that indictment to the public. Why did you not, at that time, tell the public about the No Bill that had been decided by the by the 390th grand jury three days before?

Question 4: The 167th grand jury is the one that issued the first indictment against Tom DeLay. Did you talk to former grand jury foreman, William Gibson, after his term on the 167th grand jury had ended? If so, was that conversation after you learned that the 390th grand jury had decided to issue a No Bill? Was it before you asked the 403rd grand jury to issue indictments?

Question 5: If you did talk to William Gibson, why did you engage in such conversation?

Question 6: What exactly did you say to William Gibson and what did he say to you?

ATTACHMENT B

Question 7: Did you talk to other members of the discharged 167th grand jury? If so, who were they, when did those conversations occur, and why did you engage in such conversations? What exactly did you say to them and what did they say to you?

Question 8: Did you tell the foregoing persons that the 390th grand jury had issued a No Bill?

Question 9: At any time during the five-day period, did you discuss with any members of the discharged 167th grand jury any arguments, evidence, decisions or other matters that had been or would be discussed with the 390th or 403rd grand juries? If so, what did you discuss with them?

Question 10: Did you disclose any part of your conversations with former members of the 167th grand jury to the 403rd grand jury? If so, what did you say and why and when did you say it?

Question 11: Was the 403rd grand jury aware of the No Bill voted by the 390th grand jury? Did you tell the 403rd grand jury about it before they made their decision to indict?

Question 12: On Tuesday, October 4, you issued a press release telling the public about the No Bill and purporting to explain things. Who participated in writing the press release? Why did you issue it? Did the "additional information" referred to in the press release include information resulting from your contacts with former 167th grand jurors?

If you did nothing improper you should not be concerned about answering these questions. I urge you and your staff to cooperate in my effort to quickly and fairly reconstruct the events of the five day period. Eventually, all the information will come out. It always does. In such cases it is always better for public officials to voluntarily disclose, and do it quickly, rather than to be forced to do so by a court of law.

I trust you are aware of the provisions of TEX. CRIM. PROC. CODE ANN. art. 20.02(d) that permit release of grand jury information upon the showing of a particularized need. This letter is attached as an exhibit to our Motion for Disclosure of Grand Jury Information pursuant to Art. 20.02 of the Code of

Criminal Procedure. *See also McManus v. State*, 591 S.W.2d 505, 523 (Tex. Crim. App. 1979); *Euresti v. Rogelio*, 769 S.W.2d 575, 578-79 (Tex. App.—Corpus Christi 1989, no writ).

I also remind you and your staff to preserve all documents and avoid any conversations among yourselves or with the other potential witnesses that might interfere with our quest for the truth. Needless to say, our allegation of prosecutorial misconduct concerns due process and fairness for the accused. I can think of no particularized need that is of more importance in our system of criminal justice.

Sincerely,



Dick DeGuerin

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