

CJ-09-5251

FILED IN THE DISTRICT COURT
OKLAHOMA COUNTY, OKLA.

NOV 28 2006

PATRICIA PRESLEY, COURT CLERK
by *[Signature]*
Deputy



TENTH MULTICOUNTY GRAND JURY

FINAL REPORT

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IN THE SUPREME COURT OF THE STATE OF OKLAHOMA
IN THE DISTRICT COURT OF OKLAHOMA COUNTY, OKLAHOMA

NOV 28 2006

PATRICIA PRESLEY, COURT CLERK
by _____

IN RE: TENTH MULTICOUNTY GRAND JURY)
)

District Court

Deputy

No.

CJ-05-3231

FINAL REPORT

We, the undersigned members of the State of Oklahoma's Tenth Multicounty Grand Jury, having been duly empaneled on the 31st day of May, 2005, upon the verified application of the Attorney General of the State of Oklahoma and by order of the Supreme Court of the State of Oklahoma dated April 18th, 2005, and pursuant to provisions of the Constitution and Statutes of the State of Oklahoma, OKLA. CONST. Art. II, § 18 and 22 O.S.1991 §§ 350 *et seq.*, have been charged with the responsibility of investigating in all seventy-seven (77) counties of the State, alleged public offenses against the State of Oklahoma, to include murder, rape, bribery, extortion, arson, perjury, fraud, embezzlement, violations of the Uniform Controlled Dangerous Substances Act, organized crime, public corruption, securities violations, and crimes involving the sale or purchase of goods or services by state and local subdivisions. We have met and faithfully investigated allegations of criminal conduct within these enumerated areas over the last eighteen (18) months.

The Multicounty Grand Jury, sitting in Oklahoma City, Oklahoma County, Oklahoma, at its principal meeting place, having met for fifty-one (51) days over seventeen (17) sessions, and having issued two thousand three hundred twenty-six (2,326) subpoenas and having entertained two hundred and ninety-two (292) witness appearances, and having, in a fair and impartial manner, duly considered all such testimony and exhibits to the best of our ability and understanding, with due regard to the Court's instructions, and having heretofore, after due deliberation, voted according to law, submits to this Honorable Court its Final Report as follows:

I. BACKGROUND

During this term, the Tenth Multicounty Grand Jury has extensively used its statutory powers to investigate various types of alleged criminal activity throughout the State. Ever mindful of the protection of individual rights under the Constitutions of the United States of America and the State of Oklahoma, it has become very apparent to us that the power to subpoena documents, records and other evidence, compel the attendance and testimony of witnesses under oath, and investigate allegations unrestrained by county boundaries are extremely effective weapons to combat the far-reaching crimes for which the Multicounty Grand Jury was created. The power to compel testimony has enabled the Multicounty Grand Jury to obtain the testimony of reluctant witnesses whose vital information would not likely have been obtained in any other circumstance apart from the Multicounty Grand Jury process. The authority to subpoena records of bank accounts, telephone subscriber information and toll logs, and other financial data and business records has been pivotal in discovering and documenting criminal activity throughout the State without prematurely alerting those under investigation and giving them the opportunity to dispose of evidence, change their method of operation or otherwise hinder lawful investigations.

The grand jury process is critical to a free citizenry in a representative republic such as ours. The Multicounty Grand Jury is composed of ordinary citizens from our State. The grand jury process ensures that no government agency, power, or person will unjustly or unfairly accuse or incriminate another citizen or public official without due process. It is important that no person, either governing or governed, be subjected to unfair or unjust accusation without access to a court of competent jurisdiction in which to meet his or her accusers. The Multicounty Grand Jury does not decide guilt or innocence but rather, determines whether or not there is sufficient evidence which, if unexplained

or uncontradicted and presented in court to a jury of one's peers, would prove the defendant's guilt beyond a reasonable doubt and result in a conviction. When there is sufficient evidence of both type and quality, the grand jury's responsibility is to bring an indictment, or accusation of crime, so that the State may require the indicted to face his accusers and stand trial. We have worked diligently and believe we have fulfilled our responsibility to the best of our ability in this regard. The necessity and effectiveness of the Multicounty Grand Jury have been demonstrated by the assistance this body has rendered to the numerous federal, state and local law enforcement agencies investigating crimes within this body's jurisdiction. Again, most law enforcement agencies, either by manpower, resources and/or authority, do not have the tools available to them that the Multicounty Grand Jury brings to the investigative table. The Multicounty Grand Jury has made a significant difference in many investigations.

The Multicounty Grand Jury has employed its powers to investigate a variety of crimes. These include: Racketeering; Embezzlement by Public Official; Embezzlement; Uttering of Forged Instruments; Perjury; Controlled Dangerous Substance violations; Conspiracy Against the State; Kidnapping; Rape; Fraud; Workers' Compensation Fraud; Medicaid Fraud; False, Fictitious or Fraudulent Claims Against the State; Pandering; Adoption Fraud; Obstruction of Justice; Violation of the Computer Crimes Act; Larceny; Consumer Protection Fraud; Theft; Larceny of an Automobile; Official Misconduct; Prostitution; Child Molestation; Environmental Crimes; and Making a False and Fraudulent Claim to the State. In the investigation of the above-referenced crimes, the Multicounty Grand Jury has assisted one hundred eleven (111) local, state and federal law enforcement agencies as set out in "*Appendix I*" marked and attached hereto.

II.

GENERAL DESCRIPTION OF ACTIONS TAKEN

This Multicounty Grand Jury, during the course of its investigation, returned Twenty- three (23) indictments charging a total of twenty-six (26) individuals. A significant amount of our time was spent investigating various matters arising throughout the State of Oklahoma, particularly Eastern Oklahoma.

In numerous instances, the Multicounty Grand Jury directly assisted District Attorneys Wes Lane, Tim Harris, Brett Burns and Richard Smotherman, among others, in their pursuit of criminal investigations. The Multicounty Grand Jury also worked closely with numerous Assistant District Attorneys. Part of the assistance the Multicounty Grand Jury was able to provide was in the investigations of an alleged sexual assault, as well as an alleged homicide. There were numerous matters in which the assistance of the Grand Jury was sought and, accordingly, we were able to question numerous witnesses. By obtaining testimony, the respective District Attorneys and local law enforcement agencies were able to eliminate individuals as potential suspects, strengthen their investigations, make charging decisions and/or further pursue leads resulting from testimony.

As previously noted, the Tenth Multicounty Grand Jury assisted many state agencies. Further, the Tenth Multicounty Grand Jury has partnered with federal law enforcement in matters which were either completed by the Tenth Multicounty Grand Jury or otherwise pursued through proper channels within the federal system.

III.

PARTICULAR AREAS OF INVESTIGATION

We do not find it necessary to use this report to address each and every investigation covered by the Tenth Multicounty Grand Jury. This report details areas which we believe are worthy of specific mention as follows:

A. Oklahoma State Department of Transportation and Glover Construction

From this investigation, the grand jury returned four (4) indictments containing felony counts alleging as follows: Conspiracy Against the State, 21 O.S. § 424, Intimidation of a State Witness 21 O.S. § 455, and Conspiracy to Defraud, 21 O.S. § 424. The grand jury's investigation revealed that Conspiracy Against the State was committed by George "Paul" Glover, Wade Bennett Hopkins, Gary Wayne Carr and Jarod Neil Smith. Defendant Paul Glover was president and principal stockholder of a Glover Construction Company, Inc., an Oklahoma corporation ("Glover Construction," herein), and Youngman Rock, Inc., an Oklahoma corporation also known as "the Onapa Quarry" Wade Bennett Hopkins was Vice President of Glover Construction, defendant Gary Wayne Carr was employed by Glover Construction as Asphalt Plant Superintendent and defendant Jarod Neil Smith was employed by Glover Construction as Asphalt Plant Manager. At all times relevant to the grand jury's investigation, Glover Construction Company, Inc., did business as a contractor for the construction of roads and highways using asphaltic concrete. As well, Youngman Rock, Inc. did business as a supplier of rock and gravel from its quarry. The grand jury learned that some time prior to approximately December 20, 1999, defendant Glover and Glover Construction had been notified by the Oklahoma Department of Transportation, an agency of the State of Oklahoma, that stone and rock from Youngman Rock, Inc.'s Onapa quarry (Pit No. 4601) had been

found to be unsuitable as aggregate material for making asphaltic concrete for roads and highways constructed for the Oklahoma Department of Transportation and could no longer be used to construct such roads and highways. Glover Construction had been awarded certain highway construction contracts by the Oklahoma Department of Transportation, including: Highway Project Number CIP-151C(39) IP, to reconstruct 4.1660 miles of a State highway designated U.S. Highway 64 within Muskogee County, Oklahoma using asphaltic concrete beginning approximately two tenths (0.2) of one mile north of the junction of Interstate 40 and extending north therefrom; Highway Project Number CIP-131B(19)IP, to reconstruct State Highway 9 in Haskell County using asphaltic concrete beginning at the city limits of Stigler, Oklahoma, and extending East therefrom for 6.6330 miles; and also State Highway Project Number STPY-40A(421), to grade and drain bridges and surface of the north interchange of US Highway 59 in LeFlore County, Oklahoma, the same also being known as the Poteau Bypass. Pursuant to the rules and regulations of the Oklahoma Department of Transportation and applicable contract specifications pertaining to the referenced projects and pursuant to contract specifications, Glover Construction provided the Oklahoma Department of Transportation written notices regarding each of the highway projects that the rock aggregate materials to be used on the highway construction contracts described above would come from a company called Stigler Stone. Glover did not give any notice that any materials from Youngman Stone, Inc., or the Onapa quarry would be used on said project(s). The grand jury found that the defendants conspired and agreed among themselves to defraud the State of Oklahoma by impairing, obstructing or defeating the lawful function of the Oklahoma Department of Transportation to contract for the construction of State roads and to regulate the materials used in the construction of such state roads and highways by secretly using and including stone and rock obtained from

Youngman Stone, Inc.'s Onapa quarry as some or all of the aggregate material used in asphaltic concrete mixed and laid by Glover Construction as road surface in the aforesaid road reconstruction projects.

While we clearly recognize that the Oklahoma Department of Transportation was defrauded, the Department continued to entertain bids, award contracts and pay claims to Glover even after the grand jury investigation was well underway. It creates a quandary when the Department allows an abuser of the system, such as Mr. Glover, to be awarded bids while the Department is seeking outside assistance from law enforcement to ferret out allegations of fraud and corruption suspected of the same Mr. Glover. It seems obvious and necessary that the department must create and implement an aggressive debarment process which would disallow individuals, such as Mr. Glover, from continuing to profit by being awarded new contracts from the State as he simultaneously defrauds it in his performance of previously awarded contracts. This practice seems to be one which welcomes the abuse suffered by the State of Oklahoma at the hands of Mr. Glover. The grand jury suggests that the department consider an administrative process which provides as recommended below:

- 1) Create or improve upon the existing debarment process available to the Oklahoma Department of Transportation in order to allow for suspension of an individual or business from bidding for and being awarded state contracts while charged with committing crimes directly relating to violations of public trust or the integrity of state programs.
- 2) Such debarment process should allow for written notice of the basis for suspension, irregularities giving rise to the suspension and/or other causes for the suspension.

3) Further, policies should be implemented which would allow for immediate suspension whenever a properly designated official within the Oklahoma Department of Transportation determines that immediate action is necessary to protect the public interest. For example, participation in suspected criminal activity (*e.g.* conspiring to defraud the state of Oklahoma) should be one cause, among others, giving rise to immediate suspension.

4) While we believe it would benefit the State of Oklahoma to designate an official who may determine when immediate suspension is necessary, we also recommend that the suspension procedure allow for appropriate responses to be filed by an individual or company subject to suspension before final debarment is determined.

5) We recommend a suspension and debarment procedure as described herein so that the Oklahoma Department of Transportation may take action which would be remedial in nature and only used by the department when necessary to protect the public interest and the State of Oklahoma and not for the purposes of punishment.

The grand jury strongly believes that had a system or procedure similar to that which is recommended above been in place, the defendants in this case would not have been allowed to continue to bid on and be awarded state contracts while under criminal investigation.

B. Hinton Economic Development

From this investigation, the grand jury returned four (4) indictments containing ten (10) felony counts alleging as follows: Obtaining Property Under False Pretenses, 21 O.S. 2001, §§ 1541.1 and 1541.2, Conspiracy Against the State/Conspiracy to Defraud, 21 O.S. §§ 424, Embezzlement by Public Officer/ Receiving Unlawful Interest, Profit and Perquisite, 21 O.S. § 341, and Aiding and Abetting 21 O.S. 2001, § 172. The defendants charged in the indictments returned by the grand jury include members of the City of Hinton Board of Trustees (“Trustees”), and an attorney who served, at times, as the city attorney and, at other times as a lawyer for hire who represented various entities involved in the transactions giving rise to the grand jury investigation. As well, the grand jury investigation resulted in charges against a person who represented himself as the owner of an intellectual property and his associate.

By way of background information, the grand jury learned that the Trustees entered into a Limited Guaranty Agreement together with a Security Agreement in which the Trustees of the Hinton Economic Development Authority, an agency of the State, a Public Trust, and authority of the Town of Hinton, pledged and delivered title to a valuable thing or property valued at seven million, five hundred fifty-five thousand dollars (\$7,550,000.00). The Limited Guaranty Agreement and Security Agreement, together with government securities of the pledged value to Bank One, NA, guaranteed bonds issued by the Oklahoma Development Finance Authority (“ODFA”), for the benefit of LGX, L.L.C. Donald R. Hall was President of New Vision Foods, Inc. (“NVF,”), a Nevada Corporation based in Savannah, Georgia, and was also the Manager and President of Hall

Management, LLC (“Hall Management,”), an Oklahoma Limited Liability Company, and LGX, LLC, an Oklahoma Limited Liability Company. Hall Management and NVF, collectively owned 245 of 1000 unit shares of LGX, LLC (“LGX,”), an Oklahoma Limited Liability Company.

Based on the evidence made available to the grand jury, it is clear that Trustees of the Hinton Economic Development Authority (“HEDA,”) were an agency of the government, a Public Trust, and authority of the Town of Hinton, Caddo County, Oklahoma, having the Town of Hinton, Oklahoma as beneficiary. Commencing in 1997, Mr. Hall fraudulently represented to HEDA’s Trustees that he and his companies were possessed of knowledge, experience and expertise in a process known as Liquefied Gas Extraction, a technology involving the use of liquefied natural gas to separate and extract elements from a common material. Mr. Hall made this representation in the process of requesting assistance from HEDA’s Trustees to obtain sufficient capital funding to construct a manufacturing plant near Hinton, Oklahoma, said plant to be owned by LGX and managed by Hall Management, to extract valuable, marketable products from peanuts or cocoa beans using the Liquefied Gas Extraction process.

Further, the grand jury found that in the course of dealings between Mr. Hall and HEDA’s Trustees, Mr. Hall neglected to disclose that, on or about June 20, 1996, Mr. Hall and his company, NVF, had entered into a “*Confidentiality Agreement*” regarding the Liquefied Gas Extraction process with Cargill Corporation (“Cargill,”) and its subsidiary Wilbur Chocolate, Inc. (“Wilbur,”) in which Mr. Hall and NVF promised and agreed to keep confidential “all information, data, samples, specifications, processes, methods and formulae relating to the technology that is owned by or in the possession of New Vision or Wilbur. . . .” for a term of seven (7) years. Mr. Hall also failed to disclose to HEDA’s Trustees that on or about May 9, 1997, Mr. Hall had

received a written warning from attorneys for Cargill that the Liquified Gas Extraction Process of which defendant was knowledgeable was "intellectual property" of Cargill and that it would "take whatever steps are necessary" to protect this property, such that the said defendant's unqualified representations to HEDA's Trustees that he and his companies could use said process to extract valuable and marketable products were misleading and untrue and made by Mr. Hall with the intent to trick, deceive, beat, cheat and defraud Hinton.

As previously stated, four of the individuals charged were members of the Hinton Board of Trustees. Accordingly, they were duly-appointed Trustees of the HEDA and, therefore, Public Officers required to take the same Oath of Office as elected Public Officials in the State of Oklahoma. As Trustees of HEDA, the individual board members had the control of funds of the aforesaid Public Trust in the amount of seven million, five hundred fifty thousand dollars (\$7,550,000.00), said money being funds in which the State of Oklahoma would directly or indirectly have an interest. The trustees, Eldon W. McCumber, Kenneth L. Doughty, Michael S. Chaloner and William Sparks, caused HEDA to purchase certain Government National Mortgage Association (GNMA) bonds in the name of HEDA and thereafter said trustees, aided, abetted and encouraged by the above referenced Mr. Hall and Attorney Leroy James Patton, who was also named as a defendant, feloniously delivered the referenced bonds to Bank One as collateral, together with the Limited Guaranty Agreement and Security Agreement to guarantee a loan of money from the Oklahoma Development Finance Authority to LGX, L.L.C., an Oklahoma Limited Liability Company. Furthermore, the Trustees entered into the referenced agreements knowing that Mr. Doughty, a member of the board, owned an interest in said LGX, LLC, and that Mr. Doughty had a direct or indirect perquisite, profit or interest in the use of the public property. The grand jury

investigation also revealed that Mr. Hall obtained financing for LGX in the amount of six million, four hundred thousand dollars (\$6,400,000.00) from the Oklahoma Development Finance Authority.

In summary, our findings are that the above activity can best be described as the result of a selfish and excessive desire to benefit from a “get rich quick” scheme all at the risk of losing monies and/or interest not belonging to the individuals responsible for carrying out the transactions. The evidence further demonstrated that the Trustees acted with total disregard for the fact that their actions were beyond the scope of authority they are allowed to exercise in their capacity as trustee. Unfortunately, the investigation revealed a tale of greed and resulted in monetary loss to the city of Hinton.

B. District Attorney (“DA”) District 27

As previously stated, this Grand Jury focused a significant amount of time and attention investigating allegations of wrongdoing throughout Eastern Oklahoma, including DA District 27.

In this regard, this Grand Jury returned indictments charging three (3) individuals with seven (7) felony counts alleging Possession of Controlled Dangerous Substance, 63 O.S. 2001, § 2-402, Falsification of Evidence/Providing False Evidence 21 O.S. 2001, § 453, Perjury 21 O.S. 2001, § 491, Attempted Subornation of Perjury, 21 O.S. 2001, § 492 and Embezzlement, 21 O.S. 2001, § 341.

Soon after the grand jury began its investigation, a sole area of focus splintered into various areas. Accordingly, the grand jury first turned its attention to the investigation of alleged misconduct by individuals employed by the District 27 District Attorney’s Office. In this part of the investigation, the grand jury inquired into the alleged theft of evidence from a crime scene by a sitting Assistant

District Attorney and the alleged cover-up carried out by various individuals within the District Attorney's Office. After spending multiple sessions examining witnesses and receiving exhibits regarding this part of the grand jury investigation, the grand jury returned several indictments including: Providing False Evidence, Possession of Controlled Dangerous Substance, and multiple counts of Attempted Subornation of Perjury. The referenced charges were filed against two individuals, one being Janet Bickel, now a former Assistant District Attorney, who was charged with Providing False Evidence and Possession of Controlled Dangerous Substance. Charges were also filed against Arstest Vyrl Keeter, who served as the Office Administrator at the time relevant to the investigation. Mr. Keeter was charged with Attempted Subornation of Perjury. As well, both Ms. Bickel and Mr. Keeter were charged with Perjury. The Perjury counts arise from the fact that each of the defendants provided false testimony to the Multicounty Grand Jury. After many hours, days, weeks and months of investigation, this grand jury returned the indictments described above.

After the indictments were returned and the cases began proceeding through the District Court process, defendants Bickel and Keeter both entered guilty pleas to each of the charges returned by this grand jury. In each instance, the defendants set out facts in the plea paperwork which validate the worthiness of the time and effort put into the grand jury's investigation. Specifically, the grand jury investigation revealed and the defendant confirmed that then Assistant District Attorney Janet Bickel assisted District Attorney District 27 Drug Task Force agents in their execution of a search warrant at a residence located in Cherokee County, Oklahoma. During the search, various items of evidentiary value were located throughout the residence including items which presumptively tested positive as methamphetamine. One such item thought to be methamphetamine was determined

missing from the scene at the time the evidence was being inventoried and collected. At the time when the item of evidence was determined missing, Defendant Bickel had already left the residence where the warrant was being executed. All other personnel (law enforcement and otherwise) who participated in the execution of the warrant allowed themselves to be searched and remained at the scene until released. While the matter was immediately brought to the attention of District Attorney Richard Loy Gray, Jr., the Oklahoma State Bureau of Investigation was never contacted to conduct an investigation of the matter. Furthermore, the evidence reveals that Ms. Bickel did not return to the residence to be searched and denied any responsibility for the missing evidence. Approximately five (5) days after the warrant was executed, Ms. Bickel contacted Mr. Gray and advised that she in fact had the missing item of evidence. Mr. Gray instructed Ms. Bickel to report to the Wagoner County District Attorney's Office where she was to return the evidence. Accordingly, Ms. Bickel followed Mr. Gray's instructions and gave the evidence to the District Attorney investigator in charge of the evidence room maintained in the District Attorney's office. The evidence turned in by Ms. Bickel was documented as having been turned in by "a citizen". From that point forward, there was a concerted effort to coordinate "a cover-up" and/or "responses to be offered in explanation" as to why the evidence came into Ms. Bickel's personal possession.

As admitted by Ms. Bickel, she deliberately took the evidence, which was a small plastic baggie containing methamphetamine. Ms. Bickel used or consumed the contents and then replaced them with a different quantity of methamphetamine. Mr. Keeter admitted that he attempted to coach various individuals who would be considered material witnesses to the matter, including Ms. Bickel.

As to the other areas of investigation, this grand jury has continued its ongoing investigation.

Accordingly, the grand jury subsequently returned an indictment charging the elected District Attorney, Richard Loy Gray, Jr., with Embezzlement in violation of Title 21 O.S. 2001, § 341, for his misappropriation of drug forfeiture monies. The embezzlement charge against Mr. Gray, as well as the other charges returned by this grand jury, so far in its ongoing investigation, reflect a pattern of behavior which harbors corruption and a true departure from the pure intent of a District Attorney's Office. The District Attorney's Office should serve as a *minister of justice* rather than one who facilitates standards of conduct which fall beneath the character of law abiding citizens. At times during this investigation, it was difficult to remember we were discussing licensed members of the bar, an elected official and/or a public servant rather than common criminals.

At this point in our investigation, having now also returned an indictment charging Mr. Gray with personally embezzling drug forfeiture monies, we clearly understand why Mr. Gray was in no position to correct or address employees under his watch for their criminal wrongdoing. We now know Mr. Gray created his own nest of deception and thievery. In that regard, we believe the charge of Embezzlement filed against Richard Gray is supported by overwhelming evidence including a great deal of testimony regarding seizure and forfeiture funds and how monies should be handled throughout the process. It was clear from the evidence presented to this grand jury and unrefuted by Mr. Gray that he lacks experience in handling forfeiture matters both in his prior experience in private practice and currently as a prosecutor. However, he seemed to learn enough about the system to manipulate it for his personal gain. We clearly see how Mr. Gray tweaked the system used for handling seizures in an effort to rid it of checks and balances and place himself in a position where he could exercise exclusive control over virtually every aspect of the process involving the handling

of forfeitures and seizures of monies in particular.

We do not find any legal or logical reason for Mr. Gray's decision to change the manner in which evidence should be handled. Further, we find no logical explanation as to why Mr. Gray would place himself in the chain of custody, which in effect creates the possibility of Mr. Gray becoming a witness in the very criminal cases he would otherwise be responsible for prosecuting. Gray's system for handling seizure and forfeiture funds could otherwise be characterized as micro-management, but is also contrary to good government. It is apparent to us that Gray's actions to maximize his involvement and to limit involvement by others throughout the seizure and forfeiture process was a plan to eliminate Gray's accountability for his own actions.

After hearing over two dozen witnesses and examining hundreds of exhibits, many of which were collective exhibits involving multiple documents and returning six (6) indictments, against three (3) defendants, this grand jury's investigation has been successful. The substantial amount of time we devoted to this investigation is but a portion of the man hours expended. The Office of the Attorney General (OAG), through its attorneys and investigators, spent countless hours in preparation before, during and after each of our sessions to ensure that our time was spent efficiently during each session.

This part of our investigation has deservedly attracted much public attention because of the parties involved, the capacity in which they served, the numerous acts in question and the corrupt nature of the acts described as having been carried out by the defendants while serving in their **official** capacities as **public servants**. In short, Mr. Gray, as one who should be responsible for shaping

sound policy, seems to have intentionally fostered aggregate social and cultural conditions which lend themselves to corruption rather than conduct we expect from law abiding statesmen charged with the task of responsibly conducting the State's business.

While the conduct of Bickel and Keeter was undoubtedly inappropriate and criminal in nature, when the same was brought to Gray's attention, both prior to and throughout the grand jury investigation, Mr. Gray simply responded with expressions of scorn and contempt for individuals responsible for bringing the events to light. Mr. Gray neglected to correct or even address Bickel and Keeter's behavior which turned out to be blatant criminal conduct.

Finally, regarding District 27, the investigation of other areas is not complete and the grand jury recommends that a future grand jury conclude investigation of this matter. Without revealing any matter that might impair the ongoing investigation, this grand jury would recommend that the next Multicounty Grand Jury be charged with continuing this investigation.

**C. Ongoing Problem of Filing False Claims By State Employees For Salary/Wages
("Ghost Employees")**

Although this grand jury did not return any indictments charging individuals with Filing False Claims Against the State, we assisted in numerous investigations regarding allegations of "ghost employees". In each of the investigations brought before this grand jury, our role was to assist other law enforcement who were responsible for the primary investigation. In light of the fact that we heard testimony and received evidence regarding allegations of Filing False Claims Against the State, we feel it is important to address the growing problem in our final report.

We note that it is the third consecutive grand jury to deal with the problem within State

government of officers and employees obtaining compensation for work days upon which they were actually absent without leave, i.e., the problem of the so-called “ghost employee.” Such fraud is a felony crime prosecuted as Making a False, Fictitious or Fraudulent Claim Against the State, 21 O.S. 2001, § 358. In most instances, the crime is committed by both the officer/employee making the false claim and receiving such fraudulent compensation, as well as, by the officer/employee who approves the claim with knowledge of its falsity. Claiming salary or wages for days when the officer or employee is actually absent without leave cause harm beyond the overpayment of salary and wages since accrual of annual leave benefits and sick leave benefits is linked to working.

For example, this Grand Jury investigated matters involving the Historical Society and the Department of Corrections Medical Services Division regarding alleged false claims. In both instances, the system used for documenting and monitoring an employee’s work schedule *or* the employee’s lack of supervision facilitated an employee’s ability to falsely claim hours worked. In both of these investigations, the grand jury was confronted with a recurring problem that hinders proper investigation of “ghost employee” allegations, which is the lack of uniformity in documenting the presence or absence of agencies’ officers and employees. Some agencies require all officers and employees, whether FLSA exempt or non-exempt, to report to their immediate supervisor each month the actual number of hours worked and/or leave hours taken each work day and require the immediate supervisor to certify the accuracy of the report to the payroll authorities. Other agencies require all such employees to document the actual time they arrive and leave their assigned work station each day by signing in and signing out on a daily time sheet. Other agencies only require employees to notify the personnel office of days they are not present for work and the form of leave to be charged.

The problem of the “ghost employee” is more likely to exist in State agencies that do not require at least a monthly report to the immediate supervisor by each officer/employee of the hours worked/leave taken for each work day.

The State would perhaps benefit from a uniform rule that requires all State officers or employees to report to their immediate supervisor on a monthly basis the number of hours worked and/or hours of leave taken for each work day of the pay period and that the immediate supervisor certify the correctness of that report to the payroll authorities of the agency.

D. Oklahoma Tax Commission/ Oklahoma State Department of Health

1. Oklahoma Tax Commission Tax Payer Assistance Division

This grand jury investigated allegations of criminal conduct pertaining to the registration of coin operated decals in Oklahoma under the provisions of the Title 68 O.S. § 1503, committed by personnel in the Tax Payer Assistance Division of the Oklahoma Tax Commission. In this regard, this grand jury has charged one (1) person with thirteen (13) felony counts alleging Embezzlement, 21 O.S. 2001, § 341, and Violation of the Oklahoma Computer Crimes Act, 21 O.S. 2001, § 1953.

In the course of this investigation, the grand jury studied the manner in which coin operated vending machine decals are distributed by the Oklahoma Tax Commission. The grand jury found, in lieu of tax revenues, an owner of a coin operated machine must pay fifty dollars (\$50.00) per fiscal year for each machine operating in the State of Oklahoma. Upon payment of the referenced fee, the machine owner receives a decal which must be placed or displayed on the machine as proof that the coin operated machine is properly registered with the State of Oklahoma.

The grand jury learned that the decals are distributed to various satellite offices where they may be purchased by machine owners. One may also purchase decals from the Oklahoma City "main" office by simply walking into the office and making application for the number of decals needed. The grand jury learned that there are three to four individuals in the Oklahoma City office who are responsible for processing applications for decals. Further, the grand jury learned that, during the time period relevant to our investigation, some decals were kept in the Oklahoma City office in or around a work-space used by Johnny Brandon, the above referenced accused. The grand jury learned that Mr. Brandon, a seventeen year employee of the Oklahoma Tax Commission, developed his own "client base" of individuals and/or businesses to whom he would provide decals on an annual basis for the cost of twenty dollars (\$20.00) per decal. Some of Mr. Brandon's clients described they had purchased decals from him "under the table" for approximately ten (10) years. Under this scheme, Mr. Brandon would pocket all of the funds provided by the machine owners and would give them decals for their machines. No information regarding the decals distributed to the machine owner by Mr. Brandon was ever entered into the database maintained at OTC. Mr. Brandon was able to carry out his criminal activity for such an extended period of time because of flaws in the system.

The process by which coin operated vending machine decals are purchased is one in which individual employees are not accountable to anyone else who may oversee or verify that decals are being sold legitimately. We view these deficiencies seriously in light of the fact that this agency is responsible for handling millions of dollars through its various departments and divisions. With specific regard to this grand jury's investigation, we recommend as follows:

- 1) That the Oklahoma Tax Commission begin using decals with bar codes which may be scanned in order to access information regarding the individual who purchased the decal;
- 2) That the Oklahoma Tax Commission require any employee responsible for issuing a decal to scan the decal when it is issued and to enter particular information regarding the purchaser into a database to be maintained by the Oklahoma Tax Commission. Under the present system, inspectors routinely make site visits to ensure coin operated machines have decals properly displayed. However, inspectors do not investigate whether the decals were legally obtained. Under an improved system, site inspectors should be able to immediately retrieve information regarding the decals and determine upon inspection whether the decal displayed on a particular machine is registered to its respective owner; and
- 3) That the Oklahoma Tax Commission store decals in a secure location.

The grand jury finds that its investigation of the Tax Payer Assistance Division of the Oklahoma Tax Commission is complete.

2. Oklahoma State Department of Health/Vital Records

This grand jury also investigated allegations of criminal conduct pertaining to the Vital Records Division within the Oklahoma State Department of Health. From this investigation, this grand jury charged one (1) individual with eighteen (18) felony counts alleging Embezzlement in violation of title 21 O.S. 2001, § 341. The grand jury's investigation revealed that a long time employee of the Oklahoma State Department of Health, Elliott Thompson, served as the Head

Cashier in the Vital Records Division. As such, the defendant was responsible for collecting all monies received as application fees on a particular day. As well, he was responsible for making the daily deposits for the division. We discovered Mr. Thompson would withhold most of the "cash" that was received on a particular day and would make up the daily deposit using only checks. In order to make up the amount that should be deposited on a particular day, Mr. Elliott would insert checks received on a previous day in place of the amount of cash that he withheld. Mr. Elliott would then misappropriate and divert the cash for his personal use.

Through our investigation, the grand jury discovered that Mr. Thompson pocketed thousands of dollars in cash which he received as and for application fees. Furthermore, the defendant withheld and stored thousands of dollars worth of checks in his desk drawer among other places. The grand jury notes that this matter would not have been brought to light if not for the courageous disclosure from an outside source.

Due to the lack of controls within the department this scheme could have been carried out by the defendant for many years to come. The Health Department would dramatically benefit from employing a basic accounting principal known as "*Segregation of Duties*". This basic internal control is used to ensure that errors or irregularities are prevented or detected on a timely basis by employees in the normal course of business. Segregation of Duties would provide two benefits: 1) a deliberate fraud is more difficult because it requires collusion of two or more persons; and 2) it is much more likely that innocent errors will be found. At the most basic level, it means that no single individual will have control over two or more phases of a transaction or operation. Management should assign responsibilities to ensure a cross check of duties. The grand jury finds that its investigation of this matter is complete.

Regarding both the Oklahoma Tax Commission and the Oklahoma State Department of Health, a similar lack of checks and balances resulted in investigations conducted by the Eighth and Ninth Multicounty Grand Juries which resulted in numerous indictments. The fact that a third grand jury has conducted yet another investigation of these agencies underscores the fact that it is time for the Oklahoma Tax Commission and the Oklahoma State Department of Health to clean their own houses rather than rely on law enforcement to reveal criminal conduct being carried out on a routine basis. In each of the grand jury investigations, the culprits were long time employees, like Mr. Brandon and Mr. Elliott who held positions long enough to realize the vulnerability within their systems and the glaring fact that there are few safeguards in place to insure accountability. We would strongly encourage the Oklahoma Tax Commission and Oklahoma State Department of Health to review and improve upon every aspect of business carried out by these departments so as to prevent yet another costly, time consuming and embarrassing investigation.

IV. EXPRESSIONS OF APPRECIATION

The Multicounty Grand Jury wishes to express our appreciation to several individuals and agencies who have contributed to a successful term. In appreciation, we thank the Oklahoma Supreme Court for their Order convening the Grand Jury and for their appointment of Judge Bryan Dixon as Presiding Judge of the Multicounty Grand Jury. We express appreciation to Judge Dixon for his patience and wise guidance throughout the term. Many times, Judge Dixon had to manage his own docket, which includes crowded motion dockets and trial settings in order to address matters pressing before the Grand Jury. However, Judge Dixon was always accommodating and gracious.

Furthermore, he demonstrated to this Grand Jury both directly and through our legal advisors that he was always prepared and available to address grand jury matters even if it meant sacrificing a lunch break or working after hours. Judge Dixon has been an exemplary presiding judge.

We also commend Attorney General W.A. Drew Edmondson and Assistant Attorney General Joel-lyn McCormick and the members of their staff for their professionalism, support, legal advice and assistance. Also, to the Oklahoma County Commissioners and staff for their indulgence; to the office of the Oklahoma County District Attorney Wes Lane and his staff for the use of his offices; and to the office of the Oklahoma County Public Defender Bob Ravitz and his staff for the use of his offices on numerous occasions and for providing counsel to indigent witnesses; to the Office of the Court Administrator, Renee Hildebrant, and her staff; to Shelly Schmidt who served as bailiff; to Oklahoma County Court Clerk Patricia Presley and her staff, in particular deputies clerks Teresa Davis, Joann Sykes and Susan Keltch; and finally, to City Reporter and particularly to Debra Garver.

Finally, we wish to thank our families for their support, patience, and understanding. We also express our appreciation to our employers for their support and understanding over the past eighteen (18) months.

V.

ADMINISTRATIVE RECOMMENDATIONS

During our eighteen (18) month tenure, this Grand Jury has met in multiple locations for our grand jury sessions. The first several months, we met in a conference room located in the Oklahoma County Annex Building. After several months, renovation began on that area and it was no longer available to the Grand Jury. We then started meeting in the library of the Public Defender's Office

as we waited for an area in the Oklahoma County Courthouse to become available. When the location within the Oklahoma County Courthouse became available, we were then allowed to meet in the courthouse. While the accommodations have been manageable, we believe it to be in the best interest of future Multicounty Grand Juries to have a single, permanent meeting place and courtroom for its regular use when necessary as designated by the Supreme Court. Although we have felt displaced at times during our session, we are proud to say *nothing and no-one*, regardless of title, kept us from doing the job we were sworn to complete.

VI. CONCLUSION

We are unanimous in stating that we believe, based upon our experience, that the Multicounty Grand Jury is an essential, necessary and invaluable tool for law enforcement in the State of Oklahoma. We are residents of thirteen (13) different counties across this state. We are proud of the work we have done as a grand jury. Information and evidence were obtained, and cases solved, that would likely not have been otherwise due to the use of the subpoena and investigatory powers of the Multicounty Grand Jury. We believe it is a process which should be continued, funded and fully supported by the citizens, Legislature, Governor, judiciary and law enforcement community of the State.

Lawrence David
FOREMAN

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Tommy W. Audy

Stephen M. Bush

Edward E. Palley

Kinda M. McClain

Jason R. Jeff
Nancy Denham

Perry B. Weeks

Richard D. Spencer

Agnes J. West

This Final Report of the Oklahoma Tenth Multicounty Grand Jury is received and ordered
filed this 28th day of November, 2006.

Bryan C. Dixon
BRYAN DIXON
PRESIDING JUDGE OF THE TENTH
MULTICOUNTY GRAND JURY