IN THE SUPREME COURT OF PENNSYLVANIA

No. 75 WM 2018, No. 77 WM 2018, No. 78 WM 2018,
No. 79 WM 2018, No. 80 WM 2018, No. 81 WM 2018,
No. 82 WM 2018, No. 84 WM 2018, No. 86 WM 2018,
No. 87 WM 2018, No. 89 WM 2018

IN RE: FORTIETH STATEWIDE INVESTIGATING GRAND JURY

SUPPLEMENTAL COMMON MERITS BRIEF OF CLERGY PETITIONERS RELATING TO ESSENTIAL DUE PROCESS SAFEGUARDS

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INTRODUCTION

The investigating grand jury procedure utilized in this case denied Petitioners two essential due process protections: (1) ***notice*** of the existence of the investigating Grand Jury and of the Report condemning them,[1] and (2) a ***meaningful opportunity*** to challenge the Report's false, misleading, incorrect, and unsupported assertions.[2] Without these essential protections the unredacted Report's release would have caused irreparable damage to Petitioners' reputations, in violation of the Pennsylvania Constitution. *See* Pa. Const. art. I, § 1. Indeed, but for this Court's timely stay of the release of the Report, and the careful process of temporary redaction and excision it adopted in its Opinion and Order of July 27, the constitutional consequences for Petitioners would have been calamitous.

Given Petitioners' experience, the kind of due process safeguards required to avoid any future repetition of the procedure in this case are easy enough to imagine in general, but impossible to achieve under the unusual circumstances of this case.

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[1] Petitioners received notice of some excerpts of Report No. 1 of the Fortieth Investigating Grand Jury (referred to throughout as the "Report"), in dribs and drabs, and only at the point at which the Report could no longer be corrected. Several Petitioners received the complete Report for the first time only last month – *i.e.*, after this Court's July 27 Opinion and Order establishing the procedure for temporary redactions.

[2] Although the Court did not order all petitioners in this appeal to brief the issues raised in its August 14 Order, the petitioners in the following dockets join in all of the arguments set forth herein (as well as all of the arguments set forth in Petitioners' Common Merits Brief): Nos. 74, 76, 91-97, 99-102, 107, and 111 WM 2018. *See* Pa. R. App. P. 2137.

As a general matter, a private citizen singled out for targeted condemnation in a grand jury report must have what other jurisdictions provide: an opportunity to present exculpatory evidence to the grand jury, and a hearing before a neutral supervising judge.

As for this case, no meaningful due process is possible now, even if the Pennsylvania Office of the Attorney General ("OAG") were to reconvene a new grand jury to afford Petitioners constitutionally necessary due process. This is so for three reasons: ***First***, due to the age of the allegations, essential witnesses and evidence are lost to the Petitioners. ***Second***, the clearly punitive purpose of the Report – *i.e.*, to shame Petitioners by naming names, and identifying them collectively as "predator priests" – has effectively created a lifetime stigma of sex offender status without a prior criminal conviction, and despite the retroactive application of this "registration," in some instances to conduct alleged to have occurred decades ago. ***Third***, the OAG's incessant media campaign to undermine Petitioners' good faith arguments and legitimate constitutional basis for protecting their identities has amplified public hostility to Petitioners and dealt the final death blow to any lingering hope for due process. The OAG has overseen, controlled, and orchestrated every step of this process, from the investigation to the choreographed media campaign that followed. The incurable errors before this

Court are of the OAG's own making. Humpty Dumpty cannot be put back together again.

SUMMARY OF ARGUMENT

The members of this Court have unanimously agreed that Petitioners identified in the Report should "[i]deally . . . have been afforded the opportunity to appear before the grand jury and to respond, in some reasonable fashion, to the grand jury's concerns." *In re Fortieth Statewide Investigating Grand Jury*, Nos. 75 WM 2018, et al., 2018 WL 3650493, at *15 (Pa. July 27, 2018) (hereafter, "*Fortieth Grand Jury*"); *see also id.* at *14 ("It would be ideal if the grand jury remained in session, so that a broader panoply of remedies would be available to us."). The Court further held that, having been "denied such opportunity," Petitioners "seeking the remedy of a pre-deprivation hearing . . . are entitled to this Court's further consideration of whether additional process can and should now be provided as a curative measure." *Id.* at *15. Thus, this Court's supplemental briefing Order of August 14, 2018 raises two questions:

First, what due process safeguards are required to avert irreparable damage to an individual's constitutional reputational interest, when that individual is named critically in a grand jury investigative report, and the individual challenges the grand jury's allegations as false, incorrect, misleading, or otherwise unsupported by the evidence? The answer to this question of first impression for

this Court – which finds support in the jurisprudence of this Court, and in the practices of other states – is that Petitioners are entitled to notice and a meaningful opportunity to be heard before the fact finders, *i.e.*, before the supervising judge and the grand jury itself, as described in Section I. (The particular protections to which Petitioners are entitled before the supervising judge and grand jury are described in Section I.F.)

Second, under the very unusual circumstances of this appeal – namely, an expired grand jury; a reassignment of further proceedings to a judge other than the supervising judge; a Report containing decades-old allegations involving critical witnesses who are deceased and that is purposefully punitive; and amid an onslaught of extrajudicial statements by the Attorney General berating Petitioners for seeking to protect their constitutional right to reputation – are the due process safeguards generally required even available now, in this particular case? The answer to this question, as explained in Section II, is "no."

Because Petitioners cannot be afforded essential due process now, the Court should adopt the redacted Interim Report released on August 14 as the Grand Jury's Final Report. Doing so will achieve the two goals expressed in this Court's July 27 Opinion, namely: protecting Petitioners' reputational interests, and giving expression to those of the grand jurors' conclusions that have not been challenged.

I. PETITIONERS ARE ENTITLED TO A MEANINGFUL OPPORTUNITY TO BE HEARD BEFORE THE FINDERS OF FACT – THE SUPERVISING JUDGE AS WELL AS THE GRAND JURORS

A. Due Process Requires An Appropriately Flexible Approach Tailored To The Uniqueness Of Investigating Grand Juries

This Court has recognized that reputation is a fundamental constitutional interest in Pennsylvania that cannot be infringed without due process. *See Fortieth Grand Jury*, at *10-11; *see also R. v. Commonwealth, Dep't of Public Welfare*, 636 A.2d 142, 149 (Pa. 1994). As for what protections due process requires, courts have held that due process is a "flexible" concept that is highly context dependent. *See, e.g.*, *Zinermon v. Burch*, 494 U.S. 113, 127 (1990) ("Due process, as this Court often has said, is a flexible concept that ***varies with the particular situation***." (emphasis added)); *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972) (explaining that "due process is flexible and calls for such procedural protections as the particular situation demands" and "not all situations calling for procedural safeguards call for the same kind of procedure"); *see also C.S. v. Commonwealth, Dep't of Human Servs., Bureau of Hearings and Appeals*, 184 A.3d 600, 607 (Pa. Commw. Ct. 2018).

In this matter of first impression, a "flexible approach" to due process can be derived from a review of: (1) this Court's approach to due process matters in related contexts, *see infra* Section I.C, and (2) the practices of other states, *see infra* Section I.D.

B. This Court's *Bundy*/*Mathews* Framework Requires Strict Due Process Safeguards To Protect Petitioners' Fundamental Rights

To determine what safeguards are required in any particular case, this Court, in *Bundy v. Wetzel*, recently adopted the three-part framework of the U.S. Supreme Court in *Mathews v. Eldridge*. *See Bundy v. Wetzel*, 184 A.3d 551, 557 (Pa. 2018) (citing *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976)). Under the *Bundy*/*Mathews* framework, the process due in any case is determined by:

1. the private interest affected by the governmental action;
2. the risk of an erroneous deprivation together with the value of additional or substitute safeguards; and
3. the state interest involved, including the administrative burden the additional or substitute procedural requirements would impose on the state.

Bundy, 184 A.3d at 557.

As applied here, the *Bundy*/*Mathews* factors require an opportunity for a named individual to appear before both the grand jurors (*i.e.*, the initial finders of fact) and the supervising judge in his capacity of review and oversight of the grand jury report and record.

1. Petitioners' private interest is of the highest order, and therefore requires robust due process safeguards

The OAG does not (and cannot) dispute that Petitioners seek to protect a fundamental reputational interest that this Court has recognized is – no less than its

neighboring fundamental rights to life, liberty, and property – on the "highest plane." *See* Pa. Const. art. I, § 1; *see also Fortieth Grand Jury*, at *11.

The magnitude of this private interest relates directly and proportionately to the kind of due process safeguards required to protect it. *See e.g.*, *Haygood v. Younger*, 769 F.2d 1350, 1355-56 (9th Cir. 1985) ("The more important the interest and the greater the effect of its impairment, the greater the procedural safeguards the state must provide to satisfy due process." (citation omitted)); *Santosky v. Kramer*, 455 U.S. 745, 758 (1982) ("The extent to which procedural due process must be afforded the recipient is influenced by the extent to which he may be condemned to suffer grievous loss." (citation and internal quotation marks omitted)).

Accordingly, this Court must ensure that the greatest possible protection is afforded Petitioners under the first *Bundy*/*Mathews* factor. But, for the reasons explained in Section II.C, the Attorney General's media statements have made it impossible to adequately protect Petitioners' reputations now, after their very participation in this litigation – through a redaction procedure this Court has ordered, and the Special Master has carefully and diligently monitored – has been disingenuously described by the Attorney General himself as a "cover up." *See* Ex. 1 (Remarks of Attorney General Josh Shapiro, Aug. 14, 2018) at 3, 4.

2. The risk of error from not adopting necessary due process safeguards – as this case proves – is not just high, but certain

The second *Bundy*/*Mathews* factor concerns "the risk of an erroneous deprivation together with the value of additional or substitute safeguards." *Bundy*, 184 A.3d at 557. The Interim Report reveals startling investigative failure on the part of the OAG and Grand Jury that not only suggests the risk of error, but ***proves that errors occurred***. These errors are attributable to the lack of due process afforded Petitioners.

In addition to the examples provided in Petitioners' Common Merits brief, *see* Pet. Merits Br. at 20-23, the Interim Report reflects a host of other errors of arguably lesser significance that, nonetheless, cumulatively raise serious concerns about the care and attention to detail of the OAG and the grand jurors, and the accuracy of the Report:

- ***The allegation that Reverend Charles J. Ruffenach was confronted by his accuser and denied the accuser's allegations – after Ruffenach's death.*** The Interim Report describes Reverend Charles J. Ruffenach as a priest who died in 1980, but at the same time states: "In the late 1980's, the victim confronted Ruffenach regarding the abuse. Ruffenach denied the allegations." Interim Report at 366.
- ***Descriptions of the timing of certain priests' ordination are implausible on their face.*** The Interim Report describes Reverend Paul R. Fisher (whose birth date is listed as 1967), and says he was ordained in 1977, suggesting an unusually precocious child – a mere 10 years old at the time of his entry to the priesthood. *Id.* at 536. But Fisher's accomplishment pales in comparison to that of the apparently 6-year-old

Reverend T. Ronald Haney. *See id.* at 541 (listing Haney's birth date as 1952, his year of ordination as 1958, and inconsistently stating that he entered seminary at the age of 14 and continued until his ordination in 1958).

- ***Alleged abuse reported by individuals claiming to have been a certain age at the time of the abuse do not make sense chronologically.*** *See, e.g.*, *id.* at 663 (recounting report on April 26, 2002 by a then 33-year-old male of alleged abuse in 1979 – reportedly when the 33-year-old was 16 years old – but who would have been born in or about 1969, and therefore could only have been approximately 10 years old, not 16, in 1979); *id.* at 838 (recounting report in June 2005 by a then 34-year-old male who alleged he was abused in 1973 – reportedly when he was 11 years old – but who could only have been 2 years old, not 11, in 1973); *id.* at 831 (recounting report in 2005 by a then 48-year-old woman who alleged she was molested in 1957 – reportedly when she was 11 years old – but who could only have been born in 1957); *id.* at 844 (recounting report in September 2009 by a then 42-year-old male who alleged he was abused in 1967 – reportedly when he was 9 years old – but who could only have been born in 1967).

If all named individuals had been afforded an opportunity to offer the Grand Jury exculpatory and rebuttal evidence (and if they had received the full Report sometime before this Court's July 27 Opinion and Order), the truth-seeking function of the adversarial system would have avoided these errors. *See Fortieth Grand Jury*, at *14 ("[I]t would be preferable for the grand jury to have an opportunity to correct mistakes that it may have made, if any.").

Importantly, remand to a different supervisory judge can cure some, but not all of the Grand Jury's errors. A judge could excise plainly false or incorrect material. But errors of omission that mischaracterize incidents, or otherwise create

misleading impressions, such as those identified in Petitioners' Common Merits Brief, cannot be as easily remedied. The supervising judge cannot, for example, seek to clarify the Report by adding material that is not the product of grand jury deliberation and, ultimately, adoption. *See* 42 Pa. Cons. Stat. Ann. § 4545(b) (West 2018) ("A majority of the full investigating grand jury shall be required to adopt a report or issue a presentment."). Thus, Petitioners must have a timely opportunity to raise errors before the grand jury itself.

3. The administrative burdens due process safeguards impose are necessary to achieve both Petitioners' interests and the state's shared interest in truth, accuracy, and fairness

Finally, this Court must weigh "the state interest involved, including the administrative burden the additional or substitute procedural requirements would impose on the state." *Bundy*, 184 A.3d at 557. In doing so, the government cannot sacrifice fundamental rights for the sake of "prosecutorial convenience." *See A.Y. v. Commonwealth, Dep't of Pub. Welfare, Allegheny Cty. Children & Youth Servs.*, 641 A.2d 1148, 1152 (Pa. 1994).

The Grand Jury – under the OAG's guidance – viewed the state's interests far too narrowly, seemingly without awareness of other compelling state interests implicated by their task.[3] For instance, the Grand Jury expressed the state interest

[3] To the extent these other compelling interests were overlooked by grand jurors, the OAG should have highlighted them. *See Fortieth Grand Jury*, at *12 ("With the assistance of its

in retribution by shaming those accused in order to give victims their just deserts. *See* Interim Report at 2 ("This report is our only recourse. We are going to name their names, and describe what they did – both the sex offenders and those who concealed them. We are going to shine a light on their conduct, because that is what the victims deserve."). In addition, the Grand Jury sought to inform the public and to make recommendations for needed changes in public policy. *Id.* Finally, the Commonwealth unquestionably has a compelling interest in notifying the public of the location of sex offenders, as sex offender registration statutes permit, but those statutes are subject to constitutional limits and if community notification was really the Grand Jury's purpose, its Report was an overly blunt instrument, sweeping within its ambit both the living and the deceased. *See id.* at 12 ("Many of the priests who we profile here are dead.").

In fact, the Grand Jury's overriding punitive purpose led it myopically to exclude or overlook other equally compelling state interests, contributing to the Report's errors. These other compelling state interests – which find no expression in the Interim Report – are as important to the state as they are to Petitioners. (Or so they should be.) Among them are the state's interest in ensuring that a grand

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legal advisor, the attorney for the Commonwealth, a grand jury setting about the latter course should apprehend that increased procedural protections are implicated in the interest of fundamental fairness."); *see also United States v. Colon*, 2002 WL 32351175, at *8 (E.D. Pa. Aug. 12, 2002) ("A prosecutor serves as a 'legal advisor' to the grand jury.").

jury, as an extension of the judiciary, functions fairly and with due regard for the rights of the accused. The state also has a compelling interest in ensuring that the product of the grand jury's labors – and taxpayer expense – is a truthful and accurate account that contributes meaningfully to discussion of public policy without unsupported accusation or defamation. *See Fortieth Grand Jury*, at *12 ("[I]t is difficult to understand why an attorney for the Commonwealth would not wish to present such testimony from living individuals, for the benefit of lay grand jurors who have plainly set out to find the truth and reveal it to the public.").

The OAG's and Grand Jury's obliviousness to these other important values is reflected in the Interim Report and in the manner in which the OAG has conducted this litigation.[4] Here, as elsewhere in this case, the OAG has offered this Court only an "all-or-nothing" approach, *id.* at *14 – *i.e.*, a false choice between giving voice to victims or vindicating the values of truth, accuracy, and fairness that due process requires. But a different grand jury – guided by a fair minded and non-partisan prosecutor, and with the due process safeguards Petitioners have sought – could have achieved both these aims, demonstrating that the fundamental reputational interest of Petitioners and the interests of the state are not at odds. *See In re Grand Jury of Hennepin Cty. Impaneled on Nov. 24, 1975*,

[4] It is also reflected in the grand jurors' extraordinary "objections" (filed by the supervising judge by Order dated August 6, 2018), to the procedure this Court outlined. Those "objections" include the statement that the fact Petitioners seek to cross-examine witnesses who appeared before the grand jury "is offensive." *See* Grand Jurors' Amicus at ¶ 5.d.

271 N.W.2d 817, 820-21 (Minn. 1978) ("A procedure may be devised which allows the release of the much needed information contained in grand jury reports and at the same time protects the individuals involved from unjust accusation."). What such a fair process could (and should) have entailed is discussed below.

C. Pennsylvania Courts Routinely Safeguard Reputations By Affording Individuals Strict Due Process Protections In Similar Contexts

In considering what due process safeguards Petitioners must be afforded, helpful analogs exist in other areas of Pennsylvania law. For example, under the Pennsylvania Child Protective Services Law, 23 Pa. Cons. Stat. Ann. § 6301 *et seq.* (West 2018), and the Sex Offender Registration and Notification Act ("SORNA"), 42 Pa. Cons. Stat. Ann. § 9799.10 *et seq.* (West 2018), strict due process protections are required for those whose reputations are at risk.

1. Due process requires a meaningful opportunity to challenge allegations of child abuse through a vigorous adversarial process

This Court and lower Commonwealth courts have insisted upon due process protections that include the right to meaningfully participate in an evidentiary hearing for individuals at risk of reputational harm from the publication of allegations of child abuse.

For example, the Commonwealth Court vacated an order of the Department of Public Welfare Board of Hearings and Appeals, which had dismissed the appeal of a "founded" (*i.e.*, judicially adjudicated) allegation of abuse, because the "founded" allegation constituted an "adjudication" entitling the alleged abuser to a hearing on whether he had received sufficient notice and opportunity to be heard in the underlying dependency hearing. *J.M. v. Dep't of Pub. Welfare*, 94 A.3d 1095, 1099-1101 (Pa. Commw. Ct. 2014); *see also id.* (contrasting other cases where named individual was afforded an opportunity to appear and testify at underlying hearing, to present evidence, and cross-examine all witnesses). Here too, the Report's allegations are effectively an "adjudication," particularly given the supervising judge's acceptance of the Report, purportedly on the basis of a finding of a "preponderance of the evidence." The requirement of meaningful adversarial process in *J.M.* applies equally here. *See also J.P. v. Dep't of Human Servs.*, 170 A.3d 575, 583-84 (Pa. Commw. Ct. 2017) (violation of due process not to provide any form of hearing where petitioner's name was on child abuse registry and petitioner challenged the listing).

Similarly, the Commonwealth Court recently held that it violated due process to deny an individual the opportunity to cross-examine witnesses at a professional disciplinary administrative hearing, where the petitioner sought to use, for cross-examination, the transcribed statements of witnesses from a prior child

abuse registry expungement hearing. *See C.S.*, 184 A.3d at 604. The court observed that the petitioner had a protected property interest in his professional license, as well as a protected interest in his reputation, and that this warranted the additional due process protection of affording him the opportunity to cross-examine witnesses. *Id*. at 604, 614. As the court noted:

> Broadly speaking, the principles of due process "require an opportunity, among other things, to hear the evidence adduced by the opposing party, cross-examine witnesses, introduce evidence on one's own behalf, and present argument." *D.Z. v. Bethlehem Area School District*, 2 A.3d 712, 720 (Pa. Cmwlth. Ct. 2010). "In almost every setting where important decisions turn on questions of fact, due process requires an opportunity to confront and cross-examine adverse witnesses," and this holds true even when "administrative . . . actions were under scrutiny."

Id. at 604 (quoting *Goldberg v. Kelly*, 397 U.S. 254, 269-70 (1970)).

The opportunity to cross-examine adverse witnesses in a hearing is critical, as this adversarial process elicits truth. *See id.* (stating that "cross-examination is 'the greatest legal engine ever invented for the discovery of the truth'" (quoting *California v. Green*, 399 U.S. 149, 158 (1970))); *see also id.* at 608-09 ("[O]ur legal system 'assumes that adversarial testing will ultimately advance the public interest in truth and fairness.'" (quoting *Polk County v. Dodson*, 454 U.S. 312, 318 (1981))). Indeed, this is particularly true of "cases where child abuse is alleged," because in those cases "there are unique problems of proof, especially where there exists no independent physical evidence of abuse," and "the outcome oftentimes

depends on credibility and weight determinations, and even the uncorroborated testimony of a victim, alone, is enough to sustain criminal convictions of the greatest magnitude." *Id.* at 609 (citations and internal quotation marks omitted). *See also A.Y.*, 641 A.2d at 1152-53 (holding that adverse finding by agency cannot be based solely upon uncorroborated hearsay evidence from alleged minor victim, although such evidence may generally be admissible along with other evidence).

To be clear, while Petitioners seek the full due process protections of an evidentiary hearing before the supervising judge that *C.S.* supports, *see infra* Section I.E-F (describing process sought before judge and grand jury), they seek more modest protections before the grand jury itself (*i.e.*, merely an opportunity to gain access to the grand jury record, and to appear before the grand jury in order to offer rebuttal and exculpatory testimony).[5] The flexible approach to due process described above permits this differentiation.

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[5] As this Court has observed, "[a] grand jury proceeding is not an adversary hearing in which the guilt or innocence of an accused is determined," such that "certain constitutional and supervisory protections have been held inapplicable to" these proceedings. *Pirillo v. Takiff*, 341 A.2d 896, 902, *opinion reinstated*, 352 A.2d 11 (Pa. 1975). That is unquestionably true of grand jury proceedings serving solely ***adjudicatory*** functions, rather than the investigatory functions contemplated by the Investigating Grand Jury Act ("IGJA"). Petitioners do not seek, nor do they see a basis for importing, in the context of an indicting grand jury, the protections they seek in this appeal – *i.e.*, the right to appear before an investigatory grand jury to offer exculpatory and rebuttal evidence. *See* 42 Pa. Cons. Stat. Ann. § 4548(c) (West 2018) (investigating grand jury cannot indict). But given the unusual nature of the Fortieth Grand Jury and the Report it has issued, and its plainly accusatory purpose, the distinction between adjudication/accusation and investigation was blurred. *See Fortieth Grand Jury*, at *11. Thus, for the reasons explained below, *see infra* Section I.E-F, in the investigating grand jury context named individuals who are

2. The punitive purpose and effect of the Report entitles Petitioners to the due process safeguards to which others branded as "sex offenders" are entitled

The Grand Jury's self-acknowledged purpose was to shame petitioners – *i.e.*, to single them out for "targeted condemnation." *Fortieth Grand Jury*, at *2. Indeed, the Report "is not generally couched in conventional 'investigatory' terms," and "pronounce[s] that the grand jury will identify over three hundred 'predator priests' by name and describe their conduct in terms of 'what they did – both the sex offenders and those who concealed them[,] ... shin[ing] a light on their conduct, because that is what the victims deserve." *Id.* (quoting Interim Report at 2) (first alteration added).

But again, the narrow focus upon "what the victims deserve" (important as that may be) ignored entirely what those accused of heinous crimes deserve. In that regard, this Court has held that it is an unconstitutional denial of due process to apply an irrebuttable presumption that juvenile sex offenders will recommit their crimes when this is not universally true. *See In re J.B.*, 107 A.3d 1, 2, 14 (Pa. 2014). It is hard to see why the irrebuttable ***presumption*** in *J.B.* is meaningfully different from the irrebuttable ***conclusion*** the Report establishes here that Petitioners are either offenders or otherwise culpable (*e.g.*, of failing to report

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not charged are entitled to more process at the grand jury stage than are their charged counterparts.

abuse), and are so branded for life.[6] In fact, unlike *J.B.*, where the underlying offense triggering lifetime registration was not disputed, *see id.* at 11, the *de facto* lifetime notification here is doubly unconstitutional. ***Here, no underlying conviction even exists.***

Indeed, the Report's naming of names effectively condemns Petitioners to a *de facto* lifetime community notification punishment, much like SORNA's notification requirements, without the necessary prerequisite of an underlying criminal conviction, and based upon the grand jurors' application of an undefined and unknown standard of proof.[7] But a conviction (either by guilty plea or

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[6] This Court's observation that the discretionary opportunity to submit a response to the Report could not effectively protect their reputations, *see Fortieth Grand Jury*, at *12, is even more apparent now from the manner of the Interim Report's publication on the OAG's website. Unlike this Court's website – where the Grand Jury's report and named individuals' responses are in a single downloadable file, with the entire contents searchable – the OAG separately published on its website an electronically searchable version of the report but, under a different link, the ***unsearchable*** responses of individuals not part of this appeal. This practice is inconsistent with the IGJA, which considers both a grand jury report and the responses appended to be an integrated whole. *See* 42 Pa. Cons. Stat. Ann. § 4552(e) (West 2018) ("The supervising judge may then in his discretion allow the response to be attached to the report ***as part of the report*** before the report is made part of the public record pursuant to subsection (b)." (emphasis added)).

[7] Unlike the "preponderance of the evidence" standard that applies to the supervising judge's review of the grand jury's "stated findings," the statute does not impose any particular standard of proof upon the grand jury. *See* 42 Pa. Cons. Stat. Ann. §§ 4542 (West 2018) (defining report as one "submitted by the investigating grand jury to the supervising judge . . . based upon stated findings"); *id.* § 4552(b) (establishing preponderance standard for supervising judge's review of report and record). A careful prosecutor would presumably instruct the grand jurors to ensure that their "stated findings" are based, at a minimum, upon a "preponderance of the evidence" – the same standard to be used by the supervising judge – but what standard the grand jurors used in this case only the prosecutor knows. Thus, they could have (indeed, ***must have***, given the noted errors, *see supra* Section I.B.2) reached their findings on an even lower threshold of proof. (*Cont'd*)

following trial on a "beyond a reasonable doubt" standard) is the "horse" that must come before the "cart" of sex offender registration and community notification. And this is impossible without the prior criminal convictions the Commonwealth acknowledges it cannot obtain. *See* Ex. 1 at 7 ("[T]his grand jury . . . did not just write reports. They recommended charges where they legally could and we followed through. We all wish more charges could be filed.").

Notably, this Court recently held in *Commonwealth v. Muniz*, 164 A.3d 1189, 1218, 1223 (Pa. 2017), *cert. denied sub nom. Pennsylvania v. Muniz*, 138 S. Ct. 925 (2018), that retroactive application of SORNA's registration requirements violated the *ex post facto* clauses of both the federal and state constitutions because SORNA's notification provisions are punitive. In so holding, a majority of this Court accepted the reasoning of now-Justice Donahue (then on the Superior Court) that public notification – particularly in the Internet age – creates harms that outweigh their benefits to public safety:

> Yesterday's face-to-face shaming punishment can now be accomplished online, and an individual's presence in cyberspace is omnipresent. The public internet website utilized by the Pennsylvania State Police broadcasts worldwide, for an extended period of time, the

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There is a compelling argument that the standard of proof required for imposing the shaming punishment here, which subjects named individuals to lifetime community notification, is "beyond a reasonable doubt." *See Commonwealth v. Butler*, 173 A.3d 1212, 1217 (Pa. Super. Ct. 2017), *appeal granted*, No. 47 WAL 2018, 2018 WL 3633945 (Pa. July 31, 2018) (interpreting *Muniz* to require that a fact that "increases the length of registration must be found beyond a reasonable doubt by the chosen fact-finder").

> personal identification information of individuals who have served their "sentences." This exposes registrants to ostracism and harassment without any mechanism to prove rehabilitation – even through the clearest proof. In my opinion, the extended registration period and the worldwide dissemination of registrants' information authorized by SORNA now outweighs the public safety interest of the government so as to disallow a finding that it is merely regulatory.

Muniz, 164 A.3d at 1212 (quoting concurring opinion of Donohue, J., in *Commonwealth v. Perez*, 97 A.3d 747, 765-66 (Pa. Super. Ct. 2014)); *see also id.* at 1213 ("We consider SORNA's publication provisions – when viewed in the context of our current internet-based world – to be comparable to shaming punishments.").[8]

The Grand Jury's punishment of Petitioners by branding them as sex offenders and subjecting them to the functional equivalent of lifetime global notification is also exceedingly overbroad. The Report describes not only alleged "offenders," but also those who, for example, failed to report a hearsay allegation of sexual abuse (or, for that matter, even those who ***did*** report such hearsay allegations to others in the church) – *i.e.*, "offenses" that ordinarily would not qualify as Tier III sex offenses subjecting an offender to lifetime registration

[8] Justice Donahue's words echo loudly here, where the OAG has established a website dedicated to this investigation, and a link to the Report easily accessible to media around the world. *See* Pennsylvania Diocese Victims Report, https://www.attorneygeneral.gov/report/ (last visited Sept. 3, 2018).

requirements. *See id.* at 1207 (listing Tier III offenses). No matter, says the OAG – all are subject to the same degree of public notification via the OAG's website.

Muniz highlights another incurable due process problem here, although not an *ex post facto* one. *Muniz* held SORNA unconstitutional to the extent it punished conduct predating SORNA's December 20, 2012 effective date. *See id.* at 1223. Although there is of course no *ex post facto* challenge to the Investigating Grand Jury Act ("IGJA") here, the Grand Jury's shaming punishment creates a *Muniz*-like effect by punishing conduct that in some instances allegedly occurred ***decades*** prior to SORNA's December 20, 2012 effective date. *See* Interim Report at 6 ("[T]he bulk of the discussion in this report concerns events that occurred before the early 2000's."). Thus, the effect of the IGJA's application here is a similarly incurable retroactivity problem that offends due process. *Cf. Commonwealth v. Rose*, 81 A.3d 123, 126 (Pa. Super. Ct. 2013), *aff'd*, 127 A.3d 794 (2015) ("Appellant's retroactivity, *ex post facto* and due process positions are largely intertwined since retroactivity is integral to both whether an *ex post facto* and/or a due process violation occurred.").

In sum, subjecting Petitioners to the penalty of lifetime community notification requires a meaningful opportunity to be heard. Ordinarily, this must permit an opportunity to present exculpatory evidence to the grand jury and to

participate in an adversarial hearing before the supervising judge. But it requires much more when the subject of a grand jury report is not a public official accused of malfeasance, but a private citizen accused of heinous child abuse. It requires an underlying criminal conviction that the OAG has not proffered and cannot proffer here. And so, although the OAG would tether Petitioners to their cart, with no horse hitched they cannot drag Petitioners' reputations through the mud.

D. Other States Afford The Protections Petitioners Seek Here, Demonstrating Due Process Is Possible Without Undue Administrative Burden

This Court has appropriately considered the views of other states as persuasive authority in matters of constitutional interpretation. *See, e.g.*, *Commonwealth v. Nat'l Bank & Tr. Co. of Cent. Pa.*, 364 A.2d 1331, 1335 (Pa. 1976) (noting that "[w]hile it is a truism that decisions of sister states are not binding precedent on this Court, they may be persuasive authority" (citation omitted)). Such consultation is even more appropriate under these circumstances – *i.e.*, in a matter of first impression and of great constitutional import. *See Commonwealth v. Delbridge*, 855 A.2d 27, 35 (Pa. 2003) (stating that "[a]s the questions presented here are of first impression in this Commonwealth, we turn to our sister states for amplification of the issue").

Furthermore, the empirical evidence of other jurisdictions' practice is directly relevant to the third prong of the *Bundy/Mathews* analysis, which, as noted

above, concerns "the state interest involved, including the administrative burden the additional or substitute procedural requirements would impose on the state." There is no better evidence of the minimal burden and manageable administration of constitutionally required safeguards than their effective routine application in other jurisdictions.

1. Other jurisdictions provide due process by requiring an opportunity for named individuals to appear and present evidence to an investigating grand jury

Numerous jurisdictions – both the federal system and various states – afford the necessary due process protections Petitioners seek here, namely, the opportunity to appear before the grand jury itself to offer exculpatory and rebuttal evidence, as well as the opportunity to challenge a report's conclusions and allegations before a judge. The adoption of these simple and sensible due process safeguards has not led the sky to fall in elsewhere. These safeguards are necessary and feasible in Pennsylvania as well.

Significantly, New York restricts permissible criticism in a report to criticism of a public official. But even for those officials (for whom, arguably, less due process might be required), New York provides significant due process protections, including the right to testify before a critical grand jury.

After *Wood v. Hughes*, 173 N.E.2d 21 (N.Y. 1961) (Fuld, J.), New York enacted legislation permitting reports that: (a) require an opportunity for criticized public officials to testify before the grand jury; (b) prohibit criticism of someone other than a public official (*i.e.*, "an identified or identifiable person"); and (c) afford criticized public officials, as a matter of right (contrary to the discretionary language of the IGJA, *see* § 4552(e)) an opportunity to submit a response. *See* N.Y. Crim. Proc. Law § 190.85(2)(b), (3) (McKinney 2018). Furthermore, the reviewing judge is empowered to compel the grand jury to take additional testimony or permanently seal the record if the judge is not satisfied that "[t]he report . . . is supported by the preponderance of the ***credible and legally admissible evidence***." *Id.* 190.85(2)(a) (emphasis added).[9]

But a decade after *Wood*, New York's Court of Appeals held that even the statutory safeguards in a prior version of § 190.85 insufficiently protected the due process rights of named individuals, and interpreted due process to require that named public officials also must be permitted to inspect the grand jury record prior to submitting their responses to a report, or appealing. *See In re Second Report of*

[9] This latter provision reduces substantially the risk of precisely the kind of allegations and innuendo at issue in this case. *See Fortieth Grand Jury*, at *12 & n.20 (noting that "the attorney for the Commonwealth" appearing before a grand jury is "free from any requirement to adduce legally competent evidence, or exculpatory proofs" and that "[b]y 'legally competent evidence,' we mean evidence that would be admissible in a court of law in a contested, adversarial proceeding").

Nov., 1968 Grand Jury of Erie Cty., 257 N.E.2d 859, 860-61 (N.Y. 1970) (Fuld, C.J.). Indeed, the court held that access to the grand jury material was essential to affording the named public official adequate opportunity to challenge the allegations by identifying the witnesses and other evidence supporting allegations against the official. *Id.* at 861; *see also id.* (stating that "[t]o limit the accused official or employee to a bare unsupported and unsubstantiated list of charges and allegations against him would serve to deprive him of" the due process right to be heard).

New York's practice has guided other jurisdictions, as it should similarly guide Pennsylvania. *See In re Grand Jury of Hennepin Cty.*, 271 N.W.2d at 819-20 (prohibiting release of grand jury report and expressing concern that release would inflict "great damage to the reputations of individuals who are granted no appropriate forum in which to clear themselves"); *see also id.* at 820-21 (urging legislators to look "to the experience of the State of New York" to devise procedures balancing disclosure of grand jury report information and protection of individuals from "unjust accusation").

New Jersey, similarly, permits a public official named in a grand jury report (the statute does not expressly contemplate naming a private individual) to "examine the grand jury minutes fully, under such reasonable supervision as the

court deems advisable, and be permitted to introduce additional evidence to expose any deficiency." N.J. Ct. R. 3:6-9(c).

In Utah, a grand jury is permitted to issue "a report concerning noncriminal misconduct, malfeasance, or misfeasance in office as a basis for a recommendation of removal or disciplinary action against a public officer or employee," but requires that "***each person named and any reasonable number of witnesses on his behalf*** as designated by him to the foreman of the grand jury were ***afforded an opportunity to testify before the grand jury prior to the filing of the report***." Utah Code Ann. § 77-10a-17(1), (2)(b) (West 2018) (emphasis added). Furthermore, if the "managing judge" supervising the grand jury process "is not satisfied that the report complies with the provisions of this section, he may direct that additional testimony be taken before the same grand jury or he shall make an order sealing the report." *Id.* (7)(a).[10]

In Alaska, the grand jury is required to remain in session while the "presiding judge" conducts an initial review, which consists of reviewing the

[10] The federal statute relating to grand jury reports is closely similar to Utah's, but goes even further in ensuring sufficient due process before reputational harm. Like Utah's statute, the federal statute permits the supervising judge to "direct that additional testimony be taken before the same grand jury" in the event the judge is not satisfied that the report is supported by a preponderance of the evidence and that a named "appointed public officer or employee" was permitted to appear and produce witnesses before the grand jury. 18 U.S.C. § 3333(a)(1), (b)(1)-(2), (e). Unlike the Utah statute, however, the federal statute also ensures that the report "is not critical of an identified person." *Id.* § 3333(b)(2).

report, reviewing the grand jury record, and making specific factual findings on the record. *See* Alaska R. Crim. P. 6.1(b). During this review the judge is required to determine whether "publication of the report would improperly infringe upon a constitutional right of any person, including but not limited to improper interference with a person's right to privacy." *Id.* at 6.1(b)(2). If so, or if the report is otherwise improper, the judge will return the report to the grand jury, which "may conduct further proceedings, revise the report, or seek appellate review of the judge's decision not to release the report." *Id.* at 6.1(b)(3).

However, if the judge is satisfied that the report passes his initial review, the judge must next "determine whether any part of the report may reflect adversely on any person who is named or otherwise identified in the report." *Id.* at 6.1(c). If so, the judge must provide notice to the named individual, who has a right to request an in camera hearing. *Id.* at 6.1(c)(1)-(2). That individual must be provided a copy of the report and the grand jury's record. *Id.* at 6.1(c)(3). This is not, however, an evidentiary hearing, and the named individual is limited to providing argument and submitting a written response to the report. *Id.* at 6.1(c)(4).

The due process safeguards of other states are similar. *See, e.g.*, Colo. Rev. Stat. Ann. § 16-5-205.5(4) (West 2018) (prohibiting public release of report unless supervising court is satisfied, *inter alia*, that (1) report is in the "public interest";

(2) "[t]he report is based on facts revealed in the course of the grand jury investigation and is supported by a preponderance of the evidence"; and (3) "[t]he report does not contain material the sole effect of which is to ridicule or abuse a person . . . or to subject such person . . . to public disgrace or embarrassment").

2. A critical mass of other states recognize the risk of naming private individuals by prohibiting this practice entirely unless charges are also filed against the named individual

Many states apparently recognize the constitutional hazards of identifying uncharged private individuals in a grand jury report and prohibit such naming without charges:

- **Alabama**: Ala. Code § 12-16-223 (West 2018) (stating that "[g]rand juries shall make no reports critical of any citizen of this state without returning an indictment or bill of impeachment against the same" and requiring judge to "expunge from any such grand jury report any and all such critical portions unless there has been an indictment or bill of impeachment returned against the person or persons affected");
- **California**: Cal. Penal Code § 930 (West 2018) (providing that "comment upon any person or official who has not been indicted by . . . grand jury" in a report "shall not be deemed to be privileged," subjecting grand jurors to civil liability from those named);
- **Connecticut**: Conn. Gen. Stat. Ann. § 54-47g(a), (c) (West 2018) (barring release of record or findings if investigating grand jury failed to find probable cause that named individual committed crime, and prohibiting disclosure if there is "substantial probability" of prejudice to "the lives and reputations of innocent persons which would be significantly damaged by the release of uncorroborated information");
- **Florida**: Fla. Stat. Ann. § 905.28(1) (West 2018) (permitting grand jury reports but providing that any such report "relating to an

individual which is not accompanied by a true bill or indictment is confidential" and "shall not be made public or be published until the individual concerned has been furnished a copy thereof and given 15 days to file with the circuit court a motion to repress or expunge the report or that portion which is improper and unlawful");

- **Georgia:** *Kelley v. Tanksley*, 123 S.E.2d 462, 463-64 (Ga. Ct. App. 1961) ("[A] grand jury has no right in the absence of specific statutory authority to return a report charging or casting reflections of misconduct in office upon a public officer or impugning his character, except by presentment or true bill of indictment charging such individual with a specific offense against the State; and it is the right of one, who is the subject of such extrajudicial report, to have it expunged from the official records.");

- **Indiana:** *In re Elkhart Grand Jury, June 20, 1980*, 433 N.E.2d 835, 838 (Ind. Ct. App. 1982) (affirming expungement of grand jury report that was critical of police officer and explaining that "grand juries in Indiana are not empowered to issue reports criticizing the conduct of public officers that does not constitute an indictable offense" (citing *Wood*, 173 N.E.2d at 21-35));

- **Iowa:** *Rector v. Smith*, 11 Iowa 302, 307 (1860) (holding that grand juries "have no power . . . to present any person for a criminal offense except by indictment" and explaining that "[i]f the misconduct of an officer does not amount to a crime, and is not of such magnitude as will justify the jury in finding an indictment, [the grand jury's] powers over the offense complained of, are at an end");

- **Louisiana:** La. Code Crim. Proc. Ann. art. 444(A)-(C) (West 2018) (stating that a grand jury is "not a censor of public morals" and providing that grand juries "shall make no report or recommendation" aside from reports authorized by law and by returning or not returning a "true bill");

- **Mississippi:** *Petition of Moore*, 336 So. 2d 736, 737 (Miss. 1976) (expunging those portions of a grand jury report that criticized but did not indict a judge and holding that "[t]he only action that a Grand Jury can take after investigating the conduct of a public officer is to return a presentment or indictment");

- **Missouri:** *Matter of Interim Report of Grand Jury for Mar. Term of Seventh Judicial Circuit of Missouri 1976*, 553 S.W.2d 479, 482 (Mo. 1977) (ordering expungement of grand jury report that named but did not indict individual and holding that Missouri constitutional provision relating to grand juries "had nothing whatsoever to do with a power to report short of indictment");

- **Nebraska:** *In re Grand Jury of Douglas Cty*., 509 N.W.2d 212, 214 (Neb. 1993) (holding that absent statutory authorization, "a grand jury has no right to file a report reflecting on the character or conduct of public officers or citizens, unless it is accompanied or followed by an indictment charging such individuals with a specific offense against the state");

- **Nevada**: Nev. Rev. Stat. Ann. § 172.267 (2)(a), (c) (West 2017) (prohibiting reports from (1) containing material "the sole effect of which is to ridicule or abuse a person or otherwise subject the person to public disgrace or embarrassment"; or (2) "[a]ccus[ing] a named or unnamed person directly or by innuendo, imputation, or otherwise of an act that, if true, constitutes an indictable offense unless the report is accompanied by a presentment or an indictment of the person for the offense mentioned in the report");

- **New Mexico:** N.M. Stat. Ann. § 31-6-7(E) (West 2018) (providing that grand jury reports "shall not charge any public officer or other person with willful misconduct, corruption or malfeasance unless an indictment or accusation for removal from public office is also returned by the grand jury" and recognizing that "***[t]he right of every person to be properly charged, face his accusers and be heard in his defense in open court shall not be circumvented by the report***" (emphasis added));

- **Oklahoma:** Okla. Stat. Ann. tit. 22, § 346 (West 2018) (permitting "reports as to the condition and operation of any public office or public institution," but prohibiting "charg[ing] any public officer, or other person with willful misconduct or malfeasance," or "reflect[ing] on the management of any public office as being willful and corrupt misconduct," because it is "the intent of this section to preserve to every person the right to meet his accusers in a court of competent jurisdiction and be heard, in open court, in his defense");

- **South Carolina:** *State v. Bramlett*, 164 S.E. 873, 875-76 (S.C. 1932) (finding that "a grand jury transcends its powers and exceeds its duty when in its presentment it expresses its opinion of the force and effect of the evidence which it has heard, ex parte, or has itself collected in its investigations, or when it discusses that evidence, and/or, when it presents an officer or person by name, and with words of censure and reprobation, without presenting him for indictment, or without finding a true bill against him on a bill of indictment in its hands");

- **Washington:** Wash. Rev. Code Ann. § 10.27.160 (West 2018) (stating that "[s]uch report shall be released to the public only upon a determination by a majority of the judges of the superior court of the county court that . . . the findings in the report deal with matters of broad public policy affecting the public interest and do not identify or criticize any individual");

- **Wisconsin:** *State ex rel. Town of Caledonia, Racine Cty. v. Cty. Court of Racine Cty.*, 254 N.W.2d 317, 319-20 (Wis. 1977) (quoting with approval statement that "grand jury has no authority to make a report criticising [sic] individuals either by name or by inference" because general criticism is more appropriately dealt with by legislature than judiciary (citation, quotation marks omitted));

- **Wyoming**: Wyo. Stat. Ann. § 7-5-202 (West 2018) (requiring grand juries to present "to the court by indictment" any inquiries into "crimes committed or triable" and limiting grand juries' reporting function to issues "concerning the condition of the county jail and the treatment of prisoners").

A logical inference from this practice is that other states recognize the constitutional hazards of the approach the OAG elected to take in this case.

E. Due Process Requires A Meaningful Opportunity To Be Heard At Each Determinative Stage Of A Proceeding – Here, Before The Grand Jury And Supervising Judge

Constitutional due process requires notice and a meaningful opportunity to be heard at each determinative stage of a proceeding. *See, e.g.*, *Matter of Estate of*

Pope, 808 P.2d 640, 642 (Okla. 1990) ("Notice must be reasonably calculated to inform interested parties of the pending action and of every critical stage so as to afford them an opportunity to defend or to meet the issues at a meaningful time and in a meaningful manner." (footnotes omitted)); *see also Jones v. State*, 611 So. 2d 577, 579 (Fla. Dist. Ct. App. 1992) ("At a minimum, this due process contemplates reasonable notice, a hearing, and the right to effective assistance of counsel at all significant stages of the proceedings, *i.e.*, all judicial proceedings and any other proceedings at which a decision could be made which might result in a detrimental change to the subject's liberty."); *Kentucky v. Stincer*, 482 U.S. 730, 744 n.17 (1987) ("Of course, the fact that a stage in the proceeding is critical to the outcome of a trial may be relevant to due process concerns."). Here, this requires that individuals criticized in a grand jury report have an opportunity to be heard not only before the supervising judge, but when the factual record is being developed – *i.e.*, before the grand jury itself.

This is merely the logical extension of the truism that criminal defendants are entitled to meaningfully participate in every critical stage of trial. *See Faretta v. California*, 422 U.S. 806, 819 n.15 (1975). The jeopardy to an individual's fundamental rights to life and liberty in a criminal trial entitle the criminal defendant to this process. But while the fundamental right to reputation is no less important than the fundamental rights to life and liberty, *see* Pa. Const. art. I, § 1;

see also Fortieth Grand Jury, at *11, the risk of reputational harm from being improperly criticized by an investigating grand jury does not afford named individuals the same rights as their post-indictment counterparts at risk of the loss of life or liberty.

Unlike their indicted counterparts who will enjoy full post-indictment procedural protections, individuals named in a grand jury report will have no opportunity for pretrial motions to dismiss before a neutral and independent judge; no right to a trial to defend their innocence, or to cross-examine their accusers; no opportunity to file motions for acquittal after the government has closed its case; no chance for appeal or to collaterally attack any sentence imposed. *See Wood*, 173 N.E.2d at 26 (recognizing that "[i]n the public mind, accusation by report is indistinguishable from accusation by indictment," but that while indicted individuals may "seek vindication" through "exercise of the right to a public trial, to a jury, to counsel, to confrontation of witnesses against him and, if convicted, to an appeal," reports simultaneously represent "the first and last step of the judicial process" for named individuals and thereby carry "incalculable" potential for harm); *see also* Sara Sun Beale et al., Grand Jury Law and Practice § 2:3 (2d ed. 2017) ("In contrast to an indictment, which initiates proceedings that result in a trial of the grand jury's accusations, a report does not ordinarily initiate any further proceedings. The state is never called upon to prove the charges, and the accused

is not given an opportunity to disprove them." (footnote omitted)). And yet, the risk of a deprivation of a fundamental right – the right to reputation, rather than to life or liberty – is equally grave. *Cf. Corra v. Coll*, 451 A.2d 480, 482 (Pa. Super. Ct. 1982) (stating that "resolution of [due process] question" in that case could not "be reached by applying a wooden civil/criminal distinction," and "[t]hat approach has long since been abandoned in favor of emphasis on the nature of the threatened deprivation").

Thus, for an individual named in a grand jury report, the "critical" phases of an investigating grand jury procedure are before the grand jury and the supervising judge. The "main event" – where the factual record is created – is not a trial, but rather before the grand jury itself. That record will be the basis for all future process (and any public opprobrium) the party will receive. It is therefore essential, absent the post-indictment protections afforded criminal defendants, for those facing grave reputational risk to appear before the grand jury accusing them as well as before the supervising judge.

F. The IGJA's Language Contemplates A Two-Step Process Of Factual Development And Supervisory Judicial Review, Each A Separate Opportunity To Which Petitioners Are Entitled

The plain language of the IGJA supports the conclusion that the opportunity to appear before the grand jury and supervising judge are both essential. Indeed, construing the statute in this manner avoids an unnecessary question regarding the

constitutionality of the statute that would arise if it were interpreted as ***not*** permitting a named individual to appear before the grand jury. *See* 1 Pa. Cons. Stat. Ann. § 1922(3) (West 2018) (establishing presumption that "[t]he General Assembly does not intend to violate the Constitution of the United States or of this Commonwealth").

The language of the IGJA and the canon of constitutional avoidance harmonize particularly well here. By its plain language, the IGJA requires the supervising judge to examine not only the report of the grand jury, but also ***the record*** on which the report is based. The supervising judge:

> shall examine [the report] ***and the record of the investigating grand jury*** and . . . shall issue an order accepting and filing such report as a public record . . . only if the report is based upon facts received in the course of an investigation authorized by this subchapter and is supported by the preponderance of the evidence.

42 Pa. Cons. Stat. Ann. § 4552(b) (West 2018) (emphasis added).

Given the supervising judge's role in examining the report ***and*** record of the grand jury, it follows that Petitioners must have a meaningful opportunity to provide input to both. Indeed, the meaningful opportunity to be heard that is the *sine qua non* for due process would mean little if it did not also permit the opportunity to develop the record upon which the supervising judge conducts his examination. *See, e.g.*, *Hardee's Food Sys., Inc. v. Dep't of Transp. of Pa.*, 434

A.2d 1209, 1212 (Pa. 1981) ("It is fundamental that a landowner may not be deprived of a constitutionally protected property right by the Commonwealth's exercise of its police power without a meaningful opportunity to be heard and to develop a proper evidentiary record for judicial review." (footnote omitted)); *see also Boci v. Gonzales*, 473 F.3d 762, 768 (7th Cir. 2007) (finding no denial of "a meaningful opportunity to be heard because [petitioners] were still able to develop a significant record"). Anything less not only would deprive Petitioners of due process; it would also deprive the supervising judge of the opportunity to review the grand jury's assessment of Petitioners' exculpatory and rebuttal evidence, and deprive any appellate court of a meaningful record upon which to exercise appellate review. Permitting an individual to appear before the grand jury to offer exculpatory and rebuttal evidence would mitigate the effects, and reduce the risks of error from an otherwise wholly *ex parte* proceeding. *See supra* Section I.B.2; *see also Petition of Davis*, 257 So. 2d 884, 888 (Miss. 1972) ("Our judicial system is couched in due process and fairness. Conviction by innuendo resulting from an ex parte proceeding is not compatible with and is extremely offensive to these basic principles of jurisprudence.").

Limiting individuals to appearing before a supervising judge (while depriving them of the opportunity to appear before the grand jury) diminishes the judge's role in reviewing not only the ***report*** that is the product of grand jury

proceedings, but also the ***record*** of those proceedings – one that in this case included the transcribed testimony of dozens of witnesses, and over half a million pages of exhibits. Furthermore, this deprivation would permit the OAG to craft a voluminous factual record without the protections of the rules of evidence and without any duty to provide exculpatory evidence. *See Fortieth Grand Jury*, at *12 (noting inherent risk where prosecutor is "free from any requirement to adduce legally competent evidence, or exculpatory proofs" (footnote omitted)). The record the supervising judge is instructed to review in making his preponderance determination is meaningless without Petitioners' contributions to it.

Furthermore, without a factual record encompassing the named individual's exculpatory evidence, supervising judges may too easily defer to the findings of the grand jury, as occurred in this case. As a result, an individual challenging the grand jury's findings would – out of the starting gate, *i.e.*, upon appearing before the supervising judge – be pressed to overcome an improper but implicit presumption that the grand jury's findings are correct. This inversion of the presumption of innocence severely disadvantages an individual criticized in a grand jury report but unable to appear before it. *See Armstrong v. Manzo*, 380 U.S. 545, 551 (1965) (recognizing that failure to provide petitioner with timely notice resulted in shifting of burden of proof).

* * *

For the foregoing reasons, Petitioners are entitled to a meaningful opportunity to be heard – and at a meaningful time – before the fact-finders, *i.e.*, both the supervising judge, and the grand jury. ***First***, and most obviously, due process requires that Petitioners have an opportunity to meaningfully participate in an evidentiary hearing before the supervising judge so the judge may appropriately weigh competing evidence, a function the judge cannot competently perform in isolation and while observing only one of two partners to the dance. *See Fortieth Grand Jury*, at *12 (noting "supervising judge's statutory preponderance-based review may be inadequate, in the grand jury setting, to serve as a sufficient protective measure," given that "this standard is best suited to adversarial proceedings where competing litigants present evidence to be weighed by a factfinder").

At this evidentiary hearing before the supervising judge (and, to the extent necessary, before it takes place), Petitioners must be afforded constitutionally minimal required protections available to any individual at risk of grave reputational harm, namely: (1) notice of the basis for the governmental action; (2) a neutral arbiter; (3) an opportunity to make an oral presentation; (4) a means of presenting rebuttal or exculpatory evidence; (5) an opportunity to cross-examine witnesses and to respond to written evidence; (6) the right to be represented by

counsel; and (7) a reasoned decision on the record explaining the basis for the result, from which an individual may appeal. Meaningful participation in this procedure also necessitates a right on the part of a named individual: (1) to obtain discovery from the Commonwealth, including all exhibits and testimony presented to the grand jury on the matter challenged; (2) to inspect the prosecutor's instructions to the grand jury and comments in instructing the grand jury; and (3) to have the Commonwealth bear the burden of proof at the evidentiary hearing.

Second, Petitioners are also entitled to appear before the grand jury itself (as some, but not all named individuals were permitted to do in this case) in order to present rebuttal and exculpatory evidence. It is not sufficient for an individual to arrive for the evidentiary hearing described above with, in effect, only the final quarter of the game left to be played. Nor can the supervisory judge meaningfully fulfill his statutory obligation to review the report ***and*** record, *see* 42 Pa. Cons. Stat. Ann. § 4552(b) (West 2018), without the named individual's input in fashioning that record. The opportunity to appear in this forum need not give rise to the parade of horribles the Commonwealth will doubtless foreshadow, nor require before the grand jury the full panoply of trial rights to which an indicted individual is later entitled. As the experience in the federal system and numerous of our sister states has shown, the mere opportunity to appear before the grand jury, to offer exculpatory and rebuttal evidence, can satisfy due process when

provided along with the opportunity for an evidentiary hearing before the supervising judge. *See* Beale et al., Grand Jury Law and Practice § 2:4 (stating that "allowing the subject of the investigation to appear and testify before the report is filed would not seriously disrupt the grand jury's investigation, and it would greatly enhance the fairness of the proceedings (and perhaps their accuracy as well)").

Furthermore, close oversight by the supervising judge should ensure an orderly process. *See In re Fortieth Statewide Investigating Grand Jury*, No. 45 WM 2017, 2018 WL 3977858, at *11 (Pa. Aug. 21, 2018) ("Particularly based on the present experience with Report 1 of the 40th Stat[e]wide Investigating Grand Jury, we believe – and we have learned – that courts should assume a stronger role in ***supervising*** the grand jury process, precisely because the Legislature has reposited that system within judicial control." (internal citation omitted)); *In re Dauphin Cty. Fourth Investigating Grand Jury*, 19 A.3d 491, 503 (Pa. 2011) ("The very power of the grand jury, and the secrecy in which it must operate, call for a strong judicial hand in supervising the proceedings."); *In re Twenty-Fourth Statewide Investigating Grand Jury*, 907 A.2d 505, 512 (Pa. 2006) (noting "the essential role of the judiciary in supervising grand jury functions" as a safeguard against grand jury abuse (citation omitted)).

II. ESSENTIAL DUE PROCESS SAFEGUARDS THAT SHOULD HAVE BEEN AVAILABLE TO PETITIONERS ARE NEITHER AVAILABLE NOR MEANINGFUL NOW

A. Petitioners Cannot Adequately Defend Their Reputations Decades After The Alleged Incidents, Given The Loss Of Evidence And Death Of Witnesses

What the Grand Jury clearly sought to do through its Report was to circumvent the statute of limitations on prosecutions that would otherwise foreclose the deprivation of Petitioners' fundamental rights to life, liberty, or property in criminal cases. *See* Interim Report at 1 ("As a consequence of the coverup, almost every instance of abuse we found is too old to be prosecuted."); *id.* at 2 ("We are sick over all the crimes that will go unpunished and uncompensated. This report is our only recourse."). But in this way, the Grand Jury ignored the important fairness considerations that underlie statutes of limitation, making due process impossible now.

Indeed, Petitioners seeking to challenge the allegations against them face formidable hurdles: essential witnesses who are deceased, a lack of physical evidence, and faded memories. Ordinarily, such evidentiary shortcomings in a criminal case would undercut the government's case (if not act as a complete defense[11]), as it is always the government's burden to prove – not the defendant's

[11] Indeed, "[s]tatutes of limitations 'promote justice by preventing surprises through [plaintiffs'] revival of claims that have been allowed to slumber until evidence has been lost, memories have faded, and witnesses have disappeared.'" *Dubose v. Quinlan*, 173 A.3d 634, 644

burden to ***dis***prove – alleged criminal conduct, given the presumption of innocence. But the nature of this proceeding is highly unusual, with no burden of proof set forth in the IGJA for the grand jury to reach its conclusions,[12] and public opinion squarely against the Petitioners.

Thus, there is great risk that Petitioners appearing before a new grand jury (or even before a supervising judge) will be viewed like civil plaintiffs in a defamation action, improperly compelled to assume the burden of disproving the allegations against them. *See* 42 Pa. Cons. Stat. Ann. § 8343(a) (West 2018) (plaintiff bears burden of proving "defamatory character of the communication").[13] This inversion of the normal burden of proof, as argued above, would be improper enough. But forcing Petitioners to bear this burden without the requisite evidence to carry it is a separate due process problem entirely. *See Commonwealth v.*

(Pa. 2017); *see also Mills v. Habluetzel*, 456 U.S. 91, 101 n.9 (1982) (statutes of limitation prevent "the citizen from being put to his defense after memories have faded, witnesses have died or disappeared, and evidence has been lost" (citation, quotation marks omitted)); *Booher v. Olczak*, 797 A.2d 342, 346 (Pa. Super. Ct. 2002) ("The statute of limitations requires individuals to bring their claims within a certain time of the injury so that the passage of time does not damage a defendant's ability to defend against those claims." (citation omitted)).

[12] *See supra* note 7.

[13] Of course, at any future evidentiary hearing, the burden of proof must remain with the Commonwealth. *See E.B. v. Verniero*, 119 F.3d 1077, 1108 (3d Cir. 1997) (explaining that in Meghan's Law hearing, "burden of persuasion must be placed on the state"); *see also Santosky*, 455 U.S. at 755 ("[I]n any given proceeding, the minimum standard of proof tolerated by the due process requirement reflects not only the weight of the private and public interests affected, but also a societal judgment about how the risk of error should be distributed between the litigants.").

Snyder, 713 A.2d 596, 605 (Pa. 1998) (holding that pretrial delay of 11 years violated due process, in part, due to unavailability of key witnesses, which prejudiced defendant).

In sum, the Interim Report's observation that the allegations set forth in the Report are too old to prosecute also reveals why, for several Petitioners, they are too old to competently and fairly defend.

B. The Report Subjects Petitioners To The Punitive Community Notification Requirements Of Lifetime Sex Offender Registration Without A Qualifying Criminal Conviction

For the reasons discussed above, *see supra* Section I.C.2, it is impossible for the Commonwealth to conjure up the necessary criminal convictions that are essential prerequisites for the public shaming punishment the OAG and Grand Jury sought to impose. No amount of additional due process can establish such convictions now. And even if such convictions existed, there is a strong argument that the accusations in the Report require proof beyond a reasonable doubt before a judge or jury at trial. *See supra* note 7 (citing *Butler*).

C. The OAG's Prosecutorial Misconduct Has Violated Due Process And Foreclosed Whatever Additional Process Could Still Be Had

In Petitioners' Common Merits Brief, Petitioners advised the Court, and put the Attorney General himself on notice that his continued use of the media to undermine and denigrate Petitioners was not only improper, but also risked

foreclosing any due process remedies still available. *See* Pet. Merits Br. at 48-55. *See also Commonwealth v. Chmiel*, 173 A.3d 617, 631 (Pa. 2017) (Donohue, J., concurring). Remarkably, however, since this Court's July 27 Opinion the OAG's appetite for media coverage has increased, not diminished, to the continued detriment of due process.

The OAG's well-choreographed media strategy (replete with professional videography, a website dedicated to the release of the Interim Report, and a nearly hour-long press conference), and false allegations that Petitioners have sought – through their good faith litigation – to suppress the Report and to "cover up the cover-up," have ensured that no due process can realistically be afforded before any new grand jury. The Attorney General's misconduct itself rises to the level of a violation of due process, creating "a fixed bias and hostility toward the" Petitioners, ensuring that no future grand juror could impartially evaluate Petitioners' evidence in a new proceeding. *Commonwealth v. Miller*, 746 A.2d 592, 601 (Pa. 2000).

1. The Attorney General's public letter to Pope Francis falsely accused Petitioners and sought to pressure them to withdraw their constitutional claims

In an open letter to His Holiness Pope Francis dated July 25, 2018, and available on the OAG's website,[14] the Attorney General appealed to the Pope to bring pressure to bear upon the Petitioners to withdraw their constitutional claims. (Claims this Court concluded – just two days later – entitled Petitioners "to this Court's further consideration of whether additional process can and should now be provided as a curative measure." *Fortieth Grand Jury*, at *15.). The letter also falsely asserted that "***anonymous petitioners implicated in this report went to court to stop me and silence the victims***." Ex. 2 (emphasis added).

The Attorney General well knew from Petitioners' extensive briefing of the issues before this Court that Petitioners have never sought to silence victims or suppress the Report. *See Fortieth Grand Jury*, at *9 ("There is no challenge presently before this Court to the release of Report 1 at large"). What Petitioners have simply sought throughout these proceedings is a fair process to address unsupported allegations that threaten their reputations. This is the constitutional

[14] *See* Press Release, Office of the Attorney General, "Attorney General Josh Shapiro Sends Letter to Pope Francis on Attempts to Silence Survivors and Block Release of Report on Child Sex Abuse" (July 26, 2018), *available at* https://www.attorneygeneral.gov/taking-action/statements/attorney-general-josh-shapiro-sends-letter-to-pope-francis-on-attempts-to-silence-survivors-and-block-release-of-report-on-child-sex-abuse/ (last visited Sept. 4, 2018).

right of all Commonwealth citizens, which the Attorney General is sworn to defend. *See* Pa. Const. art. VI, § 3.

But the Attorney General's letter did not stop merely at making unfounded allegations against Petitioners. It also solicited the intervention of the Pope (*i.e.*, the ultimate superior to Petitioners and the dioceses with which they are affiliated) by explicitly requesting that the Pope bring pressure to bear on his subordinates (the Petitioners) notwithstanding ongoing litigation before this Court in which Petitioners are, as the Attorney General well knows, represented by counsel:

> Your Holiness, ***I respectfully request that you direct church leaders*** to follow the path you charted at the Seminary in 2015 ***and abandon their destructive efforts to silence the survivors***. Instead, please call on them to follow the path of truth you laid out and permit the healing process to begin.

Ex. 2 (emphasis added).

The Attorney General was well aware that this letter would be covered in the press and read by Petitioners. Petitioners are unaware of any other instance in which the highest law enforcement official of this Commonwealth has so directly and explicitly communicated with a represented party (and their superior) in pending litigation in an overt effort to bring pressure to bear on the adverse represented party, knowing that they are represented and that the message would also be received by the represented parties themselves. To understate things, this constitutes gross overreach and impermissible interference with the attorney-client

relationship. *See* Pa. R. Prof'l Conduct 4.2 (stating that "[i]n representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter" without consent or authorization).

2. The Attorney General publicly denigrated Petitioners at the OAG's August 14, 2018 press conference

On the day of the scheduled 2:00 p.m. release of the Interim Report, the OAG once again made a dash towards the microphones, with a press conference scheduled to begin at 2:01 p.m. What the Attorney General proceeded to say at that press conference is truly breathtaking in its degree of disregard for the July 27 Opinion and Order of this Court, the redaction procedure painstakingly overseen by the Special Master, and the good faith positions Petitioners have taken to preserve their constitutional rights. The Attorney General stated that:

- "Over the last several months, an intense legal battle has played out between my office and ***individuals who have concealed their identities through sealed court filings. These petitioners, and for a time, some of the Dioceses, sought to prevent the entire report from ever seeing the light of day. In effect, they wanted to cover up the cover-up. They sought to do the same thing that senior Church leaders in the Dioceses we investigated have done for decades – bury the sexual abuse by priests upon children, and cover it up forever. Shamefully, these petitioners still don't have the courage to tell the public who they are.***" Ex. 1 at 3 (emphasis added).
- "The report published today in accordance with the July 27th Pennsylvania Supreme Court Order has some redactions. Let me be very clear: my office is not satisfied with the release of a redacted

report. ***Every redaction represents an incomplete story of abuse that deserves to be told.*** We have oral argument scheduled in front of the Pennsylvania Supreme Court for September the 26th, and you can be certain that we will fight vigorously to remove every redaction and tell every story of abuse and expose every cover-up. ***While those redactions represent just a very small fraction of the predator priests named by this grand jury, no story of abuse is any less important than another.***" Ex. 1 at 4 (emphasis added).

- Finally, when a lone reporter raised questions regarding Petitioners' due process claims, the Attorney General dismissed the question with curious *ad hominem* innuendo:

> Angela: The group of petitioners that has tried to block at least portions of the release of this report, um, have claimed that the report has inaccuracies and that the Supreme Court, in at least one of its rulings, said . . . that they did have some concerns about due process. I'm wondering if you can comment on first the idea that the report contained inaccuracies? Is that an accurate statement, and also, on the due process issue?
>
> Atty Gen. Shapiro: I stand by the work, the incredible work of this grand jury. The bishops were invited, the priests were invited to respond, and they did. And those responses were affixed, uh, to the report. ***I guess all I would say to you Angela is consider the source, the individuals who were protesting. Consider who they are and consider their backgrounds. . . .***

Ex. 1 at 14-15 (emphasis added).

The effect of these statements – and others on Twitter in the days prior to the filing of this Brief, *see* Ex. 3 – has been to further denigrate Petitioners and their counsel in the minds of the public. Worse still, the Attorney General's comments

necessarily mean he believes ***this Court***, by ordering the temporary redactions in the Interim Report under the careful supervision of the Special Magistrate, is itself complicit and a party to the "cover up of the cover-up."

This denigration has eroded any prospect of impartiality Petitioners may have hoped for from a reconvened grand jury panel. *See Commonwealth v. Lambert*, 723 A.2d 684, 691 (Pa. Super. Ct. 1998) (stating that "an attorney must comport himself in a manner that ensures fairness and justice to all parties to litigation" and recognizing the importance that a defendant will "have her day in court unsullied by a jury predisposed by media coverage before trial has begun"); *see also* Pa. Eth. Op. 99-135, 1999 WL 33601704, at *1 (Oct. 15, 1999) ("[A]lthough there is no absolute prohibition against an attorney issuing a press release, as a general rule there is seldom, if ever, a need to issue press releases in a pending matter."); Pa. Eth. Op. 92-70, 1992 WL 810275, at *1 (Apr. 29, 1992) (noting that "[a] statement made by a lawyer, here a prosecutor, in connection with a pending criminal matter which goes beyond the permissible comments specified in Pa. R.P.C. 3.6 is inappropriate" and "may lead to" imposition of sanctions "against the state" and "disciplinary proceedings . . . against the lawyer").

Thus, even if an impartial grand jury panel were now available, and essential due process safeguards afforded Petitioners, the release of a new report containing

their identities would be heavily burdened by the Attorney General's unfounded gloss on the report – *i.e.*, his accusation that the previously redacted allegations were part of an effort to engage in a "cover-up."

Finally, although reputational harm is concern enough, the threat of physical harm – even for clergy members having nothing at all to do with this investigation but for the fact of their occupation – cannot be ignored. *See Muniz*, 164 A.3d at 1212 (quoting concurring opinion of then-Judge Donohue regarding exposure of "registrants to ostracism and harassment"). The recent attack on the Rev. Basil John Hutsko in Indiana, who lost consciousness during the attack – and that was carried out, the perpetrator allegedly explained, "for all the little kids" – is a grim case in point.[15]

3. The OAG leaked grand jury material subject to this Court's Redaction Order

By letter dated August 17, 2018, counsel for Petitioners alerted the Special Master to two separate incidents involving leaks of grand jury information. Each of these leaks constitutes a separate, distinct violation of this Court's Opinion and Order of July 27, as well as the criminal statutes governing grand jury secrecy. *See*

[15] *See* Meagan Flynn, *Indiana Catholic priest assaulted in church by man who said, 'This is for all the little kids'*, WashingtonPost.com (Aug. 23, 2018), attached as Ex. 4 ("The assault comes in the wake of a sweeping Pennsylvania grand jury report released last week describing alleged sexual abuse by more than 300 Catholic priests that had been concealed by church officials for decades. Hutsko was not among the priests identified in the report, and multiple priests, including Loya, say he has never been accused of any wrongdoing.").

Fortieth Grand Jury, at *16 (explaining that Interim Report must "remain subject to grand jury secrecy pending completion of the process prescribed here"); 18 Pa. Cons. Stat. Ann. § 5101 (West 2018) (deeming unlawful obstruction of administration of law or other governmental function); *see also* 42 Pa. Cons. Stat. Ann. § 4549(b) (West 2018). Given this Court's instruction not to include confidential materials in this Brief, Petitioners are limited in their ability to fully describe the nature and circumstances of these egregious leaks, which publicly revealed the identities of two Petitioners. However, Petitioners are prepared to provide the Court, under seal, any additional information the Court may wish to review, including Petitioners' sealed letter to Judge Cleland of August 17, 2018.

* * *

The above examples illustrate that it has been the Attorney General's practice – indeed, his strategy of choice – to litigate this matter in the press vigorously and persistently. All of this makes clear that the Attorney General has not acted with "the responsibility of a minister of justice." Pa. R. Prof'l Conduct 3.8(e) cmt. 1 ("A prosecutor has the responsibility of a minister of justice and not simply that of an advocate."). Nor has he "refrain[ed] from making extrajudicial comments that have a substantial likelihood of heightening public condemnation of the accused." *Id.* 3.8(e). On the contrary, the Attorney General has taken every opportunity to pile on. *See id.* cmt. 4 (stating that "a prosecutor's extrajudicial

statement can create the additional problem of increasing public condemnation of the accused" and "a prosecutor can, and should, avoid comments which have no legitimate law enforcement purpose and have a substantial likelihood of increasing public opprobrium of the accused"); *see also In re Report of Grand Jury of Baltimore City*, 137 A. 370, 373 (Md. 1927) (explaining that grand jury reports "should be permitted so long as they do not point out individuals as subjects of public criticism and opprobrium").

The foregoing facts bear directly upon the questions the Court has presented for oral argument in several ways. Through the Attorney General's conduct and statements, he has revealed that the true purpose of the "investigating" Grand Jury in this case was as much (if not more) to accuse as it was to investigate. *See Fortieth Grand Jury*, at *11 ("[W]e conclude that the lines between a grand jury 'investigation' and an 'adjudication' are blurred when the grand jury renders wide-scale, individualized, condemnatory findings on the order of those announced in Report 1."). Furthermore, the Attorney General's public accusations improperly suggest to the public, before this or any other court has so concluded, that Petitioners are worthy of such condemnation, and that their good faith litigation is an improper effort to engage in a "cover-up." Petitioners would therefore start any future due process proceedings at a significant disadvantage due to the Attorney General's thorough poisoning of the well.

The OAG's media campaign illustrates the precise concerns commentators have expressed regarding the unfairness of investigating grand juries to individuals named but uncharged – and in this case, without their identities even yet revealed:

> [T]he charges receive substantial publicity, and the public is ordinarily unaware of the fact that the accusations have never been proven in an adversary proceeding. By the time the accused learns of the charges, the damage to his reputation has been done, and denials on his part will have little effect.

Beale et al., Grand Jury Law and Practice § 2:3 (footnotes omitted); *see also* *Simpson v. Langston*, 664 S.W.2d 872, 873 (Ark. 1984) (observing that "[t]he public and the press have no way to look behind [a report] to determine its fairness or its accuracy" and that "the censure would be accepted as a matter of fact with the censured person never having been afforded an opportunity to rebut the supposed fact"); *Petition of Davis*, 257 So. 2d at 888 ("The statement of a grand jury demands respect within a community and its deliberations and conclusions are tantamount to fact in the eyes of the populace.").

A fair "redo" before a different grand jury is not possible for all of the reasons set forth in this Brief. However, even if all the other obstacles to due process identified above could be overcome, the misconduct of the Attorney General described above would still foreclose such a remedy.

CONCLUSION

The "all-or-nothing" option the OAG has offered this Court is a false choice. Constitutionally necessary due process safeguards that protect individuals' reputational interests can (and must) be implemented even while giving voice to victims. And in future cases, this necessary balance can be achieved by permitting named individuals to appear before both the investigating grand jury and the supervising judge. But because this balance can no longer be attained here, the Court should adopt the Interim Report as the Final Report.

Respectfully submitted,

/s/ Justin C. Danilewitz

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CERTIFICATE OF COMPLIANCE

I, Justin C. Danilewitz, certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania* that require filing confidential information and documents differently than non-confidential information and documents.

In addition, I certify that this filing complies with the provisions of Pa. R.A.P. 2135. Although this filing exceeds 30 pages, the word count (excluding supplementary matter) remains under 14,000 words.

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EXHIBITS

Exhibit 1 - Press Conference Remarks of Attorney General Josh Shapiro, Aug. 14, 2018

Exhibit 2 - Open Letter of Attorney General Josh Shapiro to Pope Francis, July 25, 2018

Exhibit 3 - Twitter Post of Attorney General Josh Shapiro, Aug. 31, 2018

Exhibit 4 - Meagan Flynn, "Indiana Catholic priest assaulted in church by man who said, 'This is for all the little kids,'" WashingtonPost.com, Aug. 23, 2018

EXHIBIT 1

OFFICE OF THE PENNSYLVANIA ATTORNEY GENERAL PRESS CONFERENCE[1]
AUGUST 14, 2018

[Video Clip of Testimonials of Alleged Sexual Abuse Victims]

56:32

Robert Corby: My name is Robert Corby and I'm 83 years old.

Shaun Dougherty: Shaun Dougherty – 48 years old.

Carolyn Fortney: Carolyn Fortney – 37.

Shaun Dougherty: I grew up in a small western Pennsylvania town, Johnstown, Pennsylvania.

Robert Corby: I grew up in Bethlehem.

Carolyn Fortney: Enhaut, which is like right behind Steel-High High School, Steelton area.

Shaun Dougherty: I was groomed starting young.

Carolyn Fortney: The day I met him I was, I was around 18 months old.

Robert Corby: They targeted me because I was fatherless.

Carolyn Fortney: I was in my diaper, and I ran out and ran right to him.

Shaun Dougherty: We, we were taught, I mean, the priests and the nuns are God.

Carolyn Fortney: Just think like the word God makes me think of him and I just…

Shaun Dougherty: You're being groomed to get used to, uh, a grown man's hands, you know, on you regularly.

Carolyn Fortney: So he would always have his hands on me.

Shaun Dougherty: When you have the priests um, touching you every day, you know, that's a hard memory to uh, to have. Your first thought of an erection that you have in your life is by the hands of a priest.

Robert Corby: All of a sudden he was gone.

[1] Informal transcript prepared by Saul Ewing Arnstein & Lehr of televised press conference of August 14, 2018, provided by the Washington Post and available at https://www.youtube.com/watch?v=hLO_G0U9d3o (last visited Aug. 28, 2018).

Shaun Dougherty: Father Koharchick, in my 8th-grade year was just up and moved with no notice, no anything. The town was devastated. Everybody loved him.

Carolyn Fortney: They haven't found out yet.

Shaun Dougherty: He abused it. And the Church covered it up.

Robert Corby: Who would have believed me – a priest? In 1948 or '47? Would abuse you? Or do that? Never heard of such a thing because they covered it up.

Shaun Dougherty: It doesn't ever go away. It, it has an effect on you for the rest of your life.

Robert Corby: You know I'm a survivor.

Shaun Dougherty: This is not a vendetta against the Church. We're called survivors for a reason.

Robert Corby: These are people that these priests ruined their lives and they still, at 83 years old, still affects them.

Carolyn Fortney: I just feel like I've, like my whole life has been a lie.

Shaun Dougherty: Has, has absolutely destroyed me.

Robert Corby: My children suffered. My wife suffered.

Carolyn Fortney: My dad found out, but he went crazy.

Robert Corby: I was very unaffectionate. I couldn't show any affection with my wife.

Shaun Dougherty: I had no desire to have children. None. Because of this.

Robert Corby: My children I couldn't hold or hug.

Carolyn Fortney: I didn't feel comfortable at all. I still don't feel comfortable now in relationships.

Shaun Dougherty: No kids for me.

Robert Corby: The affection I couldn't give to her, and thanks to Father Royer, he took that away from me.

Carolyn Fortney: I mean it's affected my life so much.

Shaun Dougherty: This is a life-long issue with survivors.

Robert Corby: They have to be accountable, the Church, for what they did.

Shaun Dougherty: I've waited for a long time for this.

Carolyn Fortney: I think this report's going to help people who don't have a family because they're going to know that there's a lot of people out there now that believe them and are behind them.

Shaun Dougherty: This is one of the proudest things I've ever done in my life.

Robert Corby: I'm so happy.

Shaun Dougherty: Speaking about your abuse is a, a very important step in the healing process.

Robert Corby: I just was always saying, they're not going to beat me.

Carolyn Fortney: It'll just be refreshing to not have to, I guess, pretend like I'm someone else all the time. It's very lonely. Especially when it's your word against God's.

1:01:05

[End of Video Clip]

1:02:00

Atty Gen. Shapiro: Good afternoon. Josh Shapiro. Honored to serve as Pennsylvania's Attorney General. And I'm here, finally, to announce the results of a 2-year grand jury investigation into widespread sexual abuse of children within the Catholic Church, and the systematic cover-up by senior Church officials in Pennsylvania and at the Vatican. The investigation involved dozens of dedicated teammates, agents and lawyers of mine in the Office of Attorney General. Their commitment, know-how and compassion is truly inspiring. Our team was led by three extraordinary prosecutors: Michelle Henry, our first Deputy Attorney General; Executive Deputy Attorney General Jennifer Selber and, of course, Senior Deputy Attorney General Dan Dye. I also want to thank a special unit within the FBI whose assistance was indispensable to our investigation. Over the last several months, an intense legal battle has played out between my office and individuals who have concealed their identities through sealed court filings. These petitioners, and for a time, some of the Dioceses, sought to prevent the entire report from ever seeing the light of day. In effect, they wanted to cover up the cover-up. They sought to do the same thing that senior Church leaders in the Dioceses we investigated have done for decades – bury the sexual abuse by priests upon children, and cover it up forever. Shamefully, these petitioners still don't have the courage to tell the public who they are. Moments ago, an 884-page report issued unanimously by the 40th Statewide Investigative Grand Jury – the largest, most comprehensive report into child sexual abuse within the Catholic Church ever produced in the United States – was released. It builds on the

Boston Globe's spotlight report which identified 229 abuser priests, the 2005 Philadelphia grand jury report into the Archdiocese which identified over 60 abuser priests and the 2016 Altoona-Johnstown investigation conducted by the Office of Attorney General which named at least 50 abuser priests. The report published today in accordance with the July 27th Pennsylvania Supreme Court Order has some redactions. Let me be very clear: my office is not satisfied with the release of a redacted report. Every redaction represents an incomplete story of abuse that deserves to be told. We have oral argument scheduled in front of the Pennsylvania Supreme Court for September the 26th, and you can be certain that we will fight vigorously to remove every redaction and tell every story of abuse and expose every cover-up. While those redactions represent just a very small fraction of the predator priests named by this grand jury, no story of abuse is any less important than another. Today, Pennsylvanians can learn the extent of sexual abuse in these Dioceses. And, for the first time, we can begin to understand the systematic cover-up by Church leaders that followed. As the members of the grand jury wrote in their report, "We need you to hear this. There have been other reports about child sex abuse within the Catholic Church. But never on this scale. For many of us, those earlier stories happened someplace else. Now we know the truth: it happened everywhere." This lengthy report was written by 23 committed grand jurors based on extensive testimony and documentation. It goes into great detail about widespread sexual abuse and cover-up within the Catholic Church. I respectfully ask for your patience as I walk you through the contents of this report. And while I will endeavor to give a full accounting of the report so that you get a full picture of what transpired in the shadows over decades, nothing I can say in the time we have together today will do full justice to the two years of work done by these grand jurors. I ask that you take the time to read the report. This painful body of facts and documents contained in it which is now posted on the Office of Attorney General website. Now I will lay out the following: the unprecedented scope of this investigation; the abuse Diocese by Diocese; charges resulting from this grand jury investigation; the systemic cover-up by Church leaders; the weaponization of faith; the failure of law enforcement and, finally, the recommendations of the grand jury. The grand jury investigated six Dioceses: Allentown, Harrisburg, Pittsburgh, Greensburg, Erie and Scranton. Their work built on previous grand jury investigations into the Dioceses of Philadelphia and Altoona-Johnstown, and paints a complete picture of abuse and cover-up in every Diocese in Pennsylvania. The grand jury investigation began about two years ago, because we realized during the Altoona-Johnstown investigation that the abuse and cover-up was not just limited to that region, but it was pervasive throughout the entire Commonwealth of Pennsylvania. Dozens of witnesses testified before the grand jury, detailing acts of sexual abuse by priests and how senior Church officials covered up their criminal conduct, prioritizing their institution over the

safety and welfare of these young boys and girls. The grand jury subpoenaed and reviewed a half a million pages of documents – internal Church documents and official records. The abuse scarred every Diocese. The cover-up was sophisticated, and all the while Church leadership kept records of the abuse and the cover-up. These documents from the Dioceses' own secret archives formed the backbone of this investigation corroborating accounts of victims and illustrating the organized cover-up by senior Church officials that stretched, in some cases all the way to the Vatican. The term "secret archives" is not my term. It is how the Church officials themselves referred to the troves of documents sitting in filing cabinets just feet from the bishops' desks. In each Diocese, the bishops had the key to the secret archives, which contained both allegations and admissions of the abuse and the cover-up. The grand jury uncovered credible evidence of sexual abuse against 301 predator priests. As shocking as that number is, the grand jury report notes that the jurors didn't automatically name every priest mentioned in the documents in the secret archives. They actually received files on more than 400 priests, but were careful not to name names if the information was too scanty to make a reasonable determination about what had happened. Over 1,000 child victims were identified by our investigation, though the grand jury notes that they believe that, that number was in the thousands. As the report reads, "We should emphasize that while the list of priests is long, we don't think we got them all. We feel certain that many victims never came forward and that the Dioceses did not create written records every single time they heard something about abuse," the grand jurors wrote. As I detail the grand jury's findings, I will use graphic language from the report that may make some uncomfortable. But these words are the only way to adequately explain the sexual abuse committed by priests upon children. This, this is not to be salacious. It is to share the truth. To keep a promise I made to these victims that I would, in their words, talk about what this abuse actually was. And not rely on the euphemisms that Church officials used for decades to cover it up. You see, Church officials routinely and purposefully described the abuse as "horseplay," and "wrestling" and "inappropriate contact." It was none of those things. It was child sexual abuse including rape, committed by grown men – priests against children. Above all else they protected their institution at all cost. As the grand jury found, the Church showed a complete disdain for victims. In the Diocese of Erie, the grand jury named 41 priests who sexually abused children. One priest in Erie, Father Chester Gawronski, fondled boys and told them he was doing so to perform a cancer check. In 1987, after complaints were filed against him, Gawronski provided the Diocese with a list of 41 possible victims. He confirmed at least 12 children he had performed this cancer check on. He had freely confessed to multiple instances of sexual abuse. Yet, from 1987 until 2002 –15 years – Gawronski remained in active ministry and repeatedly was reassigned to new parishes. In the Diocese of Allentown, the grand jury named 37 priests who sexually

abused children. "Please help me. I sexually molested a boy," one priest, Michael Lawrence, admitted to Monsignor Anthony Muntone. Muntone noted the confession in a handwritten confidential memo. Even after the admission by the priest, the Diocese actually ruled "this experience will not necessarily be a horrendous trauma for the victim and all the family needed was the opportunity to ventilate." And so, Father Lawrence, the admitted child molester, was left in ministry for years by three different bishops. In the Diocese of Greensburg, the grand jury named 20 priests who sexually abused children. One priest, Father Raymond Lucak, impregnated a 17-year old girl, forged another pastor's signature on a marriage certificate, then divorced the girl shortly after she gave birth. Despite having sex with a minor, fathering a child, and being married and divorced, Father Lucak was allowed to stay in ministry while the Diocese sought a benevolent bishop in another state willing to take the predator hiding him from justice. In the Diocese of Harrisburg, the grand jury named 45 priests who sexually abused children. One priest, Father Joe Pease, sexually assaulted a boy repeatedly when the boy was between 13 and 15. Pease admitted to Diocese officials to finding the victim naked upstairs one time in the rectory but said it was all just horseplay and nothing sexual occurred. "At this point we are at an impasse – allegations and no admission," the Diocese wrote in one of those secret memos before cycling this predator through Church-run treatment and allowing him back into active ministry for seven more years. In the Diocese of Pittsburgh, the grand jury named 99 priests who sexually abused children. A group of at least four predator priests in Pittsburgh groomed and violently sexually assaulted young boys. One boy was forced to stand on a bed in a rectory, strip naked and pose as Christ on the cross for the priests. They took photos of their victim, adding them to a collection of child pornography, which they produced and shared on Church grounds. To make it easier to target their victims, the priests gave their favorite boys gifts—gold crosses to wear as necklaces. The crosses were markings of which boys had been groomed for abuse. The grand jury saw one of those gold crosses when one of the victims of the Pittsburgh priests testified. In the Diocese of Scranton, the grand jury named 59 priests who sexually abused children. A Diocese priest, Thomas Skotek, raped a young girl, got her pregnant, and then that priest arranged for an abortion. Bishop James Timlin expressed his feelings in a letter. He wrote, "This is a very difficult time in your life, and I realize how upset you are. I too share your grief." Except the bishop's letter was not for the girl. The bishop wrote that letter to the rapist. Just these few examples of those contained in the report demonstrates starkly similar corrupt and unconscionable abuse. The pattern was abuse, deny and cover up. The effect not only victimized children. It served a legal purpose that Church officials manipulated for their advantage. The longer they covered it up, the less chance law enforcement could prosecute these predators because the statute of limitations would run. As a direct consequence of the systematic cover-up

by senior Church officials, almost every instance of child sexual abuse we found is too old to be prosecuted – but not every instance. The grand jury issued presentments and we filed charges against a priest in Greensburg and a priest in Erie who sexually assaulted children. In Greensburg, we charged Father John Sweeney with sexually abusing a seven year-old boy. Sweeney pled guilty earlier this month. He is now an admitted sexual predator. In Erie, we charged Father David Poulson with sexually abusing one boy for eight years starting when he was just eight years old. He actually made the boy go to confession to admit his sins to Poulson himself. The bishop at the time, Donald Trautman, knew all about this abuse. And Trautman covered it up. As a result of the previous grand jury in Altoona-Johnstown, two Franciscan friars admitted they endangered the welfare of minors, covering up sexual assaults by a fellow friar. So this grand jury and the one that preceded it, did not just write reports. They recommended charges where they legally could and we followed through. We all wish more charges could be filed. But due to the Church's manipulation of our weak laws in Pennsylvania, too many predators were out of reach. The cover-up made it impossible to achieve justice for the victims. Church leaders in every one of the six Dioceses handled complaints of sexual abuse the same way for decades—by covering it up. The grand jurors wrote, "All of the victims were brushed aside in every part of the state by Church leaders who preferred to protect the abusers and their institutions above all. Priests were raping little boys and girls and the men of God who were responsible for them not only did nothing, they hid it all for decades. Monsignors, auxiliary bishops, bishops, archbishops, cardinals have mostly been protected; many, including some named in this report, have been promoted." Father Schlert, identified in the report, is now Bishop Schlert. Bishop Wuerl is now Cardinal Wuerl. Father Zubick is now Bishop Zubick. Predator priests were allowed to remain in ministry for 10, 20 even 40 years after Church leaders learned of their crimes. In those years their list of victims got longer and longer. There're simply too many examples of the cover-up to share right now. All are documented in that grand jury report, but let me share just two examples that show the lengths to which the Catholic Church would go to cover it up. The first case is an example of a corrupt bishop putting the institution ahead of its flock's well-being and repeatedly lying about it. The Diocese of Erie knew Father William Presley was sexually abusing at least two minors as early as 1987. Instead of reporting it to police, diocesan officials held meetings with Presley to review the complaints. They noted that he never denied the allegations. Despite that, they concluded Presley's victims were troubled and had psychological problems. The Diocese chose to send Presley for evaluation by a doctor and then placed him right back in ministry. After the child sex abuse scandal erupted in the Boston Archdiocese in 2002, three separate victims notified Bishop Trautman of their abuse at the hands of Presley, which is detailed in the report. Trautman spoke with Presley who

admitted the abuse. Then, 15 years after the Erie Diocese first learned Presley was a predator, the bishop finally revoked Presley's priestly faculties. After Pressley's removal, responding to press inquiries about Presley, the Diocese issued a comment saying it knew of only one abuse allegation and had "no information to provide on other possible allegations against Presley." The Diocese lied. Bishop Trautman had personal knowledge of at least three victims who had reported their abuse to him. There was only one entity that Bishop Trautman apparently was honest with – the Vatican. The bishop privately detailed the abuse to Vatican officials in 2003, writing, "It confirms my suspicion that there are even more victims of the sexual abuse and exploitation perpetrated by Presley." The Diocese and Trautman were telling the public and the faithful one thing, while they were telling the Vatican an entirely different story. Years later, in 2006, Trautman finally chose to report Presley to law enforcement. Falsely telling prosecutors that these allegations only came to light a few years ago. The grand jury found this report to law enforcement was another lie. The truth is Trautman and the Diocese of Erie intentionally waited out the statute of limitations and curbed their own investigation to avoid finding additional victims. The next case highlights the horrendous abuse perpetrated by one abuser priest on an entire family, and a Diocese's disregard by doing nothing to investigate the abuse for years despite knowing of credible allegations against the priest. Over a 10-year period, the priest, Gus Giella, sexually abused five sisters from the same family. The family of nine siblings was very involved with the Church. Giella met his victims when the girls came to the rectory to help count collections. Giella began sexually abusing one of the sisters, Carolyn, when she was just 18 months old. His abuse continued until she was twelve. You saw Carolyn earlier in that powerful video. In 1987, a teacher at Dauphin County's Bishop McDevitt High School reported to the principal that Giella was watching a young girl as she used the bathroom. The principal reported it to the Diocese and it was noted in their secret archive along with information that Giella was engaging in similar conduct with one of the five sisters from the same family. A memorandum in the Church's secret archive about Giella's abuse concluded the high school principal was instructed to do nothing in the case until the matter had been discussed with the Diocesan legal counsel. Over the next five years, the Diocese took no action to remove Giella from ministry, chose not to inform law enforcement, the family or parishioners. Instead they chose to knowingly allow him to continue to sexually abuse these girls. 1992, the youngest victim of the family told her parents what Giella had been doing, and the family reported the conduct to the Diocese and law enforcement. Police served a search warrant on Giella's home, and confiscated a young girl's panties, plastic containers with public hairs identified by initials, vials of urine and photos of girls in sexually explicit positions. Giella was arrested in 1992, more than a decade after he started abusing children. Father Giella never faced

a jury for his crimes. He died awaiting trial. The mother of the girls abused by Giella testified before the grand jury. She said she confronted Church officials – Monsignor Overbaugh – when she learned of Giella's years of abusing his [sic] daughters. In response, she said the monsignor told her, "I wondered why you were letting them go to the rectory." The grand jury concluded Giella's tragic abuse of these girls could have been stopped much earlier if the Diocese of Harrisburg had acted on the original complaint. The family of the sisters abused by this predator have never been able to tell their story until today. They were gagged from speaking by a confidentiality agreement insisted on by the Diocese in exchange for settling their claims against the Church. Instead of helping these girls heal, they paid for their silence. These women no longer need to be silenced. Today the grand jury finally gives this family of victims their voice. Predators in every Diocese weaponized the Catholic faith and used it as a tool of their abuse. Father William Presley gave a boy sedatives to relax him before his abuse then told him it was okay because he was a priest. Father Edmund Parrakow told altar boys not to wear any clothing underneath their cassocks because God didn't want clothes on their skin as they served mass. Father Robert Moslener groomed his middle school students for oral sex by telling them how Mary had to lick Jesus clean after he was born. Father Arthur Long told his young victim, as he pressured her to have sex, "God wants us to express our love for each other in this way." Father Ed Graff told a seventh grader he abused that what they were doing was okay because the priest was an instrument of God. Monsignor Thomas Benestad made a nine year old give him oral sex then rinsed the boy's mouth out with holy water to purify him. These children – children surrounded by adults enabling their abuse – were taught that this abuse was not only normal, but that it was holy. The Church was not the only institution that failed children. The grand jury also found several instances where law enforcement let them down. Here's just one example: in the Diocese of Pittsburgh, District Attorney Robert Masters of Beaver County, reported to Church leadership concerned about an abuse investigation involving one of his priests that "in order to prevent unfavorable publicity, he halted all investigations into incidents involving other young boys." District Attorney Masters actually testified to the grand jury that his reason for failing to investigate and prosecute the sexual abuse case against a priest was that he wanted the Diocese's support for his political career. I've described for you only some of the abuse and extensive cover-up, but the findings in this report would be incomplete without discussing how this abuse has affected survivors years after the abuse has ended. Child sexual abuse is traumatizing. In these cases there is an additional layer of trauma because the abuse came at the hands of their spiritual leaders. Instead of healing, victims were shamed. They were ridiculed. When these children told authority figures of their abuse their accounts were questioned and they were hushed and shunned. When a young boy ran into a police station in

Scranton after his priest attempted to assault him he told the grand jury that the on-duty officer said, "I don't want to know anything about this. I just want you to get out of here." When one victim in Allentown told a priest of her abuse he said to her, "I don't want to hear it. You go to confession and you pray for him." When another victim of the same abuser priest tried to tell another clergyman, that clergyman said, "Don't say the name." For the record, the name is Father Francis Fromholzer. One victim, despite being assaulted by a monsignor, still felt so strongly about his faith that he himself became a priest. But after feeling that Church superiors continued to ignore child sexual abuse, he left his calling. He now advocates for survivors. The impact, especially when kept secret, lasts a lifetime. The time of telling these victims to keep their truth to themselves has ended. Unlike the Catholic Church and some in law enforcement, we hear you and we believe your truth. I want to thank the many victim support groups, including the Pennsylvania Office of Victim Advocate, for the work they do every single day to support survivors and their assistance throughout this process. Several dozen survivors are here with us today, each with a story of life-long impact from their abuse. Let me tell you about just one of them whose story is sadly not unique. Joey Behe. Joey was a 7-year old boy from the Diocese of Allentown. He was repeatedly raped by Father Edward Graff, a priest, who, according to the grand jury, raped scores of children over 35 years. Father Graff was a physically imposing man and an alcoholic. When he attacked Joey he bore down on his back with such force that Joey's spine was severely damaged. Joey received treatment for this back injury and eventually became addicted to painkillers that the doctors had prescribed him. He ultimately overdosed and died. Before he died, Joey wrote to the Diocese of Allentown. "Father Graff did more than rape me," Joey wrote, "he killed my potential and in doing so killed the man that I should have become." Joey's mom, Judy, is here today. She testified before the grand jury. She said they never admitted to anything happening. It was like he was trying to prove his entire life what had happened and that he was telling the truth. They never admitted. They never said there was abuse. I promised Joey's mom that we wouldn't forget Joey. The abuse did happen. The grand jurors believed Joey. Joey's trauma led to his death. For thousands of other victims, trauma manifests itself in many different ways. Some are left with speech problems, uncontrollable stuttering. Many turned to alcohol and drugs to escape the memories of their abuse. Some are unable to ever have normal sexual relationships, have children or show physical affection to those they love. You heard Bob and Shaun speak about that in the video earlier. Many attempted suicide. Sadly, many were successful. During the grand jury's deliberations, one victim who testified before the grand jury, tried to kill herself. From her hospital bed she asked for one thing: that we finish our work and tell the world what really happened. For many of the victims this grand jury report is justice. The grand jurors felt a responsibility to expose the abuse and

make recommendations to ensure that something like this never happens again. In their words, "We are going to shine a light on their conduct because that is what the victims deserve. And we're going to make our recommendations for how the law should change so that no one will have to conduct another inquiry like this one. We exercise our historical and statutory right as grand jurors to inform the public of our findings." The report continues, "We can't charge most of the culprits what we can do is tell our fellow citizens what happened and try to get something done about it." Here are the four reforms that the grand jury recommends to prevent this type of abuse from happening again and care for victims: First, eliminate the criminal statute of limitations for sexually abusing children. Child sexual predators should no longer be able to hide behind a criminal statute of limitations. Thanks to a recent amendment, the current law permits victims to come forward until age 50. That's better than it was before, but still not good enough according to the grand jury given the physical and emotional trauma that sexual abuse victims undergo. It is well-documented that the process of telling someone about their abuse can take years or even decades. Justice for these victims should not be denied. Pennsylvania lawmakers should send a clear message and empower law enforcement agencies to hunt down all future child predators, no matter how long they live. Second, the grand jury urges lawmakers to create a civil window in Pennsylvania so that older victims may now sue for damages from when their bodies were defiled as children. The law in place now gives child sex abuse victims 12 years to sue once they turn 18. But victims in their 30's or older fall under a different law. They get only two years. For victims in this age range, the window for them to sue expired back in the 1990's long before revelations about the institutional nature of sexual abuse within the Church. This is unacceptable. The grand jury proposal would open a limited window offering abuse survivors a chance finally to be heard in court. "All we're asking is to give victims those two years back," the grand jurors wrote. I've spent time with dozens of victims – those here today and those across Pennsylvania. Not one has ever expressed a desire for compensation when they came forward and shared their truth. But they shouldn't have to go without means to pay for the counseling and substance-abuse treatment and other assistance they need to fight the demons inflicted upon them by the Church. Several other states have legally created windows for victims to sue. This report demonstrates the need for this reform in Pennsylvania. This has actually been debated in the halls of the General Assembly in the past. But so far, the interests of the Church and the insurance lobby have triumphed over the needs of victims. Given the findings of this grand jury, such a position should no longer be tenable. Heed the words of the grand jurors. Trust the victims. Adopt this reform. Third, the grand jury recommends that the penalties for a continuing failure to report child abuse be clarified. "We can't pass laws telling the Church how to administer internal operations, but we can demand that it inform authorities about rapists and molesters,"

wrote the grand jury. They recommended fixing the law, which currently creates a legal gray area around an abuser being "active" or not, and if there were repeated instances of abuse targeted at the same child or many children. The new language should impose a continuing obligation to report "while the person knows or has reasonable cause to believe that the abuser is likely to commit additional acts of child abuse." Fourth and finally, they believe that civil confidentiality agreements should not cover communications with law enforcement. Confidentiality agreements between victims and the Church were usually written to make the victim afraid of talking to anyone at all. Victims assume they can't even talk to the police. This is not true. And Church officials use this as a tool to silence victims and protect the institution. The grand jury is recommending that this be made crystal clear, proposing a new statute that no past or present non-disclosure agreement prevents a victim from talking to law enforcement. Additionally, they recommend the statute should require that future agreements must plainly state that contact with police about criminal activity is permitted. The Dioceses have issued many public statements in recent times. They claim to have changed their ways. They claim to have put appropriate safeguards in place and no longer have tolerance for sexual abuse of any kind. Statements are one thing. The proof of their claims will be if they support each of the four grand jury recommendations. So, on behalf of the grand jurors, I issue the following clear challenge to every Pennsylvania bishop and the archbishop in each Diocese: adopt and support each and every one of these recommendations to Pennsylvania law right now. Adopt and support each of these recommended reforms to Pennsylvania law right now. Stand up today, right now, and announce your support for these common sense reforms. That is the real test that will determine whether or not things have really changed, or if it will just be business as usual after the dust settles. I want to single out Bishop Persico of Erie for his public actions recently, signaling a new way forward for the Church to respond to the sexual abuse scandal. His response to this crisis actually gives me some hope. While some bishops submitted written statements, Bishop Persico was the only one to testify before the grand jury in person. He told the grand jury the mishandling of complaints by his predecessors made him angry and that he wanted to do the right thing. He did. I want to sincerely thank the men and women of the grand jury who traveled long distances several days every month for two years of their lives to listen to heartbreaking testimony, and ultimately issue this report. These 23 fellow Pennsylvanians listened to accounts of horrific sexual abuse of victims by priests, and they reached a unanimous set of conclusions in approving this report. We owe them a profound debt of gratitude. Your public service was impactful and you made a difference. On behalf of our entire team in the Office of Attorney General, the victims and the people of Pennsylvania, I thank each and every one of those 23 grand jurors. My office works to protect children throughout Pennsylvania every single day.

We pursue child sexual abuse and institutional cover-up wherever we find it: in places of worship, in schools, in government offices. Wherever we find it. In just the past 12 months, our prosecutors have filed charges involving child sexual abuse against a police chief, a deputy county coroner, a pediatrician and university officials. We also have many active investigations across the Commonwealth. The time for institutions to place their own interests above protecting our children is over. I will not tolerate it. To that end, our investigation into child sexual abuse within the Catholic Church remains ongoing. If you are listening to this news conference and you know of sexual abuse being committed by a priest or a member of clergy against yourself or anyone else, please call us. Our special clergy abuse hotline is 888-538-8541. Words cannot adequately describe these horrors, but the grand jurors, my team of prosecutors and agents and professionals and these survivors reveal a clear picture of abuse and cover-up. These predator priests were allowed to thrive in darkness for decades. But sunshine is a powerful disinfectant. There were two primary goals outlined by the grand jurors: to disclose the abuse and to ensure it never happens again. The abuse and cover-up is now publicly-disclosed for the people of Pennsylvania to read for themselves. Critical question now is, whether elected representatives and Church officials will actually listen. I'm going to take a few questions and then I wanna go spend some time with the victims. Mark?

Mark: Can you talk about how much of the um, of the abuse examples that the grand jury uncovered was sort of new compared to [unintelligible] as opposed to assembling material that had been out before, uh, you know, people who had been even prosecuted?

Atty Gen. Shapiro: You'll read the report for yourself and you will see, um, many instances of abuse that heretofore had never become public. Read the report. It's all documented in there.

Question: There's a high, there's a high school in Pittsburgh named Cardinal Wuerl North Catholic High School, and I was wondering if, in light of this report and Cardinal Wuerl's complicity in the cover-up, uh, do you recommend that Bishop Zubick take Cardinal Wuerl's name off that high school?

Atty Gen. Shapiro: Those are decisions for the Church to make. Tony?

Tony: You mention the Bishop of Erie and the actions he has taken recently. In this vast investigation along the way, were there any heroes among the clergy? Were there, is, was there anyone who stood out? [Unintelligible]

Atty Gen. Shapiro: People behind me are the heroes. The survivors are the heroes.

Tony: [Unintelligible due to clapping from the audience]

Atty Gen. Shapiro: I've issued a clear challenge to each bishop and the archbishop. Depending upon how they respond to that challenge then I'll answer your question if any of them are going to be heroes.

Nikki: Um, I think this is clear but I just want to make sure. Do you anticipate any more charges against any of the 301 priests as a result of this investigation, and of the 301 priests, how many are currently living freely or lived freely until their death?

Atty Gen. Shapiro: Nikki, we ran a statute of limitations test on each and every one of the 301 priests. We charged those that we could charge. That said, this investigation is active and ongoing. As for those living, not living, where their whereabouts are, I can't answer that question at this time.

Question: Are any of those 301 in active ministry?

Atty Gen. Shapiro: I think you have to read the report and you'll be able to identify them. Yes?

Question: Uh, how many names were redacted?

Atty Gen. Shapiro: Right here. Yes?

Question: Um, you put the phone number up there, the hotline number. Um, I imagine this report has been complete for some time. I'm curious if you've received any phone calls from members of the public. I have reason to believe that you have, naming additional priests, um, or clergy, since the report's been complete. I know you said you anticipate more. Have there been more?

Atty Gen. Shapiro: Our investigation is active and ongoing. That's all I'll say.

Question: How many names were redacted from the interim report?

Atty Gen. Shapiro: Under the Supreme Court order I can't comment on who those petitioners are. As I said earlier, they don't have the courage to come forward and identify themselves. Yes?

Question: 301 priests. Are there additional names in there that were not [unintelligible] or involved in the cover-up?

Atty Gen. Shapiro: I think you should read the report. It's very clear who was involved in the cover-up. Angela?

Angela: The group of petitioners that has tried to block at least portions of the release of this report, um, have claimed that the report has inaccuracies and that the Supreme Court, in at least one of its rulings, said that there, that they did find, that they did have some concerns about due process.

I'm wondering if you can comment on first the idea that the report contained inaccuracies? Is that an accurate statement, and also, on the due process issue?

Atty Gen. Shapiro: I stand by the work, the incredible work of this grand jury. The bishops were invited, the priests were invited to respond, and they did. And those responses were affixed, uh, to the report. I guess all I would say to you Angela is consider the source, the individuals who were protesting. Consider who they are and consider their backgrounds. And also understand, and as you read this report, it will become much clearer, that the information contained in this report is largely corroborated by the very documents that were sitting in secret archives inside the Church. Take one more question. Yes?

Question: Do you think that it will take more than just the bishops of Pennsylvania to make change or will it go up to the Pope?

Atty Gen. Shapiro: I can't comment on what the Pope may or may not do. What is clear from the challenge I issued today, is that each bishop has to answer today whether they are for these four reforms, and then the Pennsylvania House and Senate need to get to work as soon as they get back in adopting these reforms that the grand jury recommended. Okay. Thank you all very much.

Applause.

1:50:40

[END OF PRESS CONFERENCE]

EXHIBIT 2

COMMONWEALTH OF PENNSYLVANIA
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July 25, 2018

His Holiness, Pope Francis
Apostolic Palace
00120 Vatican City

Your Holiness:

I had the pleasure of officially welcoming you to St. Charles Borromeo Seminary in Wynnewood, Pennsylvania as you arrived for the World Meeting of Families on September 27, 2015. It was a high honor to receive greetings and blessings from you. I am a great admirer of you and your work—especially your commitment to fighting for the defenseless.

It was at the Seminary, shortly after our exchange, that you chose to meet with a group of survivors of sexual abuse. According to official Vatican records, in that meeting you expressed sorrow, sadness and apologies to the victims and stated that you were "profoundly sorry that your innocence was violated by those who you trusted." You went on to express remorse that the Church failed to hear and believe them for so long but that now you, the Holy Father, "hears and believes you". You pledged to "follow the path of truth wherever it may lead. Clergy and bishops will be held accountable when they abuse or fail to protect children." I was moved by your words, your compassion and your commitment.

Sadly, some of the clergy leading the church in Pennsylvania have failed to heed your words. A comprehensive investigation by the Office of Attorney General found widespread sexual abuse of children and a systemic coverup by leaders of the Catholic Church. Last month, I planned to release the findings of our investigation. As I prepared to do so, anonymous petitioners implicated in this report went to court to stop me and silence the victims notwithstanding the fact that the bishops in Pennsylvania pledged publicly to not stand in the way of the truth. Credible reports indicate that at least two leaders of the Catholic Church in Pennsylvania—while not directly challenging the release of this report in court—are behind these efforts to silence the victims and avoid accountability.

Your Holiness, I respectfully request that you direct church leaders to follow the path you charted at the Seminary in 2015 and abandon their destructive efforts to silence the survivors. Instead, please call on them to "follow the path of truth" you laid out and permit the healing process to begin. I thank you for your consideration and concern.

All the best,

JOSH SHAPIRO

EXHIBIT 3

Josh Shapiro on Twitter:

Twitter, Inc. [US] | https://twitter.com/JoshShapiroPA/status/1035505437175623680

Pa. grand jurors say: Make full clergy sex abuse report public

Using strong language, members of the Pennsylvania grand jury who signed off on the report lodged their objection to any attempts to "censor,

philly.com

1 16 47

Josh Shapiro

@JoshShapiroPA

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We'll be in the Supreme Court next month arguing for the release of the full Report. Those blocking it are only furthering the cover up. The public and survivors deserve to know the truth about the full extent of the abuse and cover up.

5:31 AM - 31 Aug 2018

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EXHIBIT 4

NewsRoom

8/23/18 WashingtonPost.com (Pg. Unavail. Online)
2018 WLNR 25714029

WashingtonPost.com

August 23, 2018

Section: morning-mix

Indiana Catholic priest assaulted in church by man who said, 'This is for all the little kids'

The attack is being investigated as a hate crime.

Meagan Flynn

The Rev. Basil John Hutsko remembers that the attacker was wearing gloves.

It was Monday morning, about 9 a.m., and he had just finishing praying at the altar of St. Michael Byzantine Catholic Church in Merrillville, Ind., as his longtime friend and fellow clergy member, the Rev. Thomas J. Loya, told The Washington Post. Hutsko stepped inside the sacristy, the little room near the altar where religious supplies are stored. He thought he was alone.

But then he felt the hands. They tightened around his neck from behind, according to Merrillville Police Chief Joseph Petruch. Then, the attacker threw the 64-year-old priest onto the ground and "immediately starting slamming his head against the floor," Petruch told CBS Chicago.

Distinctly, Petruch said, before Hutsko blacked out, he remembered hearing: "This is for all the little kids."

Hutsko was left unconscious for 15 minutes inside his church, said Loya, who visited with him after the attack. Hutsko never saw the man's face.

Petruch told CBS Chicago that he had enough information to call the attack a hate crime and has alerted the FBI. As of late Wednesday, no suspect was in custody. Neither police nor the FBI could immediately be reached for further comment.

The assault comes in the wake of a sweeping Pennsylvania grand jury report released last week describing alleged sexual abuse by more than 300 Catholic priests that had been concealed by church officials for decades. Hutsko was not among the priests identified in the report, and multiple priests, including Loya, say he has never been accused of any wrongdoing.

Commander Jeff Rice, a spokesman for the Merrillville Police Department, confirmed to the Chicago Tribune that Hutsko's attacker referred to reports of clergy sex abuse during the assault. He said these comments led police to consider the attack a hate crime, but he declined to elaborate. Petruch told CBS Chicago that police are investigating the priest's past.

"As we have been saying, Father Basil is not guilty of any abuse or any accusations. He was just an innocent priest," said Loya, who added that he has known Hutsko for 40 years. The attacker, he said, "was apparently enraged by [the report], but why he chose Father Basil, we have no idea. We have not even a clue."

Hutsko could not be reached for comment late Wednesday.

The attack Monday coincided with the release of Pope Francis's 2,000-word letter acknowledging the child sex abuse, addressed to the world's 1.2 billion Catholics. As The Washington Post reported, the unprecedented letter came as the Catholic Church faces mounting pressure to correct systemic problems within its hierarchy that have allowed clergy sex abuse to fester behind closed doors for decades.

"With shame and repentance," the pope wrote, "we acknowledge as an ecclesial community that we were not where we should have been, that we did not act in a timely manner, realizing the magnitude and gravity of the damage done to so many lives. We showed no care for the little ones; we abandoned them."

The Rev. Steven Koplinka of St. Nicholas Byzantine Catholic Parish in Munster, Ind., told the Chicago Tribune that "it's a shame" Hutsko ended up being targeted.

"It's just like they're targeting the wrong guys, you know?" he said. "The rest of us try our best to be good priests, and unfortunately, this happened."

More from Morning Mix:

Urban Meyer apologizes to 'Buckeye nation' but not to domestic abuse victim

Trump tweets the word 'Africa' for first time as president — in defense of whites in South Africa

---- Index References ----

News Subject: (Catholic Church (1CA30); Christianity (1CH94); Crime (1CR87); Criminal Law (1CR79); Hate Crimes (1HA65); Legal (1LE33); Police (1PO98); Religion (1RE60); Sex Crimes (1SE01); Social Issues (1SO05))

Region: (Americas (1AM92); Illinois (1IL01); North America (1NO39); U.S. Midwest Region (1MI19); USA (1US73))

Language: EN

Other Indexing: (Steven Koplinka; Joseph Petruch; Trump; Francis; Basil John Hutsko; Jeff Rice; Thomas Loya; Urban Meyer)

Word Count: 588

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