

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

IN THE MATTER OF THE MULTICOUNTY) Case No. SCAD-2011-9
GRAND JURY, STATE OF OKLAHOMA) D.C. Case No. CV-2011-81

INTERIM REPORT NUMBER 14

The Thirteenth Multicounty Grand Jury of Oklahoma received evidence in its session held on June 12, 13 and 14. In this session the grand jury received the testimony of witnesses and numerous exhibits in several different matters. In this session the grand jury returned one (1) indictment ___ that was/were delivered to the Presiding Judge in Open Court pursuant to law for disposition as provided by law.

Party at Café Nova on November 20, 2006¹

The grand jury has investigated² allegations of criminal activity circulating around a “victory party” held November 20, 2006, celebrating the election of the Honorable David Prater as District Attorney for District 7 (Oklahoma County, Oklahoma), and has also investigated matters leading up to the initiation of the investigation of these matters by the Oklahoma State Bureau of Investigation. Due to the serious nature of the allegations pertaining to a high public official, the grand jury believes it is fitting and proper for it to make an interim report at this time as to its findings regarding these matters.

¹ This portion of this interim report is made pursuant to 22 O.S. 2012, § 346, that provides: “In addition to any indictments or accusations that may be returned, the grand jury, in their discretion, may make formal written reports as to the condition and operation of any public office or public institution investigated by them. No such report shall charge any public officer, or other person with willful misconduct or malfeasance, nor reflect on the management of any public office as being willful and corrupt misconduct. It being 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.”

² In this investigation, the grand jury has heard the testimony of more than thirty (30) witnesses and has received numerous exhibits.

Allegations and Investigation Findings

Initial allegations regarding the subject party were made to the Office of Attorney General of Oklahoma on or about February 14, 2011, by way of a letter received that date from a local Attorney at Law³, that was addressed to Robert L. Hudson, First Assistant Attorney General. The text of this letter read as follows:

Dear Rob:

I tried to call Monday of this week to give you heads up on the packet I was sending. I received the information I am sending you from a former Assistant Oklahoma County District Attorney.⁴

If you need to speak to me about this matter please feel free to do so.

Sincerely,

S/
[Attorney A]⁵

Enclosed with the letter was an unsigned, typed or printed statement that provided as follows:

Prater had a fundraiser on November 20, 2006 at Café Nova.⁶ At least 20 donations reported on Ethics Commission website. Prater approached several people at

³ This person shall be referred to herein as “Attorney A” due to the dictates of 22 O.S. 2012, § 346.

⁴ Attorney A could not recall the name of this Assistant District Attorney.

⁵ The name of the Businessman and of Attorney A as signatory was redacted per 22 O.S. 2012, § 346. Certain names hereinafter will be redacted from this report, including from documents quoted herein as indicated by including the redaction in brackets, pursuant to 22 O.S. 2012, § 346.

⁶ Attorney A stated he personally attended the event, only “briefly.” He stated he reluctantly contributed a \$1,000.00 check to the campaign that night at the request of another person whose name he could not definitely identify. He admitted he previously had contributed to both candidates before the election as a “fact of life.” He stated he was never personally solicited for a campaign contribution by Mr. Prater at the event. He could not now recall ever seeing Attorney B at the event. He did not see Attorney B pay over the \$2,000.00 in currency that was paid that night by Attorney B as Attorney B’s sponsorship of the event.

fundraiser asking for help to pay for costs of fundraiser. Five people, at least were asked for money.⁷ L.B. Moon paid by credit card the entire bill – the bill was \$12,729.90. [Businessman], owner of Café Nova provided receipt. Has receipt showing Prater as customer and believe it to be L.B. Moon Bank of America credit card used. L.B. Moon had previously donated limit of \$5,000.00 to campaign. The payment for fundraiser does not appear on campaign contribution report nor does the expenditure. Would appear to violate the statute on contribution reporting.

L.B. Moon has pending felony charge in Oklahoma County CF-2008-6473. David Prater has personally appeared on numerous occasions on the case. L.B. Moon had prior to November 20, 2006 given the maximum amount to David Prater's campaign and David Prater was aware of that since he was also treasure of his campaign.⁸

Section 187.1 of Title 21 of the Oklahoma Statutes makes it a felony to receive or give in excess of the \$5000.00 limit on campaign contributions. It is punishable by a fine up to 4 times the amount exceeding the limit and or up to 1 year in the State Penitentiary.⁹

Also included in the letter's enclosures was what purported to be an "Invoice" of Deep Fork Grill, 5418 N. Western Avenue, Oklahoma City, Oklahoma, dated November 20, 2006, giving the name "David Prater" as "customer," for an "Inaugural Reception" costing \$12,729.90 and with the notation of "Check" as to "Payment Details."¹⁰ Another item included in the letter's enclosures was a *Campaign Contributions and Expenditures Report* dated January 31, 2007 with the conformed signature of David W. Prater, that apparently had been printed from the Oklahoma Ethics

⁷ It is interesting that this is the same number of the sponsors of the event disclosed on the written invitation to the event, and as shown later herein, who paid their sponsorships at Café Nova the evening of November 20, 2006.

⁸ Attorney A admitted he did not ask Mr. Prater, nor either of Mr. Moon's attorneys, what cause there might be for the delay in the disposition of the case.

⁹ Attorney A did not remember who produced the summary. He thought it was possible that he had caused the summary to be put down on paper, but thought it was possible that it was produced by someone else. Typographical and grammatical errors are in the original.

¹⁰ Attorney A stated that Attorney B provided a copy of the "Invoice" to him.

Commission web site on January 26, 2011.¹¹ Also included in the letter's enclosures was an *Appearance Docket* sheet from State v. Lewis B. Moon, Oklahoma County No. CF-2008-6473 that apparently had been printed from the Oklahoma State Court's Network (OSCN) on February 3, 2011.¹²

Mr. Hudson was concerned by the allegations contained in Attorney A's letter. The allegations suggested the willful commission of a felony crime by L. B. Moon and the possible commission of serious criminal offenses by the elected District Attorney for Oklahoma County. However, the allegations contained in the complaint summary supplied by Attorney A did not match the facts appearing on the face of the supplied "Invoice," nor were these discrepancies explained. From the copy of the *Campaign Contributions and Expenditures Report* enclosed with Attorney A's letter it appeared that Attorney A had personally attended the party at Café Nova on November 20, 2006, and had made a substantial campaign contribution of One Thousand Dollars (\$1,000.00) to Mr. Prater's campaign at the event (a contribution reported by Mr. Prater in the *Campaign Contribution and Expenditures Report*), but the complaint about the party was being reported by Attorney A more than four (4) years after the alleged event. Mr. Hudson was also aware of the then-ongoing attempt by Attorney A, as attorney for the defendant, to remove Mr. Prater as prosecutor from prosecution of a certain high profile murder case brought by Mr. Prater,¹³ and therefore a

¹¹ Attorney A could not remember who provided him this item.

¹² Attorney A could not remember who provided him this item.

¹³ State v. Jerome Jay Ersland, Oklahoma County No. CF-09-3199; Grand Jury Exhibit 7. The *Appearance Docket* in that case revealed the defendant moved to disqualify the District Attorney by written motion filed on October 1, 2010, *Id.* Decision on that motion was stayed by the trial Court on November 9, 2010, pending a final ruling on the defendant's motion to disqualify the trial judge, *Id.* On March 7, 2010, the defendant's motion to disqualify the District

possible bias regarding the timing of the complaint appeared to be present as well as a possible hoped-for influence regarding the outcome of Attorney A's motion to remove the elected District Attorney from the prosecution of an important case. The facts alleged also showed that the alleged over-contribution by Mr. Moon occurred on a date well beyond the applicable *Statute of Limitations* for the offense.¹⁴

Responding to Attorney A's letter and its enclosures, in a letter dated March 3, 2011, the Attorney General's First Assistant Attorney General wrote Attorney A:

Dear [Attorney A]:

I received your letter, together with its enclosures. Since the allegations of criminal conduct contained in the enclosures involve facts that, if true, occurred many years ago, I assume that they were only recently brought to your attention.

In reviewing your enclosures, it appears that all of the conduct that is suggested, which might be a violation of Oklahoma law, occurred no later than January 31, 2007. Since none of the alleged conduct would constitute an offense for which the Legislature has provided a special statute of limitation, even if the conduct was shown to have occurred, the three- (3) year general statute of limitation forever bars its prosecution at this time, 22 O.S. Supp. 2010, § 152(H). There is no reason to believe that the statute of limitations has been tolled by absence, 22 O.S. 2001, §153. Accordingly, we have no basis to undertake a criminal investigation.

Also, with respect to any alleged acts which, if true, may be violative of ethics rules, I believe those issues fall under the purview of the State Ethics Commission. If you desire to pursue those issues, you should contact the State Ethics Commission.

Attorney was scheduled by the trial judge for hearing and decision on March 31, 2011, *Id.* The defendant's motion to disqualify the District Attorney was heard and decided on March 31, 2011, and was overruled by the trial court, *Id.*

¹⁴ Under Oklahoma law, the expiration of the *Statute of Limitations* prevents the prosecution of an offense: “. . . In the syllabus to State v. Fulkerson, 16 Okl.Cr. 250, 182 P. 725 (1919), this Court held that a statute of limitations abrogates the right of the State to try and punish criminal offenses at its discretion. When so viewed, a statute of limitations constrains the reach of the State's power to prosecute and punish. It is therefore jurisdictional.”, Cox v. State, 2006 OK CR 51 & ¶7, 152 P.3d 244, 248.

Very Respectfully Yours,

S/
ROBERT L. HUDSON
FIRST ASSISTANT A.G.

Prior to mailing this letter on March 3, 2011, Mr. Hudson contacted Attorney A, and orally informed the attorney of the contents of the letter being mailed to Attorney A that date.

According to grand jury witness Attorney C, who is also a local attorney, Attorney A approached Attorney C in the Oklahoma County Courthouse on March 3, 2011, and told him that Attorney A needed to make an affidavit immediately but that Attorney A's printer was not working. Attorney A told Attorney C that Attorney A needed the affidavit immediately because of a *Statute of Limitations* problem and because he believed Businessman was preparing to go out of town. Responding to the request for help, Attorney C telephoned Attorney C's office and spoke to Attorney C's paralegal about preparing the affidavit. Attorney A told Attorney C, and then Attorney C told Attorney C's paralegal over the telephone, what the affidavit should say.¹⁵ Attorney C's paralegal then emailed the affidavit to Attorney C. Attorney C stated that he and Attorney A made some changes that were emailed back to the paralegal with instructions to make the changes and email the corrected affidavit to another attorney, Attorney B.¹⁶ Attorney C's paralegal made the changes and,

¹⁵ The paralegal confirmed that Attorney C dictated what the affidavit should say to the paralegal over the telephone and that the paralegal then put the statement into affidavit form. The paralegal thought Attorney C was at the golf course at the time. Attorney C testified that although he briefly attended the November 20, 2006 party at Café Nova, Attorney C was not involved in the planning or organizing of the party, did not receive a written invitation to the party but was orally invited, and did not have any personal knowledge of who actually paid for the event.

¹⁶ The name of this person, an attorney, has also been substituted as "Attorney B" herein pursuant to 22 O.S. 2012, § 358. It should be noted that Attorney B, though of a different law

as reflected in a copy of the email provided to the grand jury, the paralegal emailed the then-corrected affidavit on March 3, 2011 to Attorney B, stating:

[Attorney B]:

Attached please find a REVISED version of the [Businessman] Affidavit I sent earlier.

Please note that [Businessman] spells his last name [a certain, described way]. If you have any questions, please do not hesitate to contact [Attorney C].¹⁷

The copy of this email that was provided to the grand jury bore an attachment that was identified by Attorney C's paralegal as the version of the affidavit that was transmitted to Attorney B attached to the email. A slightly revised version of the affidavit form was delivered to Businessman at Businessman's place of business in Oklahoma City called the Deep Fork Grill, on April 6, 2006, by a part-time member of Attorney B's staff¹⁸ and Businessman signed the affidavit in the staff person's presence after Businessman first read the affidavit in the staff-person's presence.¹⁹ The affidavit

firm, appeared as co-counsel for the defendant with Attorney A in State v. Jerome Jay Ersland.

¹⁷ The copy of the email bore an attachment that was identified as the attachment to the email. It is notable that this attachment was not the final version of the affidavit since the following phrase was inserted in paragraph 2 in the version that was eventually signed by Businessman: "or Deep Fork Grill."

¹⁸ The part-time staff member described that person's role in Attorney B's firm as a "runner," *i.e.*, this person would take documents to the courthouse or to other places in town and do other work that needed to be done for Attorney B as directed.

¹⁹ Businessman testified that Attorney B brought Businessman the affidavit for Businessman's signature and that Businessman signed the affidavit without reading it:

"Q: How long did you study that affidavit before you signed it.

"A: Zero seconds."

The part-time staff member testified the unsigned form was obtained by that staff member from Attorney B's paralegal secretary and that the signed form was returned by that staff member to Attorney B's legal secretary. Attorney B's paralegal secretary also testified that the unsigned form was given by the paralegal secretary to the part-time staff person to take to Businessman

document of my own free will.

Further Affiant sayeth not.

S/

[Businessman]

Subscribed and sworn to before this 6th day of April, 2011

S/

Notary Public

My Commission Expires:
January 4, 2014²⁰

Attorney B's part-time staff member also testified that at no time during the reading and signing of the affidavit did Businessman make any comment about or question the affidavit's contents. The part-time staff member also testified that the date set forth on the notary declaration was the same date Businessman signed the affidavit and then turned it back over to Attorney B's part time staff member.

In testimony given to the grand jury, Attorney A repeatedly reported a lack of memory of actually dictating the affidavit. Attorney A stated that the text of the affidavit does not "sound" like something he would dictate. He did recall seeing Attorney C at the Courthouse one day and remembered overhearing Attorney C while Attorney C appeared to be dictating the affidavit to someone over the phone. He thought Attorney C was doing this for Attorney B. Attorney A also expressed that he was aware such an affidavit was to be obtained from Businessman and stated that the purpose for obtaining Businessman's affidavit was to supply it to the Office of Attorney General.

²⁰ Contrary to the notary's statement thereon, the affidavit was not sworn to or signed before the notary. In exchange for the cooperation of the notary in the grand jury's investigation, including truthful testimony and making the original affidavit form available to the grand jury from its possession of the notary's attorney, it was agreed that the notary would not be charged.

Attorney A stated several times that he did not “see” the affidavit until after it was signed, and then, he only saw a copy. Attorney A appeared surprised that the affidavit had not been directly transmitted by him to the Office of Attorney General with Attorney A’s letters until it was pointed out to him that the affidavit was not notarized until April 6, 2011, a date well after Attorney A’s letters.

Businessman testified that he personally provided a copy of the “Invoice” contained in Attorney A’s letter to Attorney B, and then later, contrary to the text of the affidavit, had signed the affidavit for Attorney B without reading it.²¹ Businessman also testified that by signing the affidavit he did not intend to cause harm to Mr. Prater. Businessman also admitted telling the OSBI that he did want to get Mr. Moon in trouble but that he didn’t think his affidavit would cause Mr. Moon to get into trouble. Businessman stated he did not like Mr. Moon, that he had previously called for the police on 911 in response to trouble caused by Mr. Moon, and that Businessman had personally “banned” Mr. Moon from the Deep Fork Grill since 2008.²² Businessman also testified that he was not aware that any other persons were involved in the preparation of the affidavit other than Attorney B.²³ Businessman also testified that the “Invoice” he provided to Attorney B did not reflect the party held at Café Nova on November 20, 2006. He stated he thought he remembered that L. B. Moon had arranged for a victory party for Mr. Prater at Deep Fork Grill on the night of the election on

²¹ See footnote 11.

²² According to Businessman, Mr. Moon is the only person in the State who has been banned from the Deep Fork Grill.

²³ Businessman specifically denied knowing of any involvement in the drafting of the affidavit by Attorney A or Attorney C.

Tuesday, November 7, 2006, but admitted that the "Invoice" wasn't for that party either.²⁴ Businessman said that signing the affidavit was "a really stupid decision." Businessman specifically admitted in his testimony that the affidavit he signed wasn't true.²⁵

In a letter dated March 9, 2011, Attorney A responded to Mr. Hudson's March 3, 2011, letter as follows:

Dear Rob:

Thanks for talking to me recently and your follow up letter.

I advised the people who brought me the information²⁶ of the possibility that the statute of limitations had run, but they still strongly believe that the statute is five years for conspiracy and that it would not run until November 2011. They also forwarded the information to the Ethics Commission²⁷ and are waiting to give any information to the press until they see if any action is taken.

I certainly hate to bother you with these matters, but the people involved believe they are of great importance to the integrity of the criminal justice system.

²⁴ Though requested by the grand jury, Businessman did not provide to the grand jury any business records corroborating any victory party being held for Mr. Prater at Deep Fork Grill on November 7, 2006, sponsored by Mr. Moon. Mr. Moon denies arranging a party to be held for Mr. Prater at Deep Fork Grill on November 7, 2006 and recalls attending a watch party for Mr. Prater at a different location that night that was located "downtown." Mr. Prater also testified that the only watch party for his campaign of which he was aware was one held downtown at the Sheraton.

²⁵ In the course of showing the affidavit to Businessman, the following occurred:

"Q: Is that true?"

"A: No."

²⁶ When asked about the identity of the "people who brought me the information," Attorney A expressed that this meant him personally, as well as Attorney B, and Attorney A's son, who worked with Attorney B. When asked why he did not just say so, Attorney A stated he believed that persons complaining against the District Attorney might suffer for making the allegations and that he, as the signatory of the letter, was willing to absorb this potential.

²⁷ Although referred to in the letter as "they," Attorney A thought he recalled doing this himself and to calling to ask where to send the information.

* * *²⁸

Sincerely,

S/

[Attorney A]

With this letter, Attorney A enclosed a different typed or printed unsigned summary than the original summary Attorney A previously had provided that, though purporting to be from “Concerned Citizens Against Corruption,” was written in the first person. This summary states:

I am requesting a full investigation in to the campaign reporting and illegal activity of the District Attorney of Oklahoma County, David Prater. There are several instances in which violations have occurred, one being with Attorney David Ogle. David Ogle has held several fundraiser events for Oklahoma County District Attorney David Prater. The District Attorney in late July of 2010 filed criminal charges against Mr. Ogle.

The statute of limitations for bribery is three (3) years.²⁹ As can be seen from the Information filed in Mr. Ogle’s case, the alleged crime committed by Mr. Ogle occurred on June 7, 2007; Mr. Prater personally filed charges against Mr. Ogle in CF-2010-5113 on July 30, 2010, after some pressure from the Oklahoma Bar Association. Although the information in the probable cause affidavit, attached to the charge was known in 2007, it was not sworn to until July 29, 2010. Clearly, this is well beyond the statute of limitations for the crime of bribery.³⁰

The crime of Criminal conspiracy, however, has a five (5) year statute of limitation and Mr. Prater should be charged for the above crimes.³¹ There are several

²⁸ A non-relevant paragraph in the letter pertaining to a different case was omitted as indicated by the ellipsis.

²⁹ Actually, the *Statute of Limitations for Bribery* is seven (7) years “after the discovery of the crime,” 22 O.S. 2012, §152(A).

³⁰ The *Information* filed by Mr. Prater against David Ogle, State v. David Ogle a.k.a, J. David Ogle, Case No. CF-2010-5113, alleging a bribery committed on or about August 22, 2007, having been filed on July 30, 2010, was filed well within the seven (7) year *Statute of Limitations for Bribery*, 22 O.S. 2011, § 152(A).

³¹ The general *Conspiracy* statute, 21 O.S. 2011, § 421, has a five (5) year *Statute of Limitation*, 22 O.S. 2011, § 152(A). A special *Conspiracy* law, *Conspiracy to Defraud the State*,

witnesses who are willing to tell the truth and testify against Mr. Prater.

I am requesting a full investigation not only in CF-2010-5113, the Attorney David Ogle case, but also in CF-2008-6524, a case involving Attorney L.B. Moon. Mr. Moon's case has been personally continued and prosecuted by District Attorney David Prater for over three (3) years due to the fact Mr. Moon paid well in excess of \$5,000.00 campaign contribution limit by paying for the bill at the David Prater victory party and fund raiser in November of 2006. Mr. Moon paid in excess of \$12,000.00 for the party.

[Businessman], Owner of Deep Fork Grill and Café Nova, is willing to testify that L.B. Moon paid the bill with a credit card and that several attorneys (some listed below) were requested to give cash to reimburse him for the bill. This expense was never reported to the Ethics commission on any campaign finance form. It is believed that Mr. Moon's case is being personally handled by Mr. Prater because they have entered into a criminal conspiracy to allow the statute of limitation to run on the illegal campaign contribution, which is a felony, and then in the month of November of 2011 his case will be dismissed. There is no other reason that a simple Actual Physical Control case should not have been disposed of by now.

Please review the campaign records of District Attorney David Prater and you will find many errors and several illegal transactions. He pays fees to consultants who are never named and are usually paid in cash. Please find listed below a list of potential witnesses; however, please be aware, time is of the essence.

1. Attorney Josh Welch
2. Attorney Scott Adams
3. Attorney Shawn Jefferson (he helped gather the money from attorney's who attended the victory party to reimburse L.B. Moon for credit card payment)
4. Attorney David Ogle (with immunity)
5. Attorney L.B. Moon (with immunity)
6. Attorney Joe Reynolds
7. District Judge Kenneth Watson
8. District Judge Cindy Troung
9. District Judge Tammy Bass-LeSure
10. Attorney Jeffery Box
11. Attorney Irven Box
12. Attorney Michael Johnson
13. Attorney Kevin Etherington
14. District Attorney Scott Rowland
15. District Attorney Jennifer Chance
16. District Attorney Michelle McElwee

21 O.S. 2011, § 424, has a seven (7) year *Statute of Limitation*, 22 O.S. 2011, § 152(A).

17. District Attorney Ed Blau
18. Attorney Aletia Timmons
19. Attorney Debbie Maddox
20. Attorney Lorainne Fairbow

And many more who are willing to come forward if requested.

District Attorney David Prater has violated the trust of the citizens of Oklahoma County and the State of Oklahoma and should be thoroughly investigated and prosecuted! I respectfully request the Ethics Commission to open a full investigation and forward all findings to the Oklahoma Attorney General for submission to the Grand Jury.

Sincerely,

Concerned Citizens Against Corruption.³²

Other items enclosed with Attorney A's March 9, 2011, letter were fifteen (15) *Court Minutes* from the case of Lewis B. Moon in which the parties agreed, and the Court allowed, continuances of the case. One other *Court Minute* and a *Bind Over Order* were also provided in regard to Mr. Moon's failure to appear in Court on June 10, 2009, in which it was agreed by an Assistant District Attorney and the attorney for the defendant that Moon would appear on June 15, 2009 and waive his preliminary hearing. The *Bind Over Order* shows that Moon did appear and did waive his preliminary hearing on that date.

Due to the expiration of the applicable *Statute of Limitations* in the underlying complaint of campaign contribution violation, and in view of the long *Statute of Limitations* regarding alleged *Conspiracy* that would allow a proper and complete investigation of the matter at a more appropriate time, and in order to avoid the potential that an official investigation of the matters alleged in these complaints might affect the outcome of the ongoing litigation being waged between Attorney A and Mr. Prater, a decision was made by the grand jury's legal advisors to commence the active

³² Attorney A could not recall specifically who produced this summary, but thought it might have been provided to him by "friends" of former District Judge, Tammy Bass-LeSure.

investigation of these matters after the conclusion of that matter.

On October 17, 2011, a packet of document copies was anonymously delivered to the Office of Attorney General bearing a copy of a web-based article re-iterating the allegations previously made in the enclosures to Attorney A's letters. Also enclosed was a copy of the purported Deep Fork Grill "Invoice" that had been provided by Businessman to Attorney B, and a copy of the "Affidavit of [Businessman]" that had been prepared as described above. Also enclosed were copies of many of the same documents previously supplied to the Office of Attorney General by Attorney A. Another set of many of the same documents, including the "Affidavit of [Businessman]" were delivered at about the same time to the offices of the Oklahoma Ethics Commission.³³ The Attorney General requested the Oklahoma State Bureau of Investigation (OSBI) to investigate the allegations contained in the packet and in Attorney A's two letters. The grand jury cooperated in this investigation through its subpoena powers and then further investigated the matter after the OSBI's investigation was concluded and reported to the Office of Attorney General.³⁴

The party held in celebration of David Prater's election as District Attorney at the Café Nova on November 20, 2006, was not arranged nor paid for by Lewis B. Moon. Instead, the party was arranged and planned by Jennifer Welch, the wife of attorney Josh Welch of the law firm of Ogle and Welch, P.C.,³⁵ in cooperation with Tamera Prater, the wife of District Attorney David Prater.

³³ This packet of documents was delivered to the offices of the Ethics Commission on October 5, 2011, by a member of the Oklahoma Legislature. No formal complaint was filed. The Oklahoma Ethics Commission never assumed jurisdiction over the October 2011 complaint because the information was not received within three (3) years of the alleged violation and no facts were provided that the facts alleged had been withheld by fraud.

³⁴ The OSBI's report was very thorough and contains more than nine hundred (900) pages. The OSBI interviewed more than 60 persons.

³⁵ Ogle and Welch, P.C., was the law firm of J. David Ogle and Josh Welch.

These women met several days after Mr. Prater's election with the "party planner" for the Deep Fork Group that includes the Café Nova at which time a party was arranged at Café Nova to be held on November 20, 2006. The entire restaurant was reserved by Mrs. Welch for this celebration and the agreed cost of the party was Ten Thousand Dollars (\$10,000.00) to be funded by the Welches and attorney friends of the Welches.³⁶ Five (5) sponsors, were recruited by Mrs. Welch assisted by another sponsor of the party and each sponsor agreed to underwrite the cost of the party at Two Thousand Dollars (\$2,000.00) per sponsor. One sponsor was the collective contribution of attorneys David Ogle and Josh Welch, who contributed their sponsorship of the party through a charge to their law firm, Ogle & Welch, P.C.'s credit card. Another sponsor was local attorney Scott Adams who contributed his sponsorship of the party through a check drawn on the account of Adams & Associates, P.C. Another collective sponsor were local attorneys Angela and Kirk Olsen, who contributed their sponsorship of the party through a check drawn on the account of Goolsby, Olsen & Proctor, P.C., the law firm of Mr. Olsen. Another sponsor was local attorney Ronald L. Wallace, who contributed his sponsorship of the party from a private account. The remaining sponsor was Attorney B, who contributed Two Thousand Dollars (\$2,000.00) in currency. Copies of the sponsors' payments to Café Nova were obtained by the grand jury from that business' custodian of business records showing the sponsor's payments were received by the restaurant on November 20, 2006, and made part of the deposit of that business for that night. Other than Attorney B,³⁷ each of the sponsors identified their payment instrument. Mrs. Welch confirmed the cash deposited was received from Attorney B. Mrs. Welch directly paid gratuities to the wait staff who worked the

³⁶ This amount reflected charges for the substantial quantities of beverages and *hors d'oeuvres* arranged by Mrs. Welch to be provided to the guests by Café Nova.

³⁷ Attorney B was not summoned to give evidence to the grand jury due to his terminal illness.

event.

The identities of the sponsors of the November 20, 2006, election celebration party were never a secret but instead were published on the face of hundreds of written invitations to the party that Mrs. Welch had privately printed and publically distributed.³⁸ Mrs. Welch testified that when the matter of having an election celebration party was first presented to Mrs. Prater, the idea of it being a fundraiser for the campaign was rejected.³⁹ Mrs. Olsen testified she specifically asked Mrs. Welch when she was approached by Mrs. Welch about being a sponsor for the election celebration party, whether the party was going to be a campaign debt retirement party and was told that it was not. The grand jury in its investigation of this matter, as aided by the efforts of the OSBI, has found a complete lack of evidence that any of the persons who in fact paid for this party and who, in fact, were at the time publically disclosed as the sponsors of the party, in any way agreed to pay for the party on condition that their sponsorships not be listed as contributions in the David Prater for District Attorney *Campaign Contribution and Expenditures Report*. Consequently, there is a complete lack of credible evidence that any of the actual sponsors of the party “conspired” with

³⁸ Attorney A admitted he attended the November 20, 2006 party after receiving a written invitation to the party from Ogle and Welch. Attorney A admitted he had probably told an OSBI agent in October 2011 when he was interviewed by the agent that it was an invitation, but told the grand jury it could either have been a printed card, fax or email. Both Mrs. Welch and the professional stationer who produced the invitations each testified that several hundred formal invitations with envelopes were printed. Some of the grand jury witnesses who went to the party testified that either they could not now remember how they learned of the party or that they remembered they were orally invited by others going to the party. Based upon the testimony given to the grand jury, it has no reason to doubt that written invitations were actually produced and publically distributed.

³⁹Mr. Prater also testified that when he learned from Josh Welch of the intention to have a party in celebration of Mr. Prater’s election, that he specifically told Mr. Welch that he did not want the event to be a campaign fundraiser, nor to have any requests made at the party for campaign debt retirement, nor should there be a “fishbowl” on a table for contributions, nor would Mr. Prater provide any fundraiser envelopes for the event.

David Prater or any other person for Mr. Prater to not report their sponsorships of the party to the Oklahoma Ethics Commission.⁴⁰

Inasmuch as the grand jury has identified and documented the contributions of all of the persons who actually paid for the November 20, 2006 party at Café Nova, the grand jury also finds that the allegations that Lewis B. Moon paid for the party are not true. Mr. Moon did not commit the felony crime of *Over-Contribution to a Campaign* as alleged by others. Accordingly, insofar as it pertains to this matter, Mr. Prater's *Campaign Contribution and Expenditure Report* was accurate as to Mr. Moon's campaign contributions, and Mr. Moon did not "conspire" with Mr. Prater regarding reporting the contributions Moon made to Prater's campaign.

Another allegation was that there was some unlawful influence involved in the manner that Mr. Prater handled Mr. Moon's DUI case that resulted from Mr. Moon's over-contribution to Mr. Prater's campaign through the payment of the November 20, 2006 party at Café Nova. As shown above, the allegation that Mr. Moon made an illegal, in-kind contribution to Mr. Prater's political campaign by paying for the Café Nova party is simply not true. The party at Café Nova was paid for by other persons and therefore the payments for this party were unconnected to Mr. Moon and

⁴⁰ The grand jury notes that although the party may have originally been intended to not be held in support of Mr. Prater's campaign, he did receive unsolicited campaign contributions from people going through what became an informal receiving line. The credible evidence received by the grand jury regarding these contributions is that the campaign contributions were not solicited at the event, but were brought to the event by the contributors and were all reported in a timely way by Mr. Prater along with others received that day in the mail at his post office box. The grand jury notes that Mr. Prater has recently voluntarily amended his *Campaign Contributions and Expenditures Report* to reflect the event as an in-kind contribution and returned some of the sponsorships to some of the party's sponsors as if the party had been organized to support his campaign. We believe these actions were intended by Mr. Prater, and should, remove even the appearance of impropriety from this celebration party. We commend Mr. Prater for voluntarily undertaking these actions.

could not have influenced the outcome of his case. The grand jury concludes that the party at Café Nova had nothing at all to do with the manner of Mr. Prater's litigation of Mr. Moon's case.

The grand jury observes that each of the times Mr. Moon's case was continued, the Court records show a neutral judicial officer approved the case's continuance.⁴¹ The grand jury also observes that Mr. Moon eventually entered a plea of guilty in the case.⁴² Mr. Prater explained to the grand jury that the length of time between the filing of charges and the ultimate disposition of the charges, was due to Mr. Prater's attempts to force Mr. Moon to obtain treatment for his alcohol addiction. These efforts were compounded and somewhat confounded by the defendant's resistance to getting treatment and providing proof of treatment for this condition and reportedly resulted in one defense attorney withdrawing from the case and another defense attorney entering the case. Eventually, when Mr. Moon obtained the alcohol addiction treatment and counseling, the case was swiftly resolved.

⁴¹ There is no evidence, nor even any allegation, that these independent judicial officers were, in any way, involved in some cover-up of Mr. Moon's wrongdoing, nor approved the continuances for any reason than for valid, appropriate reasons. Attorney A specifically stated that he did not suspect any wrongdoing by any of the judicial officers who handled this case. He also did not accuse any of the attorneys appearing in the case for the defendant of any wrongdoing.

⁴² On November 21, 2011, Mr. Moon pled guilty to two (2) misdemeanor charges, Count 2, charging *Being in Actual Physical Control of a Motor Vehicle While Intoxicated* and Count 4, Resisting Arrest. As part of the plea agreement the felony charges of Count 1, *Placing Body Fluids Upon a Government Employee* and Count 3, *Impersonating a Police Officer*, were dismissed. Mr. Prater stated that the arresting officer in the case, who was the victim of the offense set forth in Count 1, was consulted by Mr. Prater prior to the plea about the proposed outcome of the case and did not oppose it. The felony crimes alleged in the *Information* were plainly the product of Mr. Moon's severe alcohol intoxication involved in the two Counts for which Mr. Moon admitted responsibility.

Similarly, the grand jury finds no credible evidence that the political support and campaign contributions of lawyers J. David Ogle and Josh Welch to Mr. Prater's 2006 campaign for District Attorney adversely affected his handling of the cases in which they were alleged to be guilty of *Bribery*. This matter was originally investigated and reported by a municipal police agency. Certain former police officers had approached an honest police officer and had offered to pay the honest police officer money in return for not showing up at an administrative hearing pertaining to the revocation of a driver's license related to a drunk driving charge. The honest police officer reported the matter to his agency and the payment of the bribe to the honest officer was monitored by law enforcement officers and the persons directly involved in the payment were arrested. After receiving these reports, Mr. Prater suspected that the persons who had corruptly provided the bribe to the honest officer were not operating merely for themselves, but to benefit the person at whose hearing the officer was a witness, and believed that others, perhaps attorneys, were also involved. He consulted public records pertaining to the person who was the subject of the administrative hearing and found that the law firm of Ogle and Welch represented the alleged drunk driver.

Mr. Prater then requested assistance of the OSBI in conducting a further investigation of the matter. This was appropriate because the initial police agency that had investigated that portion of the case that had occurred within its municipality did not believe it had jurisdiction to investigate that part of the matter that occurred within the jurisdiction of another municipality. Unfortunately, the OSBI agent who was initially assigned to the case, and who conducted some investigation pursuant to Mr. Prater's request, was required to undergo active military service in the Army of the United States, the case was accidentally not re-assigned for a period of time, and the delivery of the investigation reports pertaining to the agent's investigation of the case was delayed.

Mr. Prater was not aware of the cause for this delay for more than a year due to the amount of legal business handled by his Office during any year. In addition to the reports prepared by the OSBI that he eventually received, Mr. Prater caused additional investigation of the cases to be undertaken through one of his District Investigators to supplement the investigations of these law enforcement agencies, and also worked to attempt to get cooperation of one or more of the defendants to give truthful testimony in the cases against the other defendants, and to thereby provide information about the execution of the alleged plan to bribe a police officer that would otherwise be unavailable to the prosecution. Due to the extremely lengthy *Statute of Limitations* for Bribery,⁴³ the prosecution of the matter was never in danger of being time barred.

Mr. Prater ultimately obtained the cooperation of one of the defendants to be a State's witness, and as part of the plea agreement for cooperation, that defendant was charged with a lesser offense. After that person agreed to cooperate, another defendant sought to cooperate, but due to that person's tardiness in agreeing to cooperate, that person was required to plead to a *Bribery* charge with a recommendation regarding sentencing that would reflect that person's assistance to the prosecution of the third defendant through truthful testimony. There was never an agreement between Mr. Prater and the third defendant, who was required by Mr. Prater to either enter a plea of guilty to the charge of *Bribery* without a plea agreement, or to go to jury trial. Jury trial in that case was scheduled, then postponed, for a time period at the defendant's request for a personal, family reason of the defendant. The cases were on the verge of concluding when Mr. Prater requested the

⁴³ The *Statute of Limitations* for Bribery is seven (7) years from the date of its discovery, 22 O.S. 2012, § 152(A). Accordingly, the *Statute of Limitations* on this alleged *Bribery* would not yet have expired, even if the cases had originally been filed on the date of this grand jury's report, see footnote 26 above.

appointment of a Special Prosecutor in the cases who then assumed complete authority over them.

The investigation and litigation of the cases against David Ogle, Josh Welch and Sam Kerr was personally, if not relentlessly, pursued by Mr. Prater and the delay in filing the cases was caused at least in part by an investigative delay for which Mr. Prater was not responsible. The jury has found no evidence that it believes is credible that the political support by Mr. Ogle or Mr. Welch in Mr. Prater's original campaign for District Attorney in any way improperly influenced the investigation of, or litigation of, these cases.

In light of the allegations that have been made against him centering on large campaign contributions made to Mr. Prater by persons later prosecuted by Mr. Prater, Mr. Prater was asked whether now, in retrospect, he thought it had been a good idea for him to personally undertake these prosecutions. Mr. Prater, to his credit, candidly agreed that it might not have been such a good idea.

It may be an act of some great personal, if not political courage, for a District Attorney to prosecute the very persons who were important to him or her in accomplishing election to this important Public Office. The grand jury, however, believes such courage is both unwise and unnecessary. Certainly a District Attorney may not shield the guilty for any reason, including personal or political reasons, and the current District Attorney for Oklahoma County has not in these cases. The grand jury believes that when a District Attorney undertakes to prosecute persons for crimes committed after those persons have made substantial contributions the District Attorney's campaign for District Attorney, the District Attorney places himself or herself in a "no win" situation in regard to the important and serious decisions that must be made in the presentation of every case. Every action undertaken by the District Attorney under such circumstances may be subjected to second guessing that may lead to unfortunate, untrue and unfair allegations. The grand jury

respectfully recommends to Mr. Prater that in the future it would be in the Public Interest, as well as his personal interest, that he recuse himself and his Office,⁴⁴ from considering or prosecuting persons who have made substantial campaign contributions to his campaign, and thereby avoid unfair, untrue, and unjust allegations regarding his official and professional conduct such as those allegations reported above.⁴⁵

There is no doubt in the minds of these grand jurors, that as one of five (5) sponsors, and as a personal contributor of Two Thousand Dollars (\$2,000.00) to defray the costs of the election celebration party held on November 20, 2006 at Café Nova, that Attorney B personally knew of the existence of the other actual sponsors of the party and that Businessman's allegations about Mr. Lewis Moon's having paid for the entire cost of the party were probably not true. It is clear that Attorney B was aware that Mr. Moon had very little personal memory of his actions on November 20, 2006, at the celebration party due to his severe alcohol intoxication that night since he reportedly spoke to Mr. Moon about the matter. Businessman and Attorney B were plainly the source of the bogus "Invoice" that Attorney A transmitted to the Office of Attorney General in February 2011 seeking an investigation of Mr. Moon and Mr. Prater.⁴⁶ It is also clear to us that Attorney B knew, or should have known, that the false allegations of the illegal payment for the party might have

⁴⁴ See 19 O.S. 2012, § 215.9.

⁴⁵ Investigation of the unfair, untrue, and unjust allegations involved in this matter consumed great Public resources of the Oklahoma State Bureau of Investigation, the Office of Attorney General and of this grand jury. All of this might be obviated by simply referring matters such as these to other, responsible professional prosecutors according to the procedure set forth in the cited statute, *see* footnote 44.

⁴⁶ Attorney A confirmed that Attorney B provided him a copy of the Invoice Attorney B had obtained from Businessman.

resulted not only an investigation of Mr. Moon, but also might very well have resulted in felony charges being brought against Mr. Moon, who had no useful memory about what he did at the party, and who was actually innocent of any such offense. In this regard, though expressing no present memory about the details of the invitation he admittedly received to the party that showed Attorney B as one of the five (5) sponsors, Attorney A also admitted to actually being told that Attorney B was a sponsor of the party at or near the time the affidavit from Businessman was being obtained.⁴⁷

More care to the cause of Justice is expected from legal professionals than was exercised here before making allegations as serious as these.⁴⁸ Such actions should never be undertaken, as the facts suggest in this case, in order to obtain some possible advantage for a client in a pending case. Such actions by members of the criminal defense bar are plainly far below any reasonable expectations of the Public in regard to anyone who should be professionally dedicated to defending other persons accused of crime.

RECESS OF SESSION TO JULY

The time allotted this session did not permit the grand jury to complete its investigation of of other matters investigated *to-date*. The grand jury will recess at this time to its next scheduled session on July 17, 18, and 19, 2012, to permit the summoning of additional witnesses and the gathering of additional physical evidence by the investigators assisting the grand jury at which time the grand jury will resume its investigations.

⁴⁷ Attorney A testified he was told either by Attorney B or by Attorney A's son who worked with Attorney B, that Attorney B was a sponsor of the November 20, 2006 party at Café Nova.

⁴⁸ This is particularly true of Attorney A, who is a former police officer and former prosecutor.

Respectfully submitted.

William L. Stulen

FOREMAN

Thirteenth Multicounty Grand Jury
of Oklahoma