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

IN THE MATTER OF THE MULTICOUNTY GRAND JURY, STATE OF OKLAHOMA	))	Case No. SCAD-2012-61 D.C. Case No. GJ-2012-1

INTERIM REPORT NUMBER 13

The Fourteenth Multicounty Grand Jury of Oklahoma received evidence in its session held on May 20, 2014. In this session, the Grand Jury did not receive the testimony of any witnesses, but did receive numerous exhibits in one matter. The Grand Jury also returned one (1) Indictment to the Presiding Judge in Open Court for review and further action pursuant to law.

PARTIAL FINDINGS OF THE FOURTEENTH MULTICOUNTY GRAND JURY AS TO ROGERS COUNTY GRAND JURY PETITION GJ-13-1

On August 26, 2013, a Petition for Grand Jury Investigation was filed in Rogers County Oklahoma [referred to herein as Rogers County Grand Jury Petition GJ-13-1] pursuant to Article 2, Section 8 of the Oklahoma Constitution and Title 38 O.S. §§ 101 *et al.* of the Oklahoma Statutes. Rogers County Grand Jury Petition GJ-13-1 sought the impanelment of a county grand jury in Rogers County to investigate certain allegations against the Rogers County District Attorney's Office and Rogers County Commissioners.[1] On August 29, 2013, the Honorable Richard Van Dyck, District Judge for Grady County, entered an *Order* holding the aforementioned Petition met the statutory requirements of Title 38 O.S. §§ 101-102, and authorizing petitioners to obtain signatures pursuant to Title 38 O.S. § 103.[2] On October 8,

[1] A copy of this document was admitted as Grand Jury Exhibit #1.

[2] After filing Rogers County Grand Jury Petition GJ-13-1, all district judges of the Rogers County District Court recused from the matter. The Honorable Richard Van Dyck, District Judge for Grady County, was assigned to this matter by the Oklahoma Supreme Court. The matter was later reassigned to the Honorable Jefferson D. Sellers, District Judge for Tulsa County.

2013, the original Rogers County Grand Jury Petition GJ-13-1 was filed along with signature sheets containing approximately 7,358 signatures, 6,994 of which were verified by the Rogers County Election Board as belonging to registered voters in Rogers County. *See* 38 O.S. § 106. On October 15, 2013, pursuant to the provisions of Title 38 O.S. § 107, a hearing was held before the Honorable Jefferson D. Sellers, District Judge for Tulsa County, to determine if the Rogers County Grand Jury Petition GJ-13-1was legally sufficient to authorize impanelment of a county grand jury in Rogers County. Judge Sellers held said Petition did not meet the requirements of Article 2, Section 19 of the Oklahoma Constitution and dismissed Rogers County Grand Jury Petition GJ-13-1 pursuant to Title 38 O.S. § 103.

Following Judge Seller's ruling on the Rogers County Grand Jury Petition GJ-13-1, the Oklahoma Attorney General's Office was asked by members of the Rogers County community to review the allegations contained in the Petition. In order to give voice to the approximately 7,000 citizens of Rogers County, the Fourteenth Multicounty Grand Jury agreed to investigate the allegations set forth in Rogers County Grand Jury Petition GJ-13-1, as well as other criminal allegations raised by the Rogers County District Attorney's Office. Throughout its inquiry into these matters, the Multicounty Grand Jury has sought to act as an independent and neutral fact finder in hopes of bringing some resolution to the issues giving rise to the allegations contained in GJ-13-1, as well as the other allegations raised by the Rogers County District Attorney's Office. In sum, the Multicounty Grand Jury conducted a six-month investigation of these allegations, heard testimony from twenty-two witnesses, and reviewed numerous exhibits. During these six months, the Multicounty Grand Jury was also required to spend time on other investigations of equal importance. As of this date, the Multicounty Grand Jury has completed

its investigation as to Allegations 1, 2, 3, 5, 6, 7, 8, 9, and 14 of Rogers County Grand Jury Petition GJ-13-1. The Multicounty Grand Jury issues this partial report of its findings.

FINDINGS OF THE FOURTEENTH MULTICOUNTY GRAND JURY AS TO ALLEGATIONS 1, 2, 3, 5, 6, 7, 8, 9, AND 14 AND PARTIAL FINDINGS AS TO ALLEGATION 4 OF ROGERS COUNTY GRAND JURY PETITION GJ-13-1

ALLEGATION 1:

Whether District Attorney A conspired with others to commit witness tampering in violation of Title 21 O.S. §§ 421 and 452, involving the following allegations:

a. District Attorney A's husband and brother were being investigated by the Oklahoma Department of Wildlife on or about December 2012, for violations of law;

b. A co-conspirator was provided a copy of the Oklahoma Department of Wildlife investigative report that outlined the violations;

c. A witness in the investigation was approached by the co-conspirators who reported having been sent by District Attorney A. The co-conspirator attempted to change the witnesses' testimony by making false allegations that the investigating game warden had engaged in misconduct, and that the investigation had been conducted for political purposes;

d. District Attorney A made similar false allegations against the investigating game warden to another person.

FINDINGS AS TO ALLEGATION 1:

The Multicounty Grand Jury finds insufficient evidence to show probable cause to believe Witness E, District Attorney A, or Witness A committed witness tampering in violation of Title 21 O.S. § 452. The facts, as presented to the Grand Jury, follow below.

On or about November 25, 2012, Game Warden Brek Henry received an anonymous tip that Witness E and Raymond Smith had killed two whitetail buck deer on a hunting lease located in Rogers County, Oklahoma, and had failed to check the deer into an Oklahoma Department of Wildlife check station as required by law. *See* 29 O.S. § 4-101. Game Warden Henry was also advised the antlers of the aforementioned bucks were located at a Shrum's Taxidermy in Claremore, Oklahoma. Acting on this information, Game Warden Henry went to Shrum's Taxidermy, where he located two large sets of antlers which did not have Oklahoma Department of Wildlife check station tags. One set of antlers had an assigned invoice listing contact information for Witness E, while the second pair of antlers' assigned invoice listed Ray Smith. Game Warden Henry also subsequently determined Mr. Smith did not have an Oklahoma hunting license.[3] *See* 22 O.S. § 4-112.

Game Warden Henry seized the aforementioned antlers, took a statement from Tony Shrum, owner of Shrum's Taxidermy, and prepared reports to present to the Rogers County District Attorney's Office. Game Warden Henry also notified District Attorney A of his investigation. All witnesses agreed District Attorney A instructed Game Warden Henry to work the case as he would work any other case. On or about December 5, 2012, Game Warden Henry provided a copy of his investigative reports in this matter to Assistant District Attorney A, who advised Game Warden Henry that because her husband and brother were involved, the District 12 District Attorney's Office would be recusing from the case.[4]

On December 6, 2012, Game Warden Henry wrote two wildlife tickets to Witness E for Illegal Possession of Whitetail Deer in violation of Title 29 O.S. § 5-411A.[5] A copy of these

[3] Witness E has a lifetime Oklahoma hunting license.

[4] The District 12 District Attorney's Office is comprised of Rogers, Craig, and Mayes Counties.

tickets was left on that date at the Rogers County District Attorney's Office for Witness E's signature. That same date, Game Warden Henry wrote two wildlife tickets to Raymond Smith: one for Illegal Possession of Whitetail Deer in violation of Title 29 O.S. § 5-411A, and one for Hunting Without a License in violation of Title 29 O.S. § 4-112A.[6] Game Warden Henry delivered Mr. Smith's wildlife tickets, along with a copy of Game Warden Henry's reports, to Kent Hudson, attorney for Raymond Smith, that same day.

On December 7, 2012, the District 12 District Attorney's Office sent a letter to the Office of the Oklahoma Attorney General requesting recusal from the above-mentioned matter, and on December 10, 2012, the Oklahoma Attorney General appointed the Honorable Eddie Wyant, District Attorney for District 13, as prosecutor. On January 28, 2012, both Witness E and Raymond Smith entered into one-year Deferred Prosecution Agreements with the District 13 District Attorney's Office. Conditions of the Deferred Prosecution Agreement included payment by both Defendants of $2,000 in restitution to the Oklahoma Department of Wildlife, $394.00 in statutory fees, and $480.00 in probation fees.

Sometime in December 2012, approximately a week to ten days after Game Warden Henry issued wildlife tickets to Witness E and Mr. Smith, Witness A met with Tony Shrum at Witness A's residence, at Witness A's request, to discuss the statement previously provided by Mr. Shrum to Game Warden Henry. Witness A identified himself as a friend of both Mr. Shrum and Witness E, and noted Witness A was present on the hunting lease when the wildlife violations occurred. Prior to meeting with Mr. Shrum, Witness A testified he had twenty to

[5] A copy of this document was admitted as Grand Jury Exhibit #12a.

[6] A copy of this document was admitted as Grand Jury Exhibit #12b.

twenty-five conversations with Witness E about Witness E's charges, but he stated District Attorney A was only present for two or three of these conversations.[7]

During the meeting with Mr. Shrum, Witness A had with him a copy of Game Warden Henry's investigative reports in the aforementioned case, along with a legal pad containing a list of questions for Mr. Shrum regarding his statements in the investigative reports. Witness A testified he received the reports from Witness E, and District Attorney A testified Witness E received the reports through Raymond Smith's attorney. Both Witness A and District Attorney A denied that Witness A received any investigative reports from District Attorney A.[8] Witness A stated the questions he prepared for his interview with Mr. Shrum were based on issues of concern raised and discussed during his conversations with Witness E and District Attorney A, but Witness A testified neither Witness E nor District Attorney A assisted him in any way in drafting the questions.

At the meeting between Witness A and Mr. Shrum, Witness A requested Mr. Shrum write out in his own words what happened at the hunting lease on November 25, 2012. Witness A testified the purpose of his questioning Mr. Shrum, and having Mr. Shrum write out a statement, was to determine if Game Warden Henry's "report [was] true and accurate as to what happened." Witness A further testified, "[a]fter I read the report, there was just some things in the report that didn't match what had really happened and . . . [t]he report was inconsistent on who did what." Witness A also advised Mr. Shrum that Witness E could lose his license to practice law as a result of his wildlife tickets. Witness A stated this information was based on a

[7] This fact was confirmed by District Attorney A during her testimony.

[8] It is undisputed by the parties that Game Warden Henry provided a copy of these reports to Mr. Kent Hudson, attorney for Raymond Smith, on or about December 6, 2012.

statement Witness E made to him during the course of their numerous conversations.[9] Witness A testified his meeting with Mr. Shrum was his own idea, and it was not arranged at the behest of either Witness E or District Attorney A.[10] He stated neither of these individuals were aware of his meeting with Mr. Shrum prior to its occurrence, and when Witness E learned of the meeting after the fact, Witness E asked Witness A not to talk to Mr. Shrum about the case again.

During the course of his testimony, Witness A acknowledged "I probably got more involved than I should have . . . [a]nd I guess maybe I shouldn't have got so involved . . . ." The Multicounty Grand Jury agrees with Witness A's assessment of his conduct. Anytime a citizen attempts to question a witness in a criminal investigation regarding the validity or accuracy of his statement, particularly where that citizen is a close friend of a defendant in that criminal case, it creates an appearance of impropriety.[11] Nevertheless, the Multicounty Grand Jury finds the evidence is not sufficient to show probable cause to believe either Witness A, Witness E, or District Attorney A committed witness tampering in violation of Title 21 O.S. § 452. Title 21 O.S. § 452 provides as follows:

> Every person who practices any fraud or deceit, or knowingly makes or exhibits any false statement, representation, token or writing, to any witness or person about to be called as a witness, upon any trial, proceeding, inquiry or investigation whatever, proceeding by authority of law, with intent to affect the testimony of such witness, is guilty of a misdemeanor.

---

[9] Witness A testified he asked Witness E "[W]hat happens if this thing doesn't get resolved? Can you get - - can you lose your law license for an attorney," to which Witness E replied, "It's possible."

[10] District Attorney A also denied she or Witness E ever requested Witness A meet with Tony Shrum.

[11] This appearance of impropriety is compounded by Witness A's statements to Mr. Shrum that Witness E could lose his bar license as a result of the criminal investigation.

As to Witness E and District Attorney A, there is no evidence to suggest they requested or encouraged any questioning of Mr. Shrum by Witness A. Rather, the evidence shows upon learning of Witness A's actions, Witness E requested Witness A cease all future questioning. As to Witness A, although his actions showed an extreme lack of judgment and created an appearance of impropriety, the evidence does not suggest Witness A made any statements or representations to Mr. Shrum which he knew to be false in order to affect his testimony. Indeed, Witness A testified he repeatedly advised Mr. Shrum "The truth is the truth. Whoever you talk to, tell them exactly what happened. Tell them exactly what you know and, you know, don't – just tell them what you know." Further, in his law enforcement interview, Mr. Shrum stated no one threatened him or tried to get him to change his story. Thus, based on the totality of the evidence, the Multicounty Grand Jury finds there is not probable cause to believe Witness E, District Attorney A, or Witness A committed witness tampering in violation of Title 21 O.S. § 452.

Finally, it is undisputed that during a private conversation between District Attorney A and Attorney A, District Attorney A alleged that contrary to what was written in Game Warden Henry's report, Henry actually knew the name of the caller on November 25. Game Warden Henry denies this allegation. Ultimately, whether Game Warden Henry knew or did not know the identity of the anonymous caller is irrelevant for purposes of this Multicounty Grand Jury's investigation. At the time she made her comment, District Attorney A was not the assigned prosecutor in this matter, she had recused her entire office, and her only relation to the case was as a private citizen and relative of the two Defendants. There is no evidence suggesting District Attorney A expressed this opinion in any public forum, nor attempted in her role as District Attorney to take any action against Game Warden Henry as a result of her private opinion.

Game Warden Henry indicated he had heard rumors from other persons, including a sitting judge, that District Attorney A was out to get him. This is consistent with a continual theme of allegations that District Attorney A used undue influence and threatening tactics against others. Even so, in this matter, the Multicounty Grand Jury has found no evidence of any adverse action taken by District Attorney A as a result of Game Warden Henry's investigation of Witness E and Raymond Smith.

ALLEGATION 2:

Whether District Attorney A and Assistant District Attorney A conspired with others in 2011 to intercept wire, oral, or electronic communications by endeavoring to wiretap employee workspaces in the courthouse in violation of Title 21 O.S. § 421 and Title 13 O.S. § 176.3.

FINDINGS AS TO ALLEGATION 2:

The Multicounty Grand Jury finds insufficient evidence to show probable cause to believe District Attorney A, Assistant District Attorney A, or others employed by the Rogers County District Attorney's Office committed or conspired to commit illegal wiretapping of employee workspaces in the Rogers County Courthouse in violation of Title 13 O.S. § 176.3.

At the outset of its investigation, the Multicounty Grand Jury heard testimony from four of the petitioners for Rogers County Grand Jury Petition GJ-13-1 to determine the evidentiary basis for the allegations listed.[12] As to Allegation 2, petitioner Sheriff A, petitioner Lieutenant A, and petitioner Witness B had no personal knowledge as to the basis for this allegation. Detective A, the fourth petitioner for Rogers County Grand Jury Petition GJ-13-1, provided the following information:

[12] Although there are six total petitioners for Rogers County Grand Jury Petition GJ-13-1, two petitioners are primarily concerned with the allegations against the Rogers County Commissioners - Allegations 10, 11, 12, and 13 - which the Multicounty Grand Jury has yet to investigate.

> A [District Attorney Investigator D], the man that I mentioned became her investigator and stayed for about six months. Early in 2011, so the first several months, [District Attorney Investigator D] had – let's see, [District Attorney A] and [Assistant District Attorney A] had an employee named [District Attorney Investigator B]. He fancied himself like a James Bond guy that had training in wiretapping, electronic surveillance and all this stuff. [District Attorney Investigator B] told [District Attorney Investigator D] that he had been assigned by [Assistant District Attorney A] and [District Attorney A] to wiretap the workspace of a woman named [Rogers County District Attorney's Office Employee A] who was an employee that they wanted to fire, employee they wanted rid of. They eventually fired. [District Attorney Investigator D] recognized that as a felony, as it's our workspace. [District Attorney Investigator D] went to [Assistant District Attorney B], the civil assistant DA, and said we've got to talk to the boss. We can't allow this to occur, it's a crime. [Assistant District Attorney B] and [District Attorney Investigator D] went to [District Attorney A] and had to work to convince her that it was illegal to wiretap anybody. You can't do that. At periods of time after -- and so – at the time – we've since demolished that old courthouse earlier this year and built a new one. But at the time, the DA's office was on the first floor and the DA occupied the space in the basement directly below the first floor office. This employee that was to be the target of the wiretapping, as well as the investigators and various other functions in the DA's office were in the basement, the -- after this spread, employees, a number of them that I've talked to all have conveyed their reason that they know they were wiretapped. Now, no one has ever, that I'm aware of, found any listening devices. No one knows if it was microwave or radio frequency or in the computer. No one knows, except I'm sure [District Attorney Investigator B]. A number of people have explained to me "I believe I was wiretapped because." And usually it's a private conversation between two people and then the office manager walks in and has already -- already knows what you said.

As noted above, Detective A testified that no listening devices or other physical evidence of wiretapping have ever been located anywhere in either the old or new Rogers County Courthouse.

In his interview with law enforcement, District Attorney Investigator D stated during the course of his employment with District Attorney A, District Attorney Investigator D learned certain persons working in the Rogers County District Attorney's Office, particularly employees of the Rogers County Bogus Check Department, were suspicious their offices were "bugged," and their private conversations were being listened to. District Attorney Investigator D brought

these rumors to the attention of Assistant District Attorney B, who then notified District Attorney A. During their conversation, District Attorney A indicated no wiretapping had ever been conducted in the Rogers County District Attorney's Office, nor was it something she had ever contemplated. District Attorney A confirmed this information during her testimony before the Multicounty Grand Jury.

District Attorney Investigator D advised investigators he had no direct evidence wiretapping was ever conducted in the Rogers County District Attorney's Office, nor was he ever told that District Attorney A or Assistant District Attorney A directed District Attorney Investigator B to wiretap any Rogers County employees' workspaces. During the course of its investigation, the Multicounty Grand Jury heard testimony from six assistant district attorneys[13] currently or formerly employed by the Rogers County District Attorney's Office during District Attorney A's tenure, as well as Rogers County Office Manager A and District Attorney Investigator B. None of these witnesses, including Assistant District Attorney B, who, according to Detective A, allegedly discussed the rumors of wiretapping with District Attorney A, were aware of any evidence supporting the aforementioned allegations of illegal wiretapping. Furthermore, none of these witnesses had any reason to believe based on their own experiences at the Rogers County District Attorney's Office that they were the target of any illegal wiretapping.

When asked about the origin of these wiretapping rumors, Office Manager A provided the following explanation:

> Me, being the district manager, my job is to oversee things in the office. I kind of have set job duties, and then other job duties are, you know, putting out fires, problem solving, I.T. person, if someone is having a problem with their computer. You know, I [am] pretty much a jack of all trades. So for me, if my bogus check department – I watch, you know, their funds, if they're on the phones enough, if

[13] These individuals are referred to herein as Assistant District Attorneys A, B, C, D, E, and F.

> my supervision department is having an issue where they're not checking files to make sure they're catching them before they time out, my main office that subpoenas are getting out on time. I mean, pretty much all of my offices, it's my job to kind of oversee and make sure things are running smoothly. . . [i]n my -- the only thing I can think of on the I have heard that there's been talk that previous staff thought that there was wiretapping done in that department because I was aware of what was going on in those departments. It doesn't take wiretapping for me to know what's going on in my departments. I talk to my staff. They let me know what's going on. I'm very active within the office, so.

During the course of this investigation, law enforcement officers interviewed three current or former employees of the Rogers County District Attorney's Office's Bogus Check Division, and none had any evidence of any illegal wiretapping at the Rogers County District Attorney's Office.

Thus, the Multicounty Grand Jury finds no evidence of any illegal wiretapping occurring in the Rogers County District Courthouse in violation of Title 13 O.S. § 176.3. Rather, this allegation derives from base speculation and unsubstantiated courthouse rumors.

ALLEGATION 3:

Whether District Attorney A sent threatening text messages to a deputy sheriff on or about May 8, 2012, threatening "war" with the officer over criticism made of her professional performance in violation of Title 21 O.S. § 1172(A)(2).

FINDINGS AS TO ALLEGATION 3:

Based on its review of the evidence and applicable case law, the Multicounty Grand Jury finds insufficient evidence to show probable cause to believe District Attorney A committed a violation of Title 21 O.S. § 1172(A)(2). The Grand Jury would note, however, that although the exchange between District Attorney A and Mayes County Deputy A does not rise to the level of criminal misconduct, it reflects an overarching theme by both sides of systemic institutionalized

bullying, and a profound lack of courtesy and professionalism in the dealings between District Attorney A and certain law enforcement agents in Rogers and Mayes County.

On May 8, 2012, at approximately 9:20 p.m., the following text message conversation occurred between District Attorney A and Mayes County Deputy Sheriff A:[14]

> **District Attorney A**: Are you going to be around tomorrow
>
> **Mayes County Deputy Sheriff A**: Doing interviews on a child sexual abuse from 11 to prob around 3 but before 11 and after three I should be. What's up?
>
> **District Attorney A**: Well that's what I'm going to ask u, I've reached my point you have hit it. Your continuous talking about me and ive had enough so it's either going to stop or your going to have a war on your hands. Its one thing for people to complain, but when there is no merit and myself and my office have given you more respect then you've given I'm done.
>
> **Mayes County Deputy Sheriff A**: I'm don't know that I'm sure what your talking about [District Attorney A]. Their has been things I haven't agreed with and there is things that I have that I thought was great. I keep hearing things that people are telling you I'm slamming you and all this but that isn't true. I will state my opinion on things and sometimes I'm not the most politically correct individual. I have never asked for or attempted to start some kind of war!!! Not sure where your info is coming from but if my statements came across to someone as disrespectful to you I apologize. I voted for you in the first election and I plan to vote for you to have another term. We are here to the same job at the end of the day and that is put criminals in jail.
>
> **District Attorney A**: Then if you have a problem with me address it to me instead of to everyone else just as I would do to you. I have been hearing this stuff from many entities for months. And I'm done eating shit sandwiches.
>
> **Mayes County Deputy Sheriff A**: Ok will do sorry for the mess still not sure that you are hearing the exact truth but I understand your frustration. I will work on keeping my opinion to myself

The next day, at approximately 8:29 a.m., the conversation resumed as follows:

> **Mayes County Deputy Sheriff A**: I have thought about this situation all night and would really like to know who you are hearing things from so that I can find out exactly I am supposed to have said to those individuals or Agencies
>
> **District Attorney A**: We can get together next week and we can talk

[14]This document was admitted as Grand Jury Exhibit #13.

Mayes County Deputy Sheriff A: Ok sounds good

Although the content of the above text message conversations is not disputed, the parties disagree as to the events and motivations leading up to this text message exchange.

During his testimony before the Multicounty Grand Jury, Mayes County Deputy Sheriff A described his pre-May 8, 2012, relationship with District Attorney A as good. When asked about the course of events leading up to this text message exchange, Mayes County Deputy Sheriff A stated he was unsure, responding:

> I've been critical of some cases that I've prosecuted – or sent for prosecution on some drug cases and different things that I felt was lax, and I spoke my opinions to other officers and things. And we've discussed different cases. Before this, there had never been a cross word, so I didn't -- it was kind of a surprise as far as actual . . . .

Mayes County Sheriff Deputy A noted his lack of understanding as to the cause of District Attorney A's angry text message led him to send his May 9 text message to District Attorney A seeking an explanation. Mayes County Sheriff's Deputy A stated:

> I just wanted to know what she had heard that I said. The more I thought about it, I couldn't think of anything that I'd said or done that was just – that would have prompted her to get so upset and sent this kind of a message, so I decided to try to get with her and figure out who said what and what was being said, and maybe it could be rectified to smooth it out.

In contrast, District Attorney A gives a starkly different version of the events leading to her May 8 text message exchange with Mayes County Sheriff's Deputy A. District Attorney A explained:

> I do know that [Mayes County Sheriff's Deputy A] is a very high maintenance law enforcement officer. He is always calling me about this, about that. And he was very vocal. I had people telling me, you know, He's saying this about you. Literally to my investigators you know, calling me a b**ch. And I'm a f***ing b**ch. And I know that I did have a conversation with [Mayes County Sheriff's Deputy A] because I'm that kind of person. Do you have a problem with me, and, if so, what is it? We need – we need to talk . . . . It's one -- it's one thing for people to complain, but there is no merit, and myself and my office have given

> you more respect than you've given. I'm done . . . . I had been continually hearing how he is just out there trashing me. And, you know, you take it. I mean, that's what happens. But when you start telling employees of mine, especially my investigators - - and [District Attorney Investigator C] came to me, and said, You know, I just chewed out [Mayes County Sheriff's Deputy A] and his - - it was his lieutenant. They ran around together. Because they're telling me what a f***ing b**ch you are . . . . And I was just like, That's so disrespectful. So like I said, I'm the kind of person, if you have a problem, let's talk about it. Don't be going out doing this and don't be doing this to my employees. I just find that to be gratefully [sic] inappropriate, unprofessional and disrespectful. And those are the – after that communication is when him and I talked on the phone.

District Attorney A stated she did not intend to threaten physical harm to Mayes County Sheriff Deputy A in her May 8 text messages, and Mayes County Sheriff Deputy A testified he did not feel physically threatened by said text messages. Mayes County Sheriff Deputy A did state, however, he felt the text messages to be unprofessional and bullying in nature. District Attorney A acknowledged she was both angry and frustrated when she sent the text messages.

Title 21 O.S. § 1172(A)(2) provides: "[i]t shall be unlawful for a person who, by means of a telecommunication or other electronic communication device, willfully makes a telecommunication or other electronic communication with intent to terrify, intimidate or harass, or threaten to inflict injury or physical harm to any person or property of that person." First time violations are punishable as a misdemeanor. 21 O.S. § 1172(D). No person may be convicted of making obscene, threatening, or harassing electronic communications unless the State proves beyond a reasonable doubt each element of the crime.

These elements are:

> First, willfully;
>
> Second, by means of an electronic communication device;
>
> Third, making an electronic communication with intent to **terrify/intimidate/harass/threaten** to inflict **injury/(physical harm)** to any **person/(property of a person)**.

OR

> Third, making an electronic communication with the intent to put the party called in fear of **(physical harm)/death**.
>
> Fourth, with the intent to **annoy/ abuse/ threaten/ harass** any person at the location receiving the electronic communication.

In defining the scope of Title 21 O.S. § 1172, the Oklahoma Court of Criminal Appeals previously noted the purpose of the statute is not to criminalize the use of ungenteel or vulgar language. *Lenz v. State*, 738 P.2d 184, 185 (Okla. Crim. App. 1987) (citing *United States v. Darsey*, 342 F. Supp. 311, 312 (E.D. Pa. 1972). The Court further noted:

> In many situations, and most especially in romantic and family conflicts, a person may call another repeatedly and the ensuing conversations may be or become more or less unsatisfactory, unpleasant, heated, or vulgar. Up to a point these are the normal risks of human intercourse, and are and should be below the cognizance of the law.

Id. at 185 (quoting *Darsey*, 342 F. Supp. at 312).

The Multicounty Grand Jury believes the Court's holding in *Lenz* applies to the situation at hand. The text messages sent by District Attorney A to Mayes County Sheriff Deputy A were clearly heated, unpleasant, and both bullying and unprofessional in tone. District Attorney A did not intend to physically threaten Mayes County Deputy A, and Mayes County Deputy A did not interpret the messages as physically threatening. Rather, these text messages were the type of unpleasant and heated conversations that make up the "normal risks of human intercourse," and are below the cognizance of the law. *Id.* at 185. Thus, the Multicounty Grand Jury finds the evidence insufficient to show probable cause to believe District Attorney A committed a violation of Title 21 O.S. § 1172(A)(2).

ALLEGATION 4:

Whether District Attorney A, Assistant District Attorney A, and others conspired to falsely report a crime in 2013 in violation of Title 21 O.S. §§ 421 and 589(A), involving the following facts:

A. Detective A publicly criticized the District Attorney's Office for poor performance and corruption. District Attorney A and Assistant District Attorney A learned that Detective A's wife was considering running against District Attorney A for District Attorney;

B. District Attorney A and Assistant District Attorney A manufactured bogus allegations of perjury against Detective A relating to a rape the officer investigated eighteen (18) months earlier;

C. District Attorney A and Assistant District Attorney A reported their bogus allegations to the United States Attorney, on or about January 7, 2013, in an effort to generate a federal investigation into Detective A for perjury. After this effort failed, District Attorney A, as well as other representatives of the District Attorney's Office, publicly acknowledged that Detective A did not, in fact commit perjury. Subsequent to these public statements, and using the same evidence as in the first attempted perjury investigation, District Attorney A and Assistant District Attorney A approached the Oklahoma Attorney General and another district attorney in an effort to generate a state perjury investigation; and

D. The Oklahoma State Bureau of Investigation, the Oklahoma Attorney General, and another district attorney concluded that no evidence of perjury existed as District Attorney A and Assistant District Attorney A had alleged.

PARTIAL FINDINGS AS TO ALLEGATION 4:

The Multicounty Grand Jury has heard extensive testimony on the facts surrounding this allegation during the course of its six-month investigation. These allegations stem from statements made by Detective A in a Probable Cause Affidavit in *State v. Matthew Sunday*, Rogers Co. CF-2011-526. District Attorney A subsequently determined these statements to be *Giglio* material.

Ultimately, the issues contained in this allegation raise complex constitutional and due process issues related to the application of *Giglio v. United States*, 405 U.S. 150 (1972). Although the Multicounty Grand Jury finds District Attorney A's actions do not constitute a violation of Title 21 O.S. § 589(A), it believes there are issues of concern surrounding District Attorney A's conduct in the making of her *Giglio* determination meriting further comment. Likewise, although the Multicounty Grand Jury also has concerns regarding Detective A's handling of the Matthew Sunday investigation, it finds the evidence insufficient to show Detective A's statements in the Probable Cause Affidavit in that case constitute perjury in violation of Title 21 O.S. § 491.

The Multicounty Grand Jury has expended considerable resources in the preparation of this interim report in hopes of fully addressing the numerous other allegations made by the various parties. The Multicounty Grand Jury will issue a more comprehensive finding on these *Giglio* issues in a future Interim Report where they can receive the full discussion they merit.

ALLEGATION 5:

Whether District Attorney A and Assistant District Attorney B conspired to willfully omit to perform a duty required of them by the Oklahoma Records Management Act, found at Title 67 O.S. §§ 201-217 by, on or about the summer 2012, ordering another person to destroy

government emails that were the subject of an Open Records Act request in violation of Title 21 O.S. §§ 345 and 421.

FINDINGS AS TO ALLEGATION 5:

The Multicounty Grand Jury finds the evidence is insufficient to show probable cause to believe District Attorney A and Assistant District Attorney B conspired to willfully fail to perform a duty required of them by the Oklahoma Records Management Act, Title 67 O.S. § 201 *et seq.*

On or about August 2012, Brett Williston, Director of Information Technology at the Rogers County Courthouse, received via email an Open Records Act[15] request from the Claremore Progress for certain email records of Rogers County Commissioner Mike Helm and Robin Anderson.[16] Upon receiving the aforementioned Open Records Act request, Mr. Williston drove to Oolagah, Oklahoma, where Commissioner Helm and Ms. Anderson's office was located, and copied their emails from their office's computer server onto a flash drive. Mr. Williston explained his process for complying with open records requests as follows:

> And just for some background for people, you might see 1,000 emails on your browsers, but it's all stored in just one filed called a PST file. So I'd locate that PST file on the computer. I'll put it on a flash drive. I go back to my office. I put it on our domain server which is backed up to Chicago, Illinois and Cushing, Oklahoma every night. So then I put the original copy on the server for backup purposes. I take another copy of that and I put it on a laptop where it kind of opens up in the browser where more people are familiar looking at it. And then I would hand that laptop over to legal for review.

As to the August 2012 Claremore Progress Open Records Act request, per his normal policies and procedures, Mr. Williston copied Commissioner Helm's and Ms. Anderson's emails from

---

[15] The Oklahoma Open Records Act is contained in Title 51 O.S. § 24A.1 *et seq.*

[16] Ms. Anderson was employed at that time as the assistant for Commissioner Helm. She now serves as the Rogers County Clerk.

the Oolagah server onto a flash drive, saved a copy of the emails on the Rogers County domain server, and placed a second copy of the emails on a laptop[17] which he then gave to Assistant District Attorney B for legal review.[18]

Mr. Williston explained during legal review of Open Records Act requests, Assistant District Attorney B reviewed and manually deleted from the laptop all emails defined as confidential under the Open Records Act and created a privilege log listing the deleted emails. Assistant District Attorney B stated this was his standard procedure for legal review of an Open Records Act request not only during the course of his employment with the Rogers County District Attorney's Office, but also during his previous employment with the Tulsa County District Attorney's Office. A copy of any email deleted from the laptop remained stored on the Oolagah server, the Rogers County Courthouse domain server, and backup servers in Chicago and Cushing. Once Assistant District Attorney B reviewed and deleted all confidential emails from the laptop, he then contacted Mr. Williston, who made two copies of the PST file on the laptop,[19] provided the second copy to the Rogers County District Attorney's Office for their records, and furnished the other copy, with the privilege log, to the Claremore Progress.

At the end of September 2012, the Claremore Progress sent a second Open Records Act request seeking all emails from Robin Anderson, Mike Helm, and Assistant District Attorney B, specifying the Claremore Progress wanted all emails with nothing removed. Upon receiving the request, Mr. Williston went back to Oolagah and downloaded a new copy of the PST file for

[17] The Rogers County District Attorney's Office used this laptop exclusively for legal review of electronic materials requested pursuant to the Open Records Act.

[18] Assistant District Attorney B acts as legal counsel for all county elected officials and boards of Rogers, Mayes, and Craig Counties pursuant to Title 19 of the Oklahoma Statutes.

[19] This was the original PST file downloaded by Mr. Williston from the Oolagah server, which did not contain any emails manually deleted by Assistant District Attorney B.

Robin Anderson and Commissioner Helm onto a flash drive.[20] Once again, a copy of the PST file was downloaded onto the Rogers County Courthouse's domain server, which is backed up nightly to off-site servers in Chicago and Cushing, and another copy was downloaded onto the same laptop for legal review by the Rogers County District Attorney's Office. Legal review for this Open Records Act request was conducted by District Attorney A, since Assistant District Attorney B's records were included in the request. District Attorney A reviewed the emails requested, deleted those which are confidential under the Open Records Act, and created a privilege log of the deleted emails. After District Attorney A completed her legal review, Mr. Williston made two copies of the PST file on the laptop,[21] provided one to the Rogers County District Attorney's Office for their records, and furnished the second copy, along with the privilege log, to the Claremore Progress.

Mr. Williston testified that in both instances, although emails were deleted from the laptop provided to the Rogers County District Attorney's Office for legal review, copies of these deleted emails remained on multiple other servers. District Attorney A and Assistant District Attorney B confirmed it was their understanding that copies of emails deleted from the laptop remained on multiple other servers. Mr. Williston testified neither District Attorney A nor Assistant District Attorney B ever requested he delete any emails from any of the servers, and this was corroborated by District Attorney A and Assistant District Attorney B.

---

[20] The Claremore Progress was advised that in order to obtain the emails for Assistant District Attorney B, the newspaper would need to contact the State of Oklahoma's Information Technology Department, as Assistant District Attorney B was a state, not a county, employee.

[21] This was the original PST file downloaded from the Oolagah server, which did not contain any emails manually deleted by District Attorney A.

The Oklahoma Records Management Act outlines authorized procedures for the creation, utilization, maintenance, retention, preservation, and disposal of all state and local records.[22] The Act also mandates records made, received, or coming into the custody of a state official in the course of his public duties may not be mutilated, destroyed, transferred, removed, altered, or otherwise damaged or disposed of, in whole or in part, except as provided by law. 67 O.S. § 209. The Oklahoma Records Management Act provides that the governing body of each county "shall promote the principles of efficient records management for local records" and "shall, as far as practical, follow the program established for management of state records." 67 O.S. § 207. The Oklahoma Open Records Act details that "all records[23] of public bodies[24] and public

---

[22] 67 O.S. § 201 *et seq.* State records are defined to include all records of any department, office, commission, board, authority or other agency of the state government; records of the State Legislature; records of the Supreme Court, the Court of Criminal Appeals or any other local or statewide court of record; and any other record designated or treated as a state record under state law. 67 O.S. § 203(b). "'Local record' means a record of a county . . . whether organized and existing under charter or under general law unless the record is designated or treated as a state record under state law." 67 O.S. § 203(c). "Preservation duplicate" means a copy of an essential record used for preservation purposes pursuant to the Records Management Act. 67 O.S. § 203(g).

[23] "Record" means all documents, including, but not limited to, any book, paper, photograph, microfilm, data files created by or used with computer software, computer tape, disk, record, sound recording, film recording, video record or other material regardless of physical form or characteristic, created by, received by, under the authority of, or coming into the custody, control or possession of public officials, public bodies, or their representatives in connection with the transaction of public business, the expenditure of public funds or the administering of public property. "Record" does not mean

a. computer software;
b. nongovernment personal effects;
c. unless public disclosure is required by other laws or regulations, vehicle movement records of the Oklahoma Transportation Authority obtained in connection with the Authority's electronic toll collection system;
d. personal financial information, credit reports or other financial data obtained by or submitted to a public body for the purpose of evaluating credit worthiness, obtaining a license, permit, or for the purpose of becoming qualified to contract with a public body;
e. any digital audio/video recordings of the toll collection and safeguarding activities of the Oklahoma Transportation Authority;

officials[25] shall be open to any person for inspection, copying, or mechanical reproduction during regular business hours" except where those records are required by law to be kept confidential, or may, at the discretion of the public body, be kept confidential. 51 O.S. §§ 24A.5 and 24A.28. The Act then lists certain types of confidential records to which the Oklahoma Open Records Act does not apply. *Id.*

Although a citizen may request all records of a public body, that citizen is only legally entitled to receive non-confidential records as defined by Oklahoma Open Records Act. 51 O.S. § 24A.1 *et seq.* Public bodies may establish reasonable procedures to protect the integrity and organization of their records, which includes establishing reasonable procedures to ensure records required by law to be kept confidential, or which may be kept confidential, are not

---

f. any personal information provided by a guest at any facility owned or operated by the Oklahoma Tourism and Recreation Department or the Board of Trustees of the Quartz Mountain Arts and Conference Center and Nature Park to obtain any service at the facility or by a purchaser of a product sold by or through the Oklahoma Tourism and Recreation Department or the Quartz Mountain Arts and Conference Center and Nature Park;
g. Department of Defense Form 214 (DD Form 214) filed with a county clerk, including any DD Form 214 filed before the effective date of this act, or
h. except as provided for in Section 2-110 of Title 47 of the Oklahoma Statutes,
    1. any record in connection with a Motor Vehicle Report issued by the Department of Public Safety, as prescribed in Section 6-117 of Title 47 of the Oklahoma Statutes,
    2. personal information within driver records, as defined by the Driver's Privacy Protection Act, 18 United States Code, Sections 2721 through 2725, which are stored and maintained by the Department of Public Safety, or
    3. audio or video recordings of the Department of Public Safety[.]

51 O.S. § 24A.3(1).

[24] Public bodies include, but are not limited to, any office, department, board, bureau, commission, agency, trusteeship, authority, council, committee, trust or any entity created by a trust, county, city, village, town, township, district, school district, fair board, court, executive office, advisory group, task force, study group, or any subdivision thereof, supported in whole or in part by public funds or entrusted with the expenditure of public funds or administering or operating public property, and all committees, or subcommittees thereof. Except for the records required by 51 O.S. § 24A.4, "public body" does not mean judges, justices, the Council on Judicial Complaints, the Legislature, or legislators. 51 O.S. § 24A.3(2).

[25] "Public official" means any official or employee of any public body. 51 O.S. § 24A.3(4).

publicly released. The Multicounty Grand Jury finds the procedures utilized by the Rogers County Courthouse Information Technology Department and the Rogers County District Attorney's Office for compliance with Open Records Act requests for electronic records of the county, as described by Brett Williston, are reasonable. The Multicounty Grand Jury finds these procedures appear to allow for timely compliance with Open Records Act requests, do not put an undue burden on the requesting party, and protect the integrity of Rogers County's confidential electronic records.

The Multicounty Grand Jury further finds there is not probable cause to believe either District Attorney A or Assistant District Attorney B violated any provisions of the Oklahoma Records Management Act. 67 O.S. § 201 *et seq.* None of the emails deleted by District Attorney A or Assistant District Attorney B were original records or preservation duplicates of those records as defined by the Act. 67 O.S. § 203. Rather, a copy of the emails provided to District Attorney A and Assistant District Attorney B were saved on multiple other Rogers County computer servers. Furthermore, the laptop containing a copy of these emails was provided by the custodian of the records to District Attorney A and Assistant District Attorney B with the understanding those deemed confidential under the Oklahoma Open Records Act would be deleted from that laptop. Stated plainly, no original documents were deleted.

Finally, the Multicounty Grand Jury acknowledges it has not reviewed the privilege log provided to the Claremore Progress newspaper as part of the Rogers County District Attorney's Office response to its two aforementioned Open Records Act requests. This has proven unnecessary, as there have been no allegations, testimony, or evidence suggesting District Attorney A or Assistant District Attorney B intentionally refused to turn over any records known by them to be properly disclosable under the Oklahoma Open Records Act. Thus, the

Multicounty Grand Jury does not find probable cause to believe either District Attorney A or Assistant District Attorney B willfully failed or refused to perform a duty of their office pursuant to Title 21 O.S. § 345.

ALLEGATION 6:

Whether District Attorney A attempted to commit the crime of Obtaining Money by False Pretenses on or about May 2013 by using fraudulent data to obtain grant money from the United States Bureau of Justice Assistance in violation of Title 21 O.S. § 1541.2.

FINDINGS AS TO ALLEGATION 6:

The Multicounty Grand Jury does not find from its examination of the evidence that probable cause exists to believe District Attorney A intentionally used fraudulent data to obtain grant money from the United States Bureau of Justice by fraud, trick, or deception in violation of Title 21 O.S. § 1541.2.[26]

Prior to July 1, 2012, the District 12 Drug and Violent Crime Task Force (referred to herein as District 12 DVCTF) received a grant award from the Edward Byrne Memorial Justice

[26] Title 21 O.S. § 1541.2 provides, in its entirety:

> Every person who, with intent to cheat and defraud obtains or attempts to obtain from any person, firm or corporation any money, property or valuable thing, of a value less than Five Hundred Dollars ($500.00), by means or use of any trick or deception, or false or fraudulent representation or statement or pretense, or by any other means or instruments or device commonly called a "confidence game," or by means or use of any false or bogus checks, or by any other written or printed or engraved instrument or spurious coin is guilty of a misdemeanor. 21 O.S. §1541.1. If the value of the money, property or valuable thing is Five Hundred Dollars ($500.00) or more but less than One Thousand Dollars ($1,000.00), the person shall be guilty of a felony punishable by incarceration in the county jail up to one (1) year and a fine of not more than Five Thousand Dollars ($5,000.00). If the value is One Thousand Dollars ($1,000.00) or more, the person is guilty of a felony punishable by imprisonment in the State Penitentiary for up to a ten (10) years and a fine not to exceed Five Thousand Dollars ($5,000.00).

Assistance Grant (referred to herein as JAG) Program in the amount of $143,607.50. The purpose of this grant award was to fund the District 12 DVCTF from July 1, 2012, to June 30, 2013. The JAG Program is a federal grant administered by the United States Bureau of Justice Assistance, which provides funds to state, local, tribal, and private non-profit law enforcement programs, prosecution and court programs, prevention and education programs, corrections and community corrections programs, drug treatment and planning programs and evaluation, and technology improvement programs with an emphasis on drug-related and violent crimes. In the State of Oklahoma, JAG awards are given out and administered by a seventeen-person JAG Board,[27] with assistance from staff of the District Attorney's Council.

Pursuant to the requirements of the JAG Program, District 12 DVCTF was required to complete JAG Progress Reports providing data including, but not limited to, the number of other law enforcement agencies they coordinated with or assisted, the number of search warrants written and served, and the number of arrests made by District 12 DVCTF's members per criminal offense. The District 12 DVCTF's Progress Report for the reporting period of July 1 to December 31, 2012, was prepared online by District Attorney Investigator E, a member of the District 12 DVCTF. In the aforementioned Progress Report, District Attorney Investigator E stated the District 12 DVCTF executed 470 arrests during the reporting period. District Attorney A advised she was not involved in the preparation or submission of said Report.

In late April 2013, District Attorney A, Assistant District Attorney A, and District Attorney Investigator A participated in a telephonic review of their JAG award with representatives of the JAG Board. District Attorney A testified during the telephone conference, that while reviewing the number of arrests listed in the aforementioned JAG Progress Report, she

[27] The JAG Board includes a representative from the Oklahoma Attorney General's Office.

noted the numbers appeared high. District Attorney A requested Assistant District Attorney A check said arrest numbers, and District Attorney A was subsequently advised there was an error.[28] Upon learning of the error, District Attorney A contacted the District Attorney's Council and notified the Council of said error. District Attorney Investigator E told investigators he also believed the number of arrests per offense he listed in the Progress Report was inaccurate, but he stated it was a typographical error. District Attorney Investigator E stated he was "fresh" and "new" at preparing progress reports, and was "overwhelmed" by the process. Investigator E advised any inaccurate information listed in said Report was an unintended error.

Email correspondence indicates that on April 25, 2013, District Attorney Investigator A contacted Jerry George, the Grant Programs Specialist for JAG, [29] by email and advised him of the error on District 12 DVCTF's July 1 to December 31, 2013, JAG Progress Report. Attached to the email was a letter from District Attorney A, addressed to Mr. George, which also noted the error. There is no evidence the District 12 DVCTF received any additional JAG funds as a result of this error on the aforementioned JAG Progress Report. Correspondingly, the Multicounty Grand Jury does not find probable cause to believe District Attorney A attempted to commit the crime of Obtaining Money by False Pretenses in violation of Title 21 O.S. § 1541.2.

ALLEGATION 7:

Whether Assistant District Attorney B intentionally misled a judge of the District Court by statements made in filings on March 4, 2013, in Rogers Co. JD-2012-17 and on March 5, 2013, in Rogers Co. CF-2012-655, both in violation of Title 21 O.S. § 554.

---

[28] District Attorney Investigator E listed that the District 12 DVCTF made 329 arrests for the first half of fiscal year 2013, when it actually made 29 arrests during that period.

[29] Mr. George is an employee of the District Attorney's Council.

FINDINGS AS TO ALLEGATION 7:

The Multicounty Grand Jury finds the evidence is insufficient to show probable cause to believe Assistant District Attorney B intentionally misled the court in his motions filed in Rogers Co. JD-2012-17 and Rogers Co. CF-2012-655.

On or about November 11, 2012, the Rogers County District Attorney's Office filed charges against Defendant Jennie Runions for Endeavoring to Manufacture a Controlled Dangerous Substance, Possession of a Controlled Dangerous Substance, and Joy Riding. Detective A was an endorsed witness for the State of Oklahoma in this case. Likewise, Detective A was also an endorsed witness for the State of Oklahoma in Rogers Co. JD-2012-17, an unrelated juvenile deprived case in which the child was alleged to have been physically abused.

In late January and mid-February 2012, the City of Claremore and Detective A filed *Motions to Intervene* in Rogers Co. JD-2012-17 and Rogers Co. CF-2012-655.[30] The purpose of the Motions to Intervene was to seek judicial determinations as to whether statements made by John Singer in his Probable Cause Affidavit in *State v. Matthew Grant Sunday*, Rogers Co. CF-2011-526, were *Giglio* material. As Detective A was an endorsed witness for the State of Oklahoma in both cases, the Rogers County District Attorney's Office was required to provide all *Giglio* materials related to Detective A to opposing to comply with due process.

On February 13 and February 22, 2013, respectively, Assistant District Attorney B filed an *Objection by the State of Oklahoma to Motions to Intervene filed by the City of Claremore and Third Party Intervenor [Detective A]* in Rogers Co. JD-2012-17 and Rogers Co. CF-2012-

[30] Motions to Intervene, and the statutory grounds on which a Motion to Intervene may be filed, are set out in Title 12 O.S. § 2024.

655.[31] On March 5, 2012, Assistant District Attorney B filed a *Corrected Motion to Reconsider and Brief in Support* in Rogers Co. CF-2012-655.[32]

Assistant District Attorney B indicated he was not involved in the prosecution of *State v. Matthew Grant Sunday*, Rogers Co. CF-11-526, but did do some general legal research on *Giglio* in the fall 2012. Assistant District Attorney B stated he did not normally handle criminal or juvenile deprived cases, but rather focused on civil matters for the Rogers County District Attorney's Office. Nonetheless, he volunteered to write the *Objections* in both of the above-styled cases because of the criminal prosecutors' heavy case load, and the extensive writing and research required to prepare the briefs. When asked how he had obtained the information used to prepare the summary of facts listed in his pleadings, Assistant District Attorney B stated:

> In my due diligence in preparing the facts, I asked those persons who were involved in the case, which would be [Assistant District Attorney F], [Assistant District Attorney A], and I believe I asked [Assistant District Attorney E]. I believe he was maybe at the end of that case or somehow involved. And I asked them on several occasions to provide me kind of a timeline and their fact statements."

Assistant District Attorney B testified he neither added nor took away from the facts as provided to him by the aforementioned parties. None of the *Objections* or *Motions* filed by Assistant District Attorney B in the above–styled cases were sworn by formal verification pursuant to Title 12 O.S. §§ 422 and 431. Assistant District Attorney B testified he did not intentionally state anything he believed to be inaccurate in his pleadings, nor attempt to mislead the court. Oral arguments on the *Objections* was primarily handled by Assistant District Attorney E, although Assistant District Attorney B was present and made a couple of comments.

---

[31] These documents were admitted as Grand Jury Exhibits #5 and #5a.

[32] The Court granted the City of Claremore and Detective A's Motion to Intervene on February 22, 2014. The Rogers County District Attorney's Office filed a Motion to Reconsider and Brief in Support on March 4, 2013. The City of Claremore filed a Response on March 15, 2013. The case was dismissed with court costs that same day, March 15, 2013.

The Multicounty Grand Jury has reviewed the *Objection by the State of Oklahoma to Motions to Intervene* filed by Assistant District Attorney B in Rogers Co. JD-2012-17 on February 13, 2013, the *Objection by the State of Oklahoma to Motions to Intervene* filed by Assistant District Attorney B in Rogers Co. CF-2012-655 on February 22, 2013, and the *Corrected Motion to Reconsider and Brief in Support* filed by Assistant District Attorney B in Rogers Co. CF-2012-655 filed on March 5, 2013. As to the *Objection by the State of Oklahoma to Motions to Intervene* filed in Rogers Co. JD-2012-17 and Rogers Co. CF-2012-655, they contain no real assertions of fact, only legal arguments and authority. In contrast, a brief summary of facts is provided in the *Corrected Motion to Reconsider and Brief in Support* filed by Assistant District Attorney B in Rogers Co. CF-2012-655. Therein, Assistant District Attorney B states Detective A provided a copy of the video of the Matthew Sunday interview to the Rogers County District Attorney's Office on August 25, 2011. This is inconsistent with the evidence presented to the Multicounty Grand Jury, which showed Detective A delivered the original video of the Matthew Sunday interview to the Rogers County District Attorney's Office on August 15, 2011, after normal business hours.

The Multicounty Grand Jury did not find any evidence to indicate the aforementioned misstatement was intentional, nor did it find it was made with any intent to mislead any of the parties. The date stated in Assistant District Attorney B's *Motion to Reconsider* is based on an August 25, 2011, email sent from District Attorney A to Detective A's supervisor, a copy of which is attached to Assistant District Attorney B's *Motion* as State's Exhibit C. This email indicates the Rogers County District Attorney's Office had not received the video of Matthew Sunday's interview as of August 25, 2011.[33] As previously noted, Assistant District Attorney B

[33] Charges had not been filed as of that date.

was not the assigned prosecutor in *State v. Matthew Grant Sunday*, Rogers Co. CF-2011-526, and was not familiar with the detailed facts of the case prior to preparing and filing the aforementioned *Motions* in Rogers Co. JD-2012-17 and Rogers Co. CF-2012-655. Assistant District Attorney B relied on information provided to him by the criminal prosecutors in his office that handled the Matthew Sunday case, including copies of email correspondence provided to him by District Attorney A. The misstatement regarding the date Detective A provided the video of the Matthew Sunday interview to the Rogers County District Attorney's Office does not appear to be an intentional attempt by Assistant District Attorney B to mislead any of the parties, nor is the inaccuracy material to Assistant District Attorney B's legal arguments. Rather, any factual discrepancy appears to be the result of Assistant District Attorney B's good faith reliance on information gleaned from source documents provided to him by third parties.

ALLEGATION 8:

Whether Assistant District Attorney E willfully failed to perform duties required of him by the Oklahoma Victim's Rights Act, found at Title 21 O.S. §142A, by depriving child victims' parents (Witness C, Witness D, and Tyler Archer) knowledge of plea bargains and depriving the child victims' parents the right to victim impact statements, all in violation of Title 21 O.S. §345, in at least the following cases:

a. On or about May 31, 2012, in Rogers Co. CF-2009-499, *State vs. Thomas Dougan* (*victim daughter of Witness C and Witness D*); and

b. On or about March 27, 2013, in Rogers Co. CF-2012-23, *State vs. Mary Applegarth* (*victim son of Tyler Archer*).

FINDINGS AS TO ALLEGATION 8(A):

On August 27, 2009, Defendant Thomas Lou Dougan was charged in Rogers Co. CF-2009-499 with one count of Lewd Molestation in violation of Title 21 O.S. § 1123. This charge resulted from a lewd proposal he allegedly made to J.R., age 3, on or about August 16, 2009, while babysitting the child. The case was investigated by Detective A of the Claremore Police Department.

In September 2009, Witnesses C and D,[34] the parents of J.R., met with Assistant District Attorney Patrick Abitbol, the prosecutor assigned to the case, in order to discuss their daughter's case and possible plea agreements.[35] Witnesses C and D testified Assistant District Attorney Abitbol advised them the plea agreement would include a ten-year sentence, with three to four years to be served in custody and six to seven years on probation. Witness C testified he was also advised the charges would not be amended from Lewd Molestation to a lesser charge. Additionally, Witnesses C and D indicated they received a Notice of Victims' Rights in the mail from the Rogers County victim witness coordinator around that time, notifying them of their rights under the Oklahoma Victim's Rights Act, Title 21 O.S. § 142A-2.

In February 2011, shortly after the election of District Attorney A, Assistant District Attorney Abitbol retired from the Rogers County District Attorney's Office, and Rogers Co. CF-2009-499 was reassigned to Assistant District Attorney E. Witness D testified that sometime after this, but prior to April 27, 2011, upon learning of Assistant District Attorney Abitbol's retirement, she went to the Rogers County District Attorney's Office to learn the identity of the

---

[34] Witness C is employed as a police officer with the Claremore Police Department.

[35] Witness C stated they discussed the case with Assistant District Attorney Abitbol once or twice prior to his retirement. Witness D indicated Witness C had several conversations about the case for which Witness D was not present.

newly assigned prosecutor. While at the courthouse, Witness D spoke with Assistant District Attorney E briefly, and recalled Assistant District Attorney E advising:

> I haven't had a whole lot of time to look this over. It's definitely something that we're going to go forward with. He said, I have a lot of cases right now because I'm taking Patrick's cases from Patrick leaving, but it is moving forward and I will keep in touch with you, and I will keep in contact with you and let you know kind of where we're at.

Witness D met again with Assistant District Attorney E sometime in May or June 2011,[36] and Witness C, Witness D, and the victim all met with Assistant District Attorney E in early 2012.[37] Witness D testified that at the meeting in early 2012, Assistant District Attorney E advised he believed the Defendant was leaning toward a plea, but he told her "I promise we won't do anything before contacting you first." Witness C stated Witness D primarily handled interactions with the Rogers County District Attorney's Office, noting that he tried to limit his involvement in the case to avoid any appearance he wanted the case treated differently due to his employment with law enforcement.

On May 31, 2012, Defendant Thomas Lee Dougan entered a plea of guilty to an amended charge of Indecent Exposure, in violation of Title 21 O.S. § 1021, and he was sentenced pursuant to a plea agreement to ten years incarceration, with three years to be served in custody, seven years suspended, payment of a $500 fine, payment of a $100 victim compensation assessment, and payment of court costs. The Defendant was also required to register as a sex offender.

---

[36] Witness C may also have been present at this meeting, as he testified he met Assistant District Attorney E twice in person, and that Witness D was present for both meetings.

[37] Witness D also met with Assistant District Attorney E twice after the plea. The first meeting, which occurred in approximately March 2013, was to discuss Witness D's concerns regarding the resolution of the case. The second meeting, in late April or early May 2013, was to discuss the procedures for giving a victim impact statement at the Defendant's one year judicial review hearing.

Witnesses C and D both testified they attempted to contact the Rogers County District Attorney's Office numerous times in the four or five days prior to the court date on May 31, 2012, but they were not called back.[38] Both Witness C and Witness D testified they were not advised Defendant had pleaded guilty, nor were they notified of the terms of the plea agreement. Particularly, they had not been advised of the reduction of charges from Lewd Molestation to Indecent Exposure until after the Defendant pleaded guilty. Witness C advised he was made aware of the plea, and specifically the amendment of charges, within a couple of days after the plea, when he saw Assistant District Attorney E while working security at a bank across from the courthouse.[39] Witness C advised this was the first time he was told about any possible amendment to the charges, and he was unhappy the charges were amended from an eighty-five percent crime to a non-eighty-five percent crime.[40] Witness D testified she learned of the plea agreement on June 8, 2012, when she received a phone call from Assistant District Attorney E. Assistant District Attorney E disputes this, and testified he specifically discussed the plea agreement, including the amendment of charges, with Witness C prior to the Defendant entering a plea. Assistant District Attorney E testified:

> We talked about the fact that his daughter was unable to discuss the case at that time. Again, she was three years old when this happened. By the time I got the case, she would have been probably four or five, because this case, I believe, was filed in 2009. And I said that we can – we've got a plea agreement where -- because I've talked to the defense attorney -- where we could amend the charge --

[38] Witness C stated Witness D made several calls, but they were not returned. She then requested Witness D call. Witness D called once or twice, but the calls were not returned.

[39] Witness D stated this occurred either on May 31, which would have been the date of the plea, or possibly on June 1, but was emphatic, even if the conversation occurred on May 31, it would have been after the Defendant pleaded guilty.

[40] Pursuant to Title 21 O.S. § 12.1 *et seq.*, persons convicted of certain felony offenses are required to serve no less than 85% of their prison sentence prior to becoming eligible for parole. These felony convictions include Lewd Molestation of a Child pursuant to Title 21 O.S. § 1123, but do not include Indecent Exposure under Title 21 O.S. § 13.1.

> I wasn't sure exactly at that time what to amend it to -- and we could give him some prison time as well as some probation time. And I distinctly remember telling him, I think it would be a three out of five rather than three out of 10, so it actually made it longer.

Witness C, however, stated he had no conversations with Assistant District Attorney E discussing a plea agreement prior to the Defendant's plea where his wife was not present.

The Oklahoma Victim's Rights Act, Title 21 O.S. § 142A-2, provides:

> The district attorney's office shall inform the victims and witnesses of crimes of the following rights:
>
> 1. To be notified that a court proceeding to which a victim or witness has been subpoenaed will or will not go on as scheduled, in order to save the person an unnecessary trip to court;
>
> 2. To receive protection from harm and threats of harm arising out of the cooperation of the person with law enforcement and prosecution efforts, and to be provided with information as to the level of protection available and how to access protection;
>
> 3. To be informed of financial assistance and other social services available as a result of being a witness or a victim, including information on how to apply for the assistance and services;
>
> 4. To be informed of the procedure to be followed in order to apply for and receive any witness fee to which the victim or witness is entitled;
>
> 5. To be informed of the procedure to be followed in order to apply for and receive any restitution to which the victim is entitled;
>
> 6. To be provided, whenever possible, a secure waiting area during court proceedings that does not require close proximity to defendants and families and friends of defendants;
>
> 7. To have any stolen or other personal property expeditiously returned by law enforcement agencies when no longer needed as evidence. If feasible, all such property, except weapons, currency, contraband, property subject to evidentiary analysis and property the ownership of which is disputed, shall be returned to the person;
>
> 8. To be provided with appropriate employer intercession services to ensure that employers of victims and witnesses will cooperate

with the criminal justice process in order to minimize the loss of pay and other benefits of the employee resulting from court appearances;

9. To have the family members of all homicide victims afforded all of the services under this section, whether or not the person is to be a witness in any criminal proceeding;

10. To be informed of any plea bargain negotiations;

11. To have victim impact statements filed with the judgment and sentence;

12. To be informed if a sentence is overturned, remanded for a new trial or otherwise modified by the Oklahoma Court of Criminal Appeals;

13. To be informed in writing of all statutory rights;

14. To be informed that when any family member is required to be a witness by a subpoena from the defense, there must be a showing that the witness can provide relevant testimony as to the guilt or innocence of the defendant before the witness may be excluded from the proceeding by invoking the rule to remove potential witnesses;

15. To be informed that the Oklahoma Constitution allows, upon the recommendation of the Pardon and Parole Board and the approval of the Governor, the commutation of any sentence, including a sentence of life without parole;

16. To receive written notification of how to access victim rights information from the interviewing officer or investigating detective; and

17. To a speedy disposition of the charges free from unwarranted delay caused by or at the behest of the defendant or minor. In determining a date for any criminal trial or other important criminal or juvenile justice hearing, the court shall consider the interests of the victim of a crime to a speedy resolution of the charges under the same standards that govern the right to a speedy trial for a defendant or a minor. In ruling on any motion presented on behalf of a defendant or minor to continue a previously established trial or other important criminal or juvenile justice hearing, the court shall inquire into the circumstances requiring the delay and consider the interests of the victim of a crime to a speedy

> resolution of the case. If a continuance is granted, the court shall enter into the record the specific reason for the continuance and the procedures that have been taken to avoid further delays.
>
> B. The district attorney's office may inform the crime victim of an offense committed by a juvenile of the name and address of the juvenile found to have committed the crime, and shall notify the crime victim of any offense listed in Section 2-5-101 of Title 10A of the Oklahoma Statutes of all court hearings involving that particular juvenile act. If the victim is not available, the district attorney's office shall notify an adult relative of the victim of said hearings.
>
> C. The district attorney's office shall inform victims of violent crimes and members of the immediate family of such victims of their rights under Sections 14 and 15 of this act and Section 332.2 of Title 57 of the Oklahoma Statutes.
>
> D. In any felony case involving a violent crime or a sex offense, the district attorney's office shall inform the victim, as soon as practicable, or an adult member of the immediate family of the victim if the victim is deceased, incapacitated, or incompetent, of the progress of pretrial proceedings which could substantially delay the prosecution of the case.

While the Victim's Rights Act codifies the rights of victims, the existence of these rights is also enshrined in the Article 2, Section 34 of the Oklahoma Constitution. There, the Oklahoma Constitution calls upon prosecutors to "ensure that victims are treated with fairness, respect and dignity, and are free from intimidation, harassment, or abuse." OKLA. CONST. art. 2, § 34. Moreover, this section constitutionally guarantees to crime victims "the right to know the status of the investigation and prosecution of [a] criminal case, including all proceedings wherein a disposition of a case is likely to occur, and where plea negotiation may occur." *Id.* Yet, despite these firm foundations in the Oklahoma Constitution and Oklahoma Statutes, no penalties exist for the failure to adhere to these requirements. In recognition of this dearth of consequences, the Multicounty Grand Jury calls upon all district attorneys to adopt best practices in the critical field of victim services.

In the field of victim services, best practices would include the assistant district attorney and victim witness personnel meeting with the victims to advise them of the plea negotiations prior to the actual plea. This allows for a transparent discussion of the case, articulation of the reasoning behind said plea negotiations, and an opportunity for the victims to ask questions prior to a plea. Also, assistant district attorneys should notify the victim of the scheduled date for the plea and advise the victim they are welcome to be present in the courtroom at the time of the plea. Additionally, best practices should include assistant district attorneys making a statement on the record at the time of the plea stating as follows:

- The victim or parents of the victim are present in the courtroom;
- They have been advised of the terms of the plea; and
- They either agree to terms of the negotiated plea or object to the terms of the plea, but have been advised by the district attorney's office that the plea is in the best interest of justice.

The existence of such a record should eliminate questions concerning victim notification.

The same recommendation also applies to Title 21 O.S. §142A-2(A)(11), which details the right to have victim impact statements filed with the judgment and sentence. In short, a statement should be made on the record that the victims have prepared victim impact statements. The victim should be allowed to read a statement into the record or submit said statement to be read into the record by the assistant district attorney for inclusion with the judgment and sentence.

In order to track contact with victims and their families, district attorney's offices should note all contacts with victims in their case file. For example: "Advised victim's family of plea

offer on 1-1-14. Family is in agreement." This documentation is critical in those cases where a different assistant district attorney shares or assumes responsibility for the case.

It is undisputed by the parties that Witness C and Witness D were notified by mail of their rights under the Oklahoma Victim's Rights Act within approximately one month of charges being filed. It is also undisputed Witness C and Witness D met with both Assistant District Attorney Abitbol and Assistant District Attorney E multiple times to discuss a possible plea agreement. Both assistant district attorneys advised Witness C and Witness D any plea agreement would involve an approximate ten-year sentence with part of that sentence served in custody and part of that served on probation in the community, which was consistent with the sentence ultimately received by the Defendant.

At its core, ALLEGATION 8(A) pits the accounts of Witnesses C and D against that of Assistant District Attorney E on whether Witnesses C and D were notified that charges were going to be amended from Lewd Molestation, an "eighty-five percent crime," to Indecent Exposure, prior to Defendant entering a plea. Assistant District Attorney E provided the notes from the file, admitted as Grand Jury Exhibit #15, which show various meetings, court dates, issuance of subpoenas, and other events. Unfortunately, the notes are not detailed, and do not indicate what was or was not told to Witness C and Witness D regarding a possible plea during their meetings.

Although the Multicounty Grand Jury cannot corroborate the account of either side, the Grand Jury can state, emphatically, that if parents in this situation were not notified of the potential downgrade of a defendant's plea from an eighty-five-percent crime to a non-eighty-five percent crime, that omission represents a matter of grave concern. The Multicounty Grand Jury considers issues of victim notification among the most serious of all constitutional and statutory

obligations imposed upon Oklahoma prosecutors. Nowhere is the need for strict adherence to these obligations more manifest than in the case of child sex abuse victims. Although district attorneys should consistently strive to ensure that each of their assistants are trained in victims' rights, the Multicounty Grand Jury encourages district attorneys to place particular emphasis on these rights in the context of child sex crimes.

Assistant District Attorney B aptly summarized the Multicounty Grand Jury's position when he reflected, albeit it on an unrelated issue, that "all of us could say we could have handled past situations better." Here, best practices were clearly not observed, but the Multicounty Grand Jury finds the evidence insufficient to bring criminal charges against Assistant District Attorney E for refusal to perform an official duty pursuant to Title 21 O.S. § 345.

FINDINGS AS TO ALLEGATION 8(B):

The Multicounty Grand Jury finds insufficient evidence to show probable cause to believe Assistant District Attorney E willfully failed to perform duties required of him by the Oklahoma Victim's Rights Act, Title 21 O.S. § 142A *et seq.*, by depriving child victim's parents, Tyler Archer and Tiffany Love, knowledge of plea bargains and the right to victim impact statements, in violation of Title 21 O.S. § 345 in *State v. Mary Applegarth*, Rogers Co. CF-2013-23.

Title 21 O.S. § 142A-2 sets forth the obligation of district attorneys to advise victims and witnesses of certain rights. Subsection (A)(10) requires the district attorney's office to inform the victim of any plea bargain negotiations, and subsection (A)(13) requires the district attorney's office to notify victims and witnesses in writing of all statutory rights.

Detective A testified he spoke with the child victim's parents, Tyler Archer and Tiffany Love, and they confirmed they were never asked about any plea agreement, nor were they

afforded the right to submit a victim impact statement. Tyler Archer told OSBI investigators he was unaware of any plea agreement, that he did not know when the agreement was made between Defendant Applegarth and the District 12 District Attorney's Office, and that Assistant District Attorney E did not even consult with him when Defendant Applegarth was sentenced. Additionally, Tiffany Love told investigators that Assistant District Attorney E failed to explain the case to her, and instead told her the case had nothing to do with her and he did not have to notify her.

Assistant District Attorney E testified that Tiffany Love and Tyler Archer were advised of their rights as victims and the same was reflected in the district attorney's office's case file. Therefore, the district attorney's office complied with the statutory requirement. Assistant District Attorney E testified he did not notify the child victim's parents about the plea agreement "because the State had custody [of the child]. Their attorneys were involved in the case. The same attorneys were involved in that case[,] and they were peripherally involved in the criminal case, so I did not talk to the parents because they were represented by attorneys and in the deprived case." Additionally, Assistant District Attorney E testified he believed he was not required to notify the family of the child because they were not the custodian of the child at that time. Assistant District Attorney E does not dispute that he did not provide notice of the plea agreement to the child's biological parents, and maintains he was not required to do so under the Oklahoma Victim's Rights Act.

The allegations of abuse against this child initiated multiple legal proceedings. First, in June 2012, the child was removed from Tiffany Love and placed into the custody of the Department of Human Services (hereinafter referred to as "DHS") based on allegations of physical abuse by Love and her boyfriend Matthew Jenkins. On June 26, 2012, Tiffany Love

was charged with Enabling Child Abuse by Injury in *State v. Tiffany Love,* CF-2012-338. On that same date, Matthew Jenkins was charged with Child Abuse by Injury in violation of Title 21 O.S. 843.5(A) in *State v. Matthew Jenkins*, Rogers Co. CF-2012-339.

Second, a deprived action was filed against both parents, Tiffany Love and Tyler Archer. Based on an interview conducted by OSBI, Tyler Archer stated that since paternity had not established him as the father, and further, since he was not married to his girlfriend, the court would not place the child with him. By operation of the Oklahoma Children's Code, Title 10A § 1-1-101 *et seq.*, a child cannot be considered deprived unless both parents have failed to protect. At the time DHS picked up this child, Archer had not established paternity; therefore, he could not legally protect the child even though Love claimed he was the father. In an attempt to have the child placed with him, Archer quickly married his girlfriend three days later. There is conflicting evidence in the record as to whether the child was placed with Archer or a relative of Archer. Love and Archer, represented by counsel, stipulated to the allegations in the deprived petition and were undergoing treatment plans in an attempt to regain custody of their child.

On September 20, 2012, Defendant Love entered a plea of guilty to an amended charge of Child Neglect and was sentenced pursuant to a plea agreement to a five-year suspended sentence with the first six months to be served in the Rogers County Jail, and with judicial review occurring after one year.

On October 24, 2012, Defendant Jenkins entered a plea of guilty to an amended charge of Conspiracy to Commit a Felony and was sentenced pursuant to a plea agreement to a ten-year sentence with the first five years to serve in the Oklahoma Department of Corrections and the remaining balance suspended.

Archer's mother-in-law, Mary Applegarth, housed the child at this time, but she also subsequently abused the child. On January 15, 2013, Mary Applegarth was charged in Rogers Co. CF-2013-23 with one count of Child Abuse by Injury, in violation of Title 21 O.S. § 843.5(A). Assistant District Attorney E was assigned to prosecute this case.

On March 27, 2013, Defendant Applegarth entered a plea of guilty to the charge of Child Abuse by Injury and was sentenced pursuant to a plea agreement to a five-year suspended sentence with the first 90 days to be served in the Rogers County Jail and judicial review occurring after one year.

As detailed above in FINDINGS AS TO ALLEGATION 8A, the Oklahoma Victim's Rights Act, found in Title 21 O.S. § 142A-2, lists the duties of a district attorney's office to keep victims and witnesses of crimes informed about the case in which they are involved. Just as in the case of victim notification, the Multicounty Grand Jury also calls upon district attorneys to train their personnel and adopt best practices on Title 21 O.S. §142A-2(A)(11), which details the right to have victim impact statements filed with the judgment and sentence. In short, a statement should be made on the record that the victims have prepared victim impact statements. The victim should be allowed to read a statement into the record or submit said statement to be read into the record by the assistant district attorney for inclusion with the judgment and sentence.

In this case, however, considering that Tiffany Love was charged criminally, pleaded guilty, and was convicted of enabling child abuse of her child, it seems inappropriate that Assistant District Attorney E would consult her on plea negotiations regarding this abuse. Allowing Love to proffer a victim impact statement on behalf of the child she abused would be equally unfitting. Indeed, doing so would only victimize the child further. Clearly, the intent of the Oklahoma Victim's Rights Act was best served by the exclusion of both Love and Archer

from the relevant plea negotiations. Consequently, the Multicounty Grand Jury finds that Assistant District Attorney E's failure to proffer victim impact statements from either Love or Archer cannot constitute a willful failure or refusal to perform a duty of office pursuant to Title 21 O.S. § 345.

ALLEGATION 9:

Whether Assistant District Attorney E intentionally misled a judge of the District Court in statements made on May 31, 2012, in Rogers Co. CF-2009-499 (Witness C and Witness D's *daughter)*, by representing to the judge that Witnesses C and D had agreed to a plea agreement that included reducing the crime and dramatically reducing the minimum punishment, in violation of Title 21 O.S. §554.

FINDINGS AS TO ALLEGATION 9:

As previously noted in FINDINGS AS TO ALLEGATION 8A, on August 27, 2009, Defendant Thomas Lou Dougan was charged in Rogers Co. CF-2009-499 with one count of Lewd Molestation, in violation of Title 21 O.S. § 1123, based on allegations he made a lewd proposal to J.R., age 3, on or about August 16, 2009, while babysitting the child.[41] On May 31, 2012, Defendant Thomas Lee Dougan entered a plea of guilty to an amended charge of Indecent Exposure, in violation of Title 21 O.S. § 1021, and was sentenced to ten years incarceration, with three years to be served in custody and seven years suspended, pursuant to a plea agreement with the Rogers County District Attorney's Office.

Mr. Dougan entered his plea before the Honorable Terrell S. Crosson, Special District Judge for Rogers County, and Assistant District Attorney E represented the State of Oklahoma. During the course of the plea, the following exchange occurred:

[41] A copy of the docket sheet for Rogers Co. CF-2009-499 was admitted as Grand Jury Exhibit #14.

> THE COURT: Sir, you previously testified that you were a competent person and the Court has found that you're a competent person here today. Do you understand that the State is moving to amend Count 1 to Indecent Exposure, a Felony?
>
> THE DEFENDANT: Yes, Your Honor.
>
> THE COURT: Do you have any objection to that?
>
> THE DEFENDANT: No, Your Honor.
>
> THE COURT: And at this time I would ask the State, is this amendment and plea agreement, are the victim and the victim's family in agreement with this?
>
> ASSISTANT DISTRICT ATTORNEY E: Yes, Your Honor. I've had contact with them back in April. We discussed this again in the month of March – excuse me, I'm sorry – May, and so they're in agreement with this plea agreement, as well.

The evidence and findings of the Multicounty Grand Jury in this matter have previously been outlined in this Report in great detail under FINDINGS AS TO ALLEGATION 8A, and will not be restated here. Suffice it to say, there is a substantial dispute between Witnesses C and D and Assistant District Attorney E as to whether Witnesses C and D were advised that charges in Rogers Co. CF-2009-499 were going to be amended from Lewd Molestation to Indecent Exposure pursuant to a plea agreement prior to the Defendant's plea. Witnesses C and D and Assistant District Attorney E give divergent accounts as to their conversations regarding a possible plea agreement, and the Multicounty Grand Jury could find no other witnesses or evidence corroborating either side of the account. Accordingly, the Multicounty Grand Jury finds the evidence insufficient to bring criminal charges against Assistant District Attorney E for violation of Title 21 O.S. § 554.[42]

---

[42] Title 21 O.S. § 554 states:

> Every attorney who either directly or indirectly buys or is interested in buying any evidence of debt or thing in action with intent to bring suit thereon is guilty of a

ALLEGATION 14:

Whether District Attorney A should be removed from office, pursuant to Title 22 O.S. § 1181, for oppression and corruption in office and willful maladministration including:

ALLEGATION 14(A):

Whether each crime described above supports District Attorney A's removal from the Office of District Attorney.

ALLEGATION 14(B)

Whether, in April 2013, District Attorney A refused to argue against parole for a child molester in Rogers Co. CF-2009-499 in an effort to punish the victim's parents, Witnesses C and D, for criticizing her office.

ALLEGATION 14(C):

Whether, on or about January 2013, District Attorney A manufactured bogus ethical allegations against Oklahoma Department of Wildlife Game Warden Henry as punishment for the game warden investigating crimes committed by District Attorney A's husband, Witness E, and brother, Raymond Smith.

---

misdemeanor. Any attorney who in any proceeding before any court of a justice of the peace or police judge or other inferior court in which he appears as attorney, willfully misstates any proposition or seeks to mislead the court in any matter of law is guilty of a misdemeanor and on any trial therefor the state shall only be held to prove to the court that the cause was pending, that the defendant appeared as an attorney in the action, and showing what the legal statement was, wherein it is not the law. If the defense be that the act was not willful the burden shall be on the defendant to prove that he did not know that there was error in his statement of the law.

ALLEGATION 14(D):

Whether, on or about January 9, 2013, District Attorney A filed an administrative complaint against Detective Sergeant A for seeking a candidate to run for the office of District Attorney in the next election.

ALLEGATION 14(E):

Whether, on or about 2012, District Attorney A lied to investigators of the U.S. Department of Justice in an investigation relating to a former employee's termination.

ALLEGATION 14(F):

Whether, on or about March 7, 2013, District Attorney A provided the name and telephone number of Witness B, the father of two child rape victims, to a Tulsa World Reporter in violation of Witness B's wishes to remain anonymous.

ALLEGATION 14(G):

Whether District Attorney A presided over violations of Title 21 O.S. § 142A-2(A)(1) by regularly causing victims and witnesses to be unnecessarily subpoenaed to court.

ALLEGATION 14(H):

Whether District Attorney A administered over violations of Title 21 O.S. §142A-2(A)(17) by regularly allowing sex crimes and other prosecutions to be delayed for years.

LEGAL STANDARD FOR REMOVAL FROM OFFICE

Title 22 O.S. § 1181 provides that officers, including District Attorneys, may be removed from office for: "habitual or willful neglect of duty," "gross partiality in office," "oppression in office," "corruption in office," "extortion or willful overcharge of fees in office," "willful maladministration," "habitual drunkenness," or "failure to produce and account for all public funds and property in his hands, at any settlement or inspection authorized or required by law."

The Supreme Court of Oklahoma defines "willful" for purposes of Title 22 O.S. § 1181 as "acts which were done either with a bad or evil intent or were contrary to a known duty, or the inexcusably reckless performance of an official duty . . . ." *State v. Price*, 2012 OK CR 51, ¶ 28, 280 P.2d 943, 951-52.

In a removal action, the State bears the burden of showing evidence of bad or evil intent or acts undertaken recklessly or contrary to a known duty. *Id.* at ¶ 30. Title 22 O.S. § 1181 does not expressly define corruption in office, but the Oklahoma Uniform Jury Instruction's comments for Title 22 O.S. § 1181 state, "corruption in office means the public officer's unlawful and wrongful use of his or her public office to procure a benefit for himself or herself or another person, contrary to duty and the rights of others." OUJI-CR 3-27.

FINDINGS AS TO ALLEGATION 14(A):

The Multicounty Grand Jury finds insufficient evidence to bring an accusation for removal against District Attorney A pursuant to Title 22 O.S. § 1181 for those allegations which have been previously and fully addressed in this Interim Report.[43] The Grand Jury did not find probable cause to believe District Attorney A committed these alleged crimes during her tenure as District Attorney for the District 12 District Attorney's Office, nor does her conduct constitute malfeasance in office per Title 22 O.S. § 1181. Therefore, the Multicounty Grand Jury does not find any grounds for seeking removal of District Attorney A from office pursuant to Title 22 O.S. § 1181.

Thoughtless acts committed in office, with no bad or evil purpose, even though involving serious errors of professional judgment, do not justify removal. *See Shields v. State*, 89 P.2d 756, 761 (Okla. 1939); *see also Price*, at ¶¶ 27-30, 280 P.2d at 951-53. Although District

[43] The Multicounty Grand Jury would note, however, that a full discussion of District Attorney A's treatment of potential *Giglio* issues concerning Detective A is forthcoming in a subsequent Report of this Grand Jury.

Attorney A at times displayed poor judgment and unprofessional behavior in the workplace, no criminal violations were found in relation to these allegations, and District Attorney A's conduct does not rise to the level of malfeasance of office. Thus, the Multicounty Grand Jury finds the evidence insufficient to bring an accusation for removal against District Attorney A pursuant to Title 22 O.S. § 1181.

FINDINGS AS TO ALLEGATION 14(B):

The Multicounty Grand Jury finds no evidence to support the allegation that District A refused to argue against parole in Rogers Co. CF-2009-499, and thus, finds this allegation is not sufficient to bring an accusation for removal pursuant to Title 22 O.S. § 1181.

As previously detailed in both FINDINGS AS TO ALLEGATION 8A and FINDINGS AS TO ALLEGATION 9 of this Report, on August 27, 2009, Defendant Thomas Lou Dougan was charged in Rogers Co. CF-2009-499 with one count of Lewd Molestation, in violation of Title 21 O.S. § 1123, based on allegations he made a lewd proposal to J.R., age 3, on or about August 16, 2009, while babysitting the child.[44] On May 31, 2012, Defendant Thomas Lee Dougan entered a plea of guilty to an amended charge of Indecent Exposure, in violation of Title 21 O.S. § 1021, and was sentenced to ten years incarceration, with three of those years to be served in custody, and seven on probation. In April 2013, Defendant Dugan came up for reentry before the Oklahoma Pardon and Parole Board. District Attorney A summarized her policies for arguing before the Oklahoma Pardon and Parole Board as follows:

[44] A copy of the docket sheet for Rogers Co. CF-2009-499 was admitted as Grand Jury Exhibit #14. Witness D testified District Attorney A looked at her and Witness C multiple times during the parole hearing but did not attempt to speak with them. Witness C stated he believed District Attorney A knew who he was, and Witness C felt ignored. District Attorney A testified she did not recognize either Witness C or Witness D at the hearing. Once again, this is a victim services issue.

> If it's a stage 2, meaning they have passed through stage 1 and it's a stage 2, I go down and make argument. Otherwise they don't allow argument. You must do a letter. I did not know on a reentry that you could go down and argue.

District Attorney A sent a letter to the Oklahoma Pardon and Parole Board objecting to Defendant Dougan's reentry. District Attorney A was present at the April Oklahoma Pardon and Parole Board meeting, and made oral arguments against parole in another matter.[45] District Attorney A stated she did not make oral arguments against parole on Defendant Dougan's case because she had previously sent a detailed letter objecting to parole, and, as previously noted, was unaware she could make oral arguments on a reentry proceeding.[46]

On May 30, 2013, Defendant Dougan appeared before the Honorable Dwayne Steidley, District Judge for Rogers County, for a one-year judicial review of his sentence.[47] Witness D was present and presented a victim impact statement. The Rogers County District Attorney's

---

[45] Witness C indicated it was a kidnapping case.

[46] District Attorney A stated, "there's times that I just do letters. I don't show for every, you know, argument that I can make. Because in essence, my letters are so detailed that I read my letter."

[47] The Defendant's one-year judicial review was originally scheduled for May 2, but was continued because the Rogers County District Attorney's Office allegedly failed to issue a writ. The matter was passed to May 28, but was passed again to May 30, due allegedly to the Rogers County Sheriff's Office's failure to transport the Defendant from the Oklahoma Department of Corrections to the Rogers County Courthouse. Witness D stated she and Witness C both appeared at the May 28 judicial review, and neither one of them were notified the hearing had been continued. Witness D stated, "the District Attorney -- we -- my husband and I sat up there for over an hour waiting on somebody to come in the courtroom. They told us to go up there and sit down and wait and somebody would be there. Nobody ever came." Ultimately, like many of the other issues raised in Rogers County Grand Jury Petition GJ-13-1, this is an important victims service issue, but is beyond the purview of the Multicounty Grand Jury and is best addressed by the citizens of Rogers County.

Office was also present and argued against modification of Defendant Dougan's sentence. Modification was denied by Judge Steidley.[48]

Based upon these facts, the Multicounty Grand Jury finds that Allegation 14(B) is not supported by the evidence, as District Attorney A did object to the Oklahoma Pardon and Parole Board on reentry for Defendant Dougan in Rogers Co. CF-2009-499 by letter. Thus, the Multicounty Grand Jury finds this allegation insufficient to bring an accusation for removal pursuant to Title 22 O.S. § 1181.

FINDINGS AS TO ALLEGATION 14(C):

The Multicounty Grand Jury finds the evidence as to this allegation is insufficient to bring an accusation for removal from office against District Attorney A pursuant to Title 22 O.S. § 1181.

Rogers County Grand Jury Petition GJ-13-1 Allegation 14(c) restates Allegation 1, and the findings of the Multicounty Grand Jury regarding this allegation were previously detailed in this Report under FINDINGS AS TO ALLEGATION 1. As detailed in those findings, the Multicounty Grand Jury did not find sufficient evidence to show probable cause to believe District Attorney A violated Title 21 O.S. § 425. Therefore, the Multicounty Grand Jury does not find grounds for bringing an accusation for removal against District Attorney A per Title 22 O.S. § 1181 based on this allegation.

[48] During her testimony, Witness D expressed several other concerns regarding how the Rogers County District Attorney's Office handled her daughter's case. These include the District Attorney's office incorrectly stating her daughter's initials at the time of plea, the victim's age was never stated on the record, no aggravating circumstances being listed in the summary of facts on the judgment and sentence, and the District Attorney's Office's failure to return Witness D's phone calls. These are also victim services issues outside the scope of this Grand Jury.

FINDINGS AS TO ALLEGATION 14(D):

The Multicounty Grand Jury finds that District Attorney A did voice a complaint against Pryor Detective Sergeant A to Pryor Police Chief Dennis Nichols, after Pryor Detective Sergeant A posted a Facebook message seeking a candidate to run against District Attorney A in the next election. The Multicounty Grand Jury further finds that although District Attorney A's conduct was unprofessional, and the manner in which she handled the incident reflected poor judgment, she did not act with either a bad or evil purpose, or in a manner so contrary to a known duty or inexcusably reckless as to bring an accusation for removal pursuant to Title 22 O.S. § 1181. *See Shields v. State*, 89 P.2d 756 (Okla. 1939); *see also State v. Price*, 2012 OK CR 51, ¶¶ 27-30, 280 P.2d 943, 951-52.

On January 9, 2013, Pryor Detective Sergeant A posted the following on his personal Facebook page: "Does anyone have a suggestion for a new District Attorney for Mayes, Rogers, and Craig in 2014?"[49] Detective Sergeant A testified he logged onto Facebook and added the post from his personal phone at his personal residence at approximately 7:55 a.m., while off-duty and shortly before leaving for work. Detective Sergeant A stated the Facebook post was in response to the allegations made the previous day by District Attorney A against Detective A that Detective A had lied in his Probable Cause Affidavit in *State v. Matthew Grant Sunday*, Rogers Co. CF-2011-526. District Attorney A testified that the previous day, Pryor Detective Sergeant A also sent an email to the chief prosecutor in Mayes County informing her he would take three or four of his investigations to federal prosecutors.

That same day, District Attorney A called the Pryor Police Department and requested a meeting between District Attorney A, Assistant District Attorney A, and Pryor Police Chief

[49] A copy of this posting was admitted as Grand Jury Exhibit #6.

Dennis Nichols. At approximately 12:24 p.m. that day, District Attorney A and Assistant District Attorney A in fact met with Police Chief Nichols and Detective Sergeant A in Pryor. During that meeting the following conversation occurred:[50]

> District Attorney A: You know why we are here right? Ok, Chief Nichols doesn't know. Do you want to let him in why we are here?
>
> Detective Sergeant A: It's an off duty post to Facebook. We have no policy saying anything and I didn't say anything. I put a post on there saying we need a new DA in 2014 which I have received phone calls from most of law enforcement and the judges here in town.
>
> District Attorney A: Let me tell you something [Detective Sergeant A]. You emailed my assistant DA yesterday.
>
> Detective Sergeant A: And told them I presented stuff and I haven't said anything bad about anything.
>
> District Attorney A: It is berating and it is disrespectful. I would ask you if you are an investigator to look into something before you do something. I don't appreciate what you have done. I have done nothing but give you absolute respect. You have my cell number. You have called me on weekends. You have called me at night. You tell me how this prosecutor isn't doing a good job. You sometimes call and say this prosecutor is OK. You called me to say I like this, I don't like that. I have given you absolute deference and you do something like this based upon someone telling you something. The issues that we have right now right now are in black and white, [Detective Sergeant A]. Do you understand? The Giglio issues that we have are black and white. OK? It is there.
>
> Detective Sergeant A: That's fine.
>
> District Attorney A: The evidence is there. It's already been filed. This is not conversations. This is not you misinterpret. This is black and white and I don't appreciate it. I don't appreciate it at all. I have done nothing but give you respect. You are in and out of our office anytime you want and you have the audacity to send an email to my prosecutor like that. Who do you think you are?
>
> Detective Sergeant A: Wo. Wo. Wo. You don't come in here and yell at me.
>
> District Attorney A: I absolutely . . . I can assure you I'm not yelling. I am tired of this disrespect and it's stopping today.

[50] The summary of this conversation is based on a non-certified transcript of the conversation prepared by Pryor Detective Sergeant A transcribed from his recording, a copy of which has been admitted as Grand Jury Exhibit #7.

Detective Sergeant A: Really? I think I have bent over backwards for you for a long time. Who . . . Ok . . . you asked us for help and we gave you help.

District Attorney A: Absolutely.

Detective Sergeant A: I have cases that I can pull that have already been presented and I can do that. They are my cases. They didn't say anything bad about anybody because I knew what you would do.

District Attorney A: Why did you send that email?

Detective Sergeant A: Why did you file a year later?

District Attorney A: Why did you . . .

Detective Sergeant A: Was it because you knew Edith was going to run and after Sunday's paper?

District Attorney A: I don't know what you are talking about.

Detective Sergeant A: So this has nothing to do with the Claremore Progress paper on Sunday?

District Attorney A: Jesus Christ, [Detective Sergeant A]! I am under a duty. Are you kidding me? Research Giglio. Are you kidding me?

Assistant District Attorney A: Wow.

Detective Sergeant A: Really, like I don't know what Giglio is?

District Attorney A: You don't know what Giglio is?

Detective Sergeant A: No, I'm saying, like I don't know what Giglio is. I'm saying yes, I know what Giglio is.

District Attorney A: OK. What are you talking about with the paper and Edith?

District Attorney A: Holy crap [Detective Sergeant A]!

Detective Sergeant A: Really, so it's just a coincidence that Claremore PD . . .

District Attorney A: Absolutely, absolutely.

Assistant District Attorney A: We have been working on this for a year.

District Attorney A: For months, we have had it transcribed. We have had the tapes cleaned up.

Detective Sergeant A: OK. So it's a coincidence.

District Attorney A: I have done everything that I possibly can . . .

Assistant District Attorney A: Wow.

District Attorney A: To make sure we dotted every I and crossed every T because I know when I come out with something like that what that would do to somebody. You're damn right it's a coincidence.

Detective Sergeant A: Okay, so Claremore PD totally slams you on and your office on Sunday and you come out with this on Tuesday.

District Attorney A: Oh my god.

Assistant District Attorney A: Wow.

District Attorney A: You're amazing. You're amazing.

Assistant District Attorney A: That's a very simple thought.

Nichols: I'm sorry. I don't know anything about what is going on.

District Attorney A: Chief Nichols, we have found out, we have been working on this in our office. We have a Giglio issue with an officer.

Detective Sergeant A: With [Detective A].

District Attorney A: That [Detective Sergeant A] hangs out with. We had to . . . it's dealing with tapes and affidavits. We had to get tapes cleaned up. We had transcriptions. That takes time. We had other lawyers look at it. When you talk about Giglio, which is a credibility issue, we take it very seriously. We are going to take time. Umm, we met and finally realized, yes, this is what it is. We have met and informed Chief Brown of the issues and that we've got a problem. That was yesterday. Today, last night, [Detective Sergeant A] and I don't have the email. I will have it. Emails [Assistant District Attorney D], our assistant here, letting her know that any cases that possibly can, and I'm paraphrasing cause I didn't see it, that they're gonna be taking them federal. Like that's a gig to us. Cause we don't have . . .

Detective Sergeant A: I didn't mean for it . . .

District Attorney A: [Detective Sergeant A], you didn't pull it out of you're a** and just send it. Are you denying that you did not send this because . . .

Detective Sergeant A: [District Attorney A], if you are going to talk to me, talk to me. You don't sit there and point your finger at me.

Nichols: Hey, hey.

District Attorney A: I am not pointing my finger.

Detective Sergeant A: No, you are. If you want to talk, let's talk.

District Attorney A: Did you not send an email?

Detective Sergeant A: Yes, I sent an email and they already have those cases.

District Attorney A: Because of [Detective A]?

Detective Sergeant A: Absolutely!

District Attorney A: Yes, OK. I took it as berating. He should not be in this. If you want to know the facts I would advise to look into them.

Detective Sergeant A: This doesn't have anything to do with Pryor P.D.

District Attorney A: Then he has posted on his Facebook um how we need to . . . Does anyone have a suggestion for a new District Attorney for Mayes, Rogers, and Craig in 2014. I am not going to tolerate it. I am not going to put up with this.

Detective Sergeant A: You tell me how that's anything illegal or wrong.

District Attorney A: I have stated . . . I have given great deference and I feel like I am getting nothing but slapped in the face. Slapped in the face and I'm not going to have it.

Detective Sergeant A: I did it before I came to work, before I left my house and I have not touched it since.

District Attorney A: I'm not going to have it.

Assistant District Attorney A: Chief, if I went home today after work and I typed into my Facebook page with however many hundreds of friends that I've got and I post we need to look into a new Chief of Police for Pryor and I'm the first assistant DA for this district. And I type that in, I would assume and I am making an assumption here that you would have a significant problem with me posting

something like that as being significantly unprofessional, given the fact that we have (inaudible).

Detective Sergeant A: 'Cause I'm pretty sure that our detective just run against our Chief last year and I didn't do anything at work.

Assistant District Attorney A: I just posed a question to the Chief.

Detective Sergeant A: Cause I'm pretty sure that the people I have talked to said it's a political figure and they are to expect it.

Nichols: Well, again this is the first I have heard of it. I didn't know anything was going on.

District Attorney A: I understand. I didn't want to do anything behind his back and that is why I said if you want to pull him in because of this conversation because I look you in the eye. That's what I do. Good or bad, I look you in the eye.

Detective Sergeant A: [District Attorney A], I knew you were going to be pissed and I didn't care.

District Attorney A: That's obvious, [Detective Sergeant A].

Detective Sergeant A: And the difference is . . .

Assistant District Attorney A: The question is do you want to have a good working relationship with this office?

Nichols: Yes, we want to have a good working relationship, we do.

District Attorney A: I think sometimes officers think that they are doing us a favor and it's a two way street.

Assistant District Attorney A: Let, let, let the Chief respond.

Nichols: We want to have a good working relationship. I want the officers (inaudible) and vice versa. Again I am going to have to do a little more talking, researching to find out what is going on here.

District Attorney A: I understand that.

Nichols: Our guys have been doing a good job and I don't want to knock them for that and apparently there is some issues here that I need to take a look at and see.

Detective Sergeant A: So let me get this straight. You didn't have a problem when I stepped over the line and backed you, versus Gene. You were ok with that because that was for you but now that I say something about you, there is a problem?

District Attorney A: That is the most chicken s**t statement I have ever heard. You are stating this because [Detective A] has told you . . .

Detective Sergeant A: I can do whatever I want.

District Attorney A: He has twisted this when it's black and white. I am telling you that if you are the good officer you are, go look at the information. It's there.

Detective Sergeant A: That's fine. I don't even know what the problem is. The problem is that you get slammed in the Claremore Progress on Sunday and on Tuesday you come out with this. You call it a coincidence. Okay, that's fine.

District Attorney A: Ugh.

Assistant District Attorney A: Wow.

District Attorney A: You're right.

Nichols: Give me a chance to kind of see what's going on.

District Attorney A: Kind of absorb.

Nichols: Did this all start over one case?

District Attorney A: You mean the Giglio issue?

Chief: Yes.

District Attorney A: Yes.

Assistant District Attorney A: There is one case that was investigated by [Detective A] in 2011, in July, that he submitted affidavits to our office that are not supported. The affidavits both search warrant and from arrest are not supported by his report or the video of the confession. That material was dribbled into us over time. The affidavits came first and then six days later the reports come to us then a month later, the day before we file it the video finally gets to us after multiple requests for the video. At the end of the day we filed rape by instrumentation based on the reports, mostly based on the affidavits, I presumed, some text messages. It's pretty clear we made a mistake in filing. We have cleaned that up. The case has been disposed of. We had some concerns because one of our prosecutors had said pretty early on that this was a Giglio problem.

This probably got said the first time a year ago. We didn't look at it, didn't drill into it. Frankly, I haven't dealt with any Giglio issues in my career and I didn't really put much . . . I didn't put as much stock as I should have into that issue about whether this was a significant enough credibility problem that we would have to turn it over to the defense in future cases. Cause that's what it boils down to. That is the Giglio issue. Is it a significant enough of a credibility issue that you would have to turn it over in the future. Not just the criminal case you are dealing with but future criminal cases so that the defense has the right to use that material for impeachment against that witness. So, we take a . . . we knew we needed to look at it. We're busy as hell and we have no appetite for it frankly. It's not like we have been sitting around looking to do this to police officers. Nobody is. But we knew we had to look at it. We did at some point and time take a hard look at it because we had another Giglio issue that got submitted to the court, because we were debating whether this issue involving a Sheriff's Office employee was Giglio material or not. The office was split basically between the attorneys whether this is or it isn't. And one of the defense attorneys was begging for it, banging the desk about it. So we submitted that material to the judge to determine in camera, meaning by himself, with just the material to determine whether it was Giglio material or not. The judge told me before he announced it in court that he was going to announce it as Giglio and he walked in there and did it. I knew at that point in time we better take a look at the Sunday thing. I'm concerned that it may be as bad or worse.

District Attorney A: That was several months ago.

Assistant District Attorney A: Yeah.

District Attorney A: In the meantime I'm having other prosecutors look at it but the bottom line is that we went publicly to the chief because, with Giglio under the law you have a duty as law enforcement to make sure we have any Giglio/Brady issues and we have a duty to make sure if there's any Brady/Giglio issues that we give it to the defense and, if not, then you're talking law suits. You know it a great burden on everyone.

Assistant District Attorney A: We spent... even after we... this decision got made several weeks ago before the holidays on the other employee. That's about the time we picked it back up saying we got to get on this. Cause we need to know. Otherwise, we are going to be in a jam with the cases involving Detective A.

District Attorney A: Yeah.

District Attorney A: So we started drilling into it. Every attorney in our office outside of one who is the new lawyer (inaudible) every single lawyer in that office has looked at it now. We've all came to the same conclusion. That was over a period of weeks that we were coming to this conclusion. We have drilled into it. We listed to the tape, listened to the tape, trying to find something that would

substantiate the affidavits. It is not there and at that point and time once we made the decision as an office we had a duty according to the ethics council of the Oklahoma Bar Association that we talked to that said if you brand something as Giglio material, you have an obligation to turn it over immediately. You cannot wait for trial. So once that decision was made we had an ethical obligation, our bar cards were on the line, to disclose it. So, this decision gets made last week. We start lining up people we were going to talk to because we want to do it in a very proper, professional way, and [Detective Sergeant A] here thinks that because there is a newspaper article that we can't control gets printed on a Sunday, when we had already had lawyers and we have all kinds of witnesses at our office.

District Attorney A: We have had the District Attorney's Council involved, the Bar Association you know.

Assistant District Attorney A: Yeah, we got plenty of witnesses to support our position.

District Attorney A: I wanted it, I had the tape cleaned up. We had it transcribed. You know what I'm saying. I wanted to dot every I and cross every T. Did I drag my feet? I absolutely did and that's my fault. But I would do the same again and make sure I've got everything and make sure you got it all before you come out on something like this. Because it is that serious so you're right I wanted it transcribed. I wanted it cleaned up. I wanted to make sure from top to bottom.

Detective Sergeant A: You're supposed to report it immediately and it's been 18 months?

District Attorney A: We didn't know about it.

Detective Sergeant A: You said . . . no, he just said that the attorney immediately said right off the bat that there is a problem.

District Attorney A: She came to me and told me.

Detective Sergeant A: So it's that big of an issue but it's 18 months later.

District Attorney A: You know and that is my fault.

Detective Sergeant A: I'm just saying which one is it?

District Attorney A: Because, she came to me and told me . . .

Detective Sergeant A: If it's that much of a problem you have let him testify how many times since then?

Assistant District Attorney A: Hey, for one thing you need to treat this office with just a hair bit more respect.

Detective Sergeant A: She came in here yelling at me, [Assistant District Attorney A]. I have never even talked to you.

Assistant District Attorney A: I know.

Detective Sergeant A: OK? My deal with [District Attorney A] is because she is mad because I posted something on Facebook but she was perfectly fine with it when I backed her 100%.

Assistant District Attorney A: Sergeant . . . let, let, let me . . .

Detective Sergeant A: No, which one is it. Is she mad at me because it was okay back then but it's not okay now?

Assistant District Attorney A: No I think the problem we got with you at this point and time Sergeant is the fact that you have been expressing some concerns about the office that we know for a fact you have been getting straight from [Detective A]. You had a problem with me months ago that you expressed to my office and we have never met.

Detective Sergeant A: So does the Highway Patrol. So does everybody in Vinita.

Assistant District Attorney A: Yeah everybody in Vinita. You want to line them up as witnesses right now, Sergeant?

Detective Sergeant A: I'm just saying, OHP pulled out for a while didn't they?

Assistant District Attorney A: Gee man, your information sucks.

Detective Sergeant A: It doesn't matter [District Attorney A], the point is that I was off duty and I can post what I want.

Lair: That's true.

Nichols: OK. Guys you have come over here and brought this to my attention. Give me a little opportunity now to . . . and I'll get back and visit with you.

District Attorney A: Absolutely. Thank you.

Chief Nichols described District Attorney A's demeanor during their meeting as upset, and Detective Sergeant A described her as being angry. Chief Nichols testified the Pryor Police

Department has no formal policies regarding posts or comments made by its employees on social media. District Attorney A stated she did not consider her meeting with Detective Sergeant A and Chief Nichols to constitute filing of a formal administrative complaint, and Chief Nichols stated he did not consider it as an administrative complaint. As a result, no disciplinary action was taken against Detective Sergeant A.[51]

As mentioned above, the Multicounty Grand Jury strenuously disapproves of District Attorney A's conduct during this episode with Detective Sergeant A and the Pryor Police Department. By her own testimony and public statements, District Attorney A considers herself the chief law enforcement officer of Rogers County. Despite this estimation, District Attorney A has refused, since taking office, to assume the mantle of principled leadership. Indeed, when Detective Sergeant A campaigned for District Attorney A, or lobbied for the Fraternal Order of Police to endorse her, District Attorney A made no critique of Detective Sergeant A's public opinions on the position of district attorney. Detective Sergeant A's discourse, conducted on his off-duty time as a private citizen, only became suspect when his support shifted away from her. Thus, while District Attorney A accepted, fostered, and promoted political discourse among law enforcement officials in Rogers County that benefitted her, she also took active, determined steps to stamp out discourse by police officers, even in their off-duty hours, that criticized her job performance. District Attorney A's actions lack the level of professionalism district attorneys and other elected officials should aspire to attain.

[51] Chief Nichols indicated administrative complaints against officers employed with the Pryor Police Department can be made either verbally or through a written formal complaint. Normally, administrative complaints are sent first to the police officer's supervisor, and are then forwarded to Chief Nichols if they are not resolved.

FINDINGS AS TO ALLEGATION 14(E):

The Multicounty Grand Jury has heard limited evidence on this issue, as it is the subject of pending Equal Employment Opportunity Commission (EEOC) litigation. The Multicounty Grand Jury reserves the right to review this allegation at a later date should the EEOC litigation result in findings of wrongdoing by any of the parties.

FINDINGS AS TO ALLEGATION 14(F):

The Multicounty Grand Jury finds that on or about March 7, 2013, District Attorney A provided the name and telephone number of Witness B, the father of two juvenile rape victims living in Rogers County, to Tulsa World reporter Rhett Morgan. The evidence does not show, however, that Witness B wished to remain anonymous. Indeed, prior to District Attorney A releasing Witness B's contact information, Witness B voluntarily contacted multiple media outlets to express his public displeasure over the conduct of his children's case by the Rogers County District Attorney's Office. Similarly, the Multicounty Grand Jury finds no probable cause to believe the contact information released by District Attorney A to the media was part of a juvenile court record. *See* 10 O.S. § 1-6-102. Thus, although the Multicounty Grand Jury finds District Attorney A's release of said information to the media without Witness B's consent was both improper and unprofessional, the Multicounty Grand Jury does not find probable cause to believe said release constituted a criminal violation pursuant to Title 10 O.S. § 1-6-107. Furthermore, the Multicounty Grand Jury finds no corroborating evidence that the above-referenced act was done with either bad or evil intent, in a manner contrary to a known duty, or with the inexcusable recklessness necessary to support an accusation for removal pursuant to Title 22 O.S. § 1181.

On or about February 2013, Witness B's spouse found his daughter E.J., age 8, performing certain sexual acts on juvenile male suspect S.H., age 13. The Rogers County Sheriff's Office was called, and an investigation was initiated. The investigation revealed that both E.J. and Witness B's other daughter, B.J., age 10, had performed various sexual acts on S.H. and his brother K.H., age 11, for a period of four to six months prior to discovery.[52] Thereafter, S.H. was placed in juvenile detention, and a more thorough investigation was conducted by the Rogers County Sheriff's Office.

The parties dispute the status of the case following its presentation to the Rogers County District Attorney's Office. Witness B testified he was advised by the Rogers County Sheriff's Office on February 13, 2013, that charges had been declined by the Rogers County District Attorney's Office because the sexual acts were consensual between the parties. Assistant District Attorney C, the assigned prosecutor, disputes any declination of charges, stating rather:

> When the case came up for filing decision -- or a charging decision was made based on the evidence presented under oath at the show cause hearing, I was made aware at the initial appearance by the Office of Juvenile Affairs there were other individuals, other juveniles involved.[53] I requested for these other juveniles to be detained, and was instructed by OJA that law enforcement did not want these individuals detained. After that initial appearance, I had the officer, the investigating officer, come to my office, and he explained to me why he did not want them detained, and provided a copy of the full report, which was not available up until that point in time . . . he encouraged me to review the report. I think the issue of voluntariness of all parties involved was brought up, but I don't recall the exact statement . . . . After reviewing the report, there was some issues regarding disclosures made by one of the children. But ultimately once I had a chance to review the entire report, I contacted the investigator and contacted DHS

[52] To protect the victims' privacy as much as possible in this highly publicized matter, the Multicounty Grand Jury will refrain from discussing intricate details of this case. Even so, the Multicounty Grand Jury believes a broad overview of the case is necessary to provide a context for subsequent events as alleged in the Grand Jury petition.

[53] Assistant District Attorney C testified there were approximately five juveniles involved, three girls and two boys, ranging from ages eight to thirteen, who had performed various sex acts on each other.

> . . . . I certainly believed something needed to be done, but whether it was best handled through the juvenile delinquent proceedings or DHS was where I had the concerns.

As of February 13, 2013, S.H. was released from juvenile detention, and Witness B believed that all charges against both S.H. and K.H. had been declined by the Rogers County District Attorney's Office. Witness B was outraged at this perceived decision, and that same day, he contacted the Claremore Progress newspaper and both the Channel 6 and Channel 23 news stations.

On February 14, 2013, Witness B went to the Rogers County District Attorney's Office to discuss his daughters' case and met with Assistant District Attorney A and District Attorney Investigator A. Based on Witness B's account, the discussion appears to have been very heated, ending in an agreement that Witness B would allow the Rogers County District Attorney's Office additional time for investigation and refrain from speaking to the media while District Attorney A's Office was reviewing the case.

During the period from February 14, 2013, to March 5, 2013, Witness B contacted both the Rogers County Sheriff's Office and the Rogers County District Attorney's Office to report that one of his daughters had been harassed by J.H., a juvenile male relative of suspects S.H. and K.H., while riding the school bus. [54] Witness B testified he was advised by the Rogers County District Attorney's Office there was nothing that could be done. Witness B testified he contacted the Rogers County District Attorney's Office a second time on approximately March 4 or 5, 2013, after one of the juvenile suspects, while standing across the street from one of his daughters waiting for the school bus, purposefully dropped his pants. The Rogers County District Attorney's Office made a report of the incident, and District Attorney Investigator A from the

[54] The juvenile male relative allegedly placed his hands on her and called her a rapist. A report of the incident was completed by the Rogers County Sheriff's Office.

Rogers County District Attorney's Office returned Witness B's call and advised there was nothing that could be done. Witness B describes his reaction as follows: "I went through the ceiling. I had had enough. For 30 days my daughters went through hell of being harassed, hollered at, called rapists, lying, and I just got my belly full and I went back to the media."

On March 5, Witness B spoke again with the Claremore Progress, the Channel 6 news, and the Channel 23 news. That same day, Witness B was informed that the Rogers County District Attorney's Office was filing two charges of First Degree Rape, two counts of Forcible Sodomy, and one charge of Incest against juveniles S.H. and K.H., in addition to one charge of Witness Intimidation against juvenile J.H.

On or about March 5 or 6, Witness B received a call on his cell phone from reporter Rhett Morgan of the Tulsa World newspaper asking if Witness B wanted to give a statement, which Witness B provided at that time. After speaking with Mr. Morgan, Witness B realized the Tulsa World was not one of the media outlets he had contacted, and he called Mr. Morgan back to learn how he had received Witness B's cell phone number.[55] Mr. Morgan advised that he had received Witness B's cell phone number from District Attorney A's office. Both Assistant District Attorney C and District Attorney A confirmed District Attorney A provided Witness B's telephone number to Rhett Morgan. District Attorney A testified as follows:

> [Witness B] went to every media outlet. And when I got a call and I, you know, was saying, look, we can't talk about this; even though he was like, we refuse to prosecute sex crimes. And he's just stating all these misrepresentations, I'm keeping it, you know, we really can't talk about this, we're requesting further investigation. And when Rhett Morgan called me, I told him, you know, look, I can't talk about it, but it is under investigation. And he said, I wonder what, you know, [Witness B's] thoughts are. I'm like, I don't know. I can give you his number. And so I did. I gave Rhett Morgan his number. [Witness B] is not a witness. He wasn't in the police report. I actually had it because it was on a message pad. So for him to remain anonymous -- he was already on at least two to three television stations and it had already been to at least one newspaper. And I

[55] Witness B stated his cell phone was registered under his brother's name, not his own.

> didn't do it maliciously. I have been through with the media where they don't call me for my side and they print something that doesn't tell the whole story. And I just figured [Witness B] wanted to talk to them. And [Witness B] admitted Rhett Morgan called him. He called him back, and, you know, again berated my office. So -- but he didn't like that. So, yes, I gave out his number.

Witness B stated he did not give the Rogers County District Attorney's Office permission to release his phone number to any third parties. While acknowledging he had spoken to several media outlets prior to District Attorney A releasing his information, Witness B testified he was upset by District Attorney A's actions. He explained:

> [W]hat upset me about it is the fact the District Attorney is supposed to be there to protect my children from what they've been going through or what they've went through. I gave them my information under the confidence that it wouldn't be turned loose. Granted, yes, I had talked to other reporters. That wasn't my issue. My issue was that my children are juveniles too, and she released my information to a reporter that I didn't request to have my information.

Assistant District Attorney C testified the Rogers County District Attorney's office does not customarily give out contact information for family members of victims, but Assistant District Attorney B advised there is no formal written policy as to release of said information from files. Witness B filed a complaint with the Oklahoma Bar Association, a complaint with the Oklahoma Attorney General's Office, and a police report with the Rogers County Sheriff's Office as a result of District Attorney A's release of his cell phone number.[56] As a result of Witness B's bar complaint, the District 12 District Attorney's Office subsequently recused from this matter, and the Oklahoma Office of the Attorney General reassigned the case to the District 14 District Attorney's Office.

As detailed above, it is undisputed that District Attorney A released the name and telephone number of Witness B to Tulsa World reporter Rhett Morgan, but there is no evidence

[56] Witness B filed multiple bar complaints and complaints with the Oklahoma Attorney General's office dealing with both the handling of his daughter's cases and the release of his contact information.

to suggest Witness B wished to remain anonymous. District Attorney A testified she obtained Witness B's contact information from a message pad, not juvenile court records, and the Multicounty Grand Jury has heard no evidence contradicting this assertion. Thus, the Multicounty Grand Jury does not find probable cause to believe District Attorney A's actions constituted a criminal violation pursuant to Title 10 O.S. § 1-6-107. Additionally, the evidence does not suggest District Attorney A released said information to punish Witness B, or with a bad or evil intent against him, or in a manner that was contrary to a known duty or inexcusably reckless. Indeed, District Attorney A knew or should have known that release of this information would likely result in the publication of additional critical statements by Witness B against her office. Thus, the Multicounty Grand Jury does not find said act sufficient to support an accusation for removal pursuant to Title 22 O.S. § 1181.

That being said, the Multicounty Grand Jury does find the release of Witness B's contact information to the media by District Attorney A without his consent to be inappropriate. Although Witness B had previously spoken with several media outlets, it was Witness B's right to decide which media outlets to contact, not the District Attorney's Office. In similar fashion, it was not appropriate for District Attorney A to release information provided to her as part of a private telephone message from a victim's family member. Ultimately, however, this issue, and many of the others raised by Witness B are victim service issues outside the scope of this Multicounty Grand Jury, and are best addressed by the citizens of Rogers County.[57]

---

[57] Witness B noted he was significantly happier since his case had been reassigned to the District 14 District Attorney's Office, stating:

> What I can say about the District Attorney in Muskogee County is the man showed me that my girls mattered. He made the effort to come down and make sure they knew what was going to take place if they had to testify. He took them to a courtroom, showed them how things would work and what would happen. He

FINDINGS AS TO ALLEGATION 14(G):

The Multicounty Grand Jury finds insufficient evidence to bring an accusation for removal from office against District Attorney A pursuant to Title 22 O.S. § 1181 based on the allegation that District Attorney A administered over violations of Title 21 O.S. § 142A-2(A)(1) by regularly causing victims and witnesses to be unnecessarily subpoenaed to court.

During his testimony before the Multicounty Grand Jury, Detective A testified that less than 2% of subpoenas issued to Claremore police officers result in a police officer testifying in court, with only four Claremore police officers having testified out of a total of 212 police officers subpoenaed during an eight-month period. Detective A also provided a six-page list of Claremore police officers subpoenaed to the Rogers County District Court from November 2012 to June 2013.[58] District Attorney A denies her office issues subpoenas to individuals unnecessarily, stating:

> I just think this is, again, a grasp of [Detective A] just to slander me and to get his mission done. It's absolutely ridiculous. I don't -- you know, again, I hope you understand his mentality; that he believes that we have over-subpoenaed people because he is a lawyer in his own mind, and he knows the witnesses we need to prosecute our cases.

Title 21 O.S. § 142A-2(1) of the Oklahoma Statutes provides, "[t]he district attorney's office shall inform the victims and witnesses of crimes of the following rights: (1) To be notified that a court proceeding to which a victim or witness has been subpoenaed will or will not go on as scheduled, in order to save the person an unnecessary trip to court." According to the testimony of District Attorney A, the Rogers County District Attorney's Office has filed over 4,000 criminal cases since she took office in 2011.

> showed me that the law does work. I didn't see diddly out of my own county of any support of my girls or what happened to them.

[58] This list was admitted as Grand Jury Exhibit #2.

As Detective A noted, "sometimes you can't help the fact that you waste your trip to court. That's the nature of the beast." Not every subpoenaed witness will actually testify in court, and it would be unreasonable to hold a district attorney's office to that standard. But Detective A is also correct that when police officers are subpoenaed unnecessarily, the resources of their law enforcement unit are being squandered. Ultimately, allegations of this type are simply outside the scope of this grand jury's purpose, which is the investigation of violations of law. However, this allegation is further evidence of the lack of communication and dysfunction between the District Attorney's Office and law enforcement within Rogers County. The Grand Jury encourages all district attorneys to make an effort to timely notify subpoenaed witnesses, including law enforcement, if their testimony is no longer needed.

FINDINGS AS TO ALLEGATION 14(H):

The Multicounty Grand Jury finds insufficient evidence to bring an accusation for removal against District Attorney A pursuant to Title 22 O.S. § 1181 based on the allegation District Attorney A presided over violations of Title 21 O.S. § 142A-2(A)(17) by regularly allowing sex crimes and other prosecutions to be delayed for years.

During his testimony before this Grand Jury, Detective A provided a list of eighteen cases filed between 2009 and 2011 which have remained pending for a significant period of time.[59] Title 21 O.S. § 142A-2(17) of the Oklahoma Statutes provides in part,

> The district attorney's office shall inform the victims and witnesses of crimes of the following rights:
>
> To a speedy disposition of the charges free from unwarranted delay caused by or at the behest of the defendant or minor. In determining a date for any criminal trial or other important criminal or juvenile justice hearing, the court shall consider the interests of the victim of a crime to a speedy resolution of the charges under the same standards that govern the right to a speedy trial for a defendant or a minor. In ruling on any motion

[59] This document has been admitted as Grand Jury Exhibit #3.

> presented on behalf of a defendant or minor to continue a previously established trial or other important criminal or juvenile justice hearing, the court shall inquire into the circumstances requiring the delay and consider the interests of the victim of a crime to a speedy resolution of the case. If a continuance is granted, the court shall enter into the record the specific reason for the continuance and the procedures that have been taken to avoid further delays.

There has been no allegation the Rogers County failed to notify victims of their rights pursuant to Title 21 O.S. § 142A-2(17). Rather, the allegations revolve around the actual delay of these cases.

As previously stated, the Multicounty Grand Jury is invested by statute with the power to investigate violations of law. The aforementioned allegations are not criminal in nature, nor do they support an accusation for removal pursuant to Title 21 O.S. § 1181. The Grand Jury does not have the resources to review the approximately 4,000 criminal cases filed during District Attorney A's administration and compare the timeliness of their disposition with those in other jurisdictions, nor is it appropriate for the Grand Jury to do so. Furthermore, as alluded to in the Oklahoma Victim's Rights Act, it is ultimately the judiciary who grants or denies continuances, regardless of the wishes of the parties, and it is the judiciary that has the final responsibility to prevent excessive delays. Fundamentally, this allegation goes to whether the duties of district attorney are being effectively carried out by the current office holder. That judgment is best left to the people of Rogers County.

CONCLUSION

Once Rogers County Grand Jury Petition GJ-13-1 had been dismissed, circumstances required an independent third party to review the cross allegations in Rogers County. The Multicounty Grand Jury has been able to fulfill that role and conduct an independent review in an attempt to restore the credibility of, and confidence in, the Rogers County criminal justice system. The Multicounty Grand Jury, composed of citizens from across the State of Oklahoma,

has worked to conscientiously and thoroughly investigate all the allegations raised in Rogers County Grand Jury Petition GJ-13-1 and the additional allegations raised by District Attorney A.

While the Multicounty Grand Jury does not find probable cause to support the return of an Indictment or accusation for removal against District Attorney A for the allegations addressed in this Interim Report, a review of the testimony and other evidence gathered during the course of this investigation has revealed an alarming lack of respect, civility, and overall professionalism in the relationship between District Attorney A and the law enforcement agencies within Rogers County. Although both the district attorney and law enforcement officers bear responsibility for the current state of this relationship, District Attorney A has elevated tensions by choosing, at certain times, to aggressively and personally confront members of law enforcement critical of District Attorney A. The amount of dysfunction in Rogers County between law enforcement and District Attorney A is harmful to the ability of citizens to have confidence in the administration of the criminal justice system. The Multicounty Grand Jury encourages District Attorney A to rise above the political fray and demonstrate statesmanship.

Also concerning are allegations concerning the treatment of victims of crime by the Office of District Attorney A. The State of Oklahoma has been at the forefront of recognizing and guaranteeing the rights for victims of crime. Article 2, Section 34 of the Oklahoma Constitution specifically contains a victim's bill of rights which ensures that "victims are treated with fairness, respect and dignity . . . ." There is sufficient evidence to suggest improvement in the conduct of District Attorney A's victim services, especially as they relate to child victims. Although the Oklahoma Victim's Rights Act does not contain any penalty for violation of its provisions, these provisions should be respected and followed. District Attorneys across the state should review the best practices outlined in this report and ensure their assistants are

properly trained. Every district attorney should be vigilant in the protection of the constitutional rights of victims, particularly child victims, under the Oklahoma Constitution they have sworn to uphold.

The broken relationship between District Attorney A and law enforcement officials of Rogers County, when considered alongside the concerns raised by crime victims in Rogers County, reflects a pattern of grave malfunction within the criminal justice system in Rogers County. It is unfortunate that this dysfunction was allowed to persist and expand in degree so acutely that the citizens of Rogers County felt compelled to circulate and sign a petition demanding action. We are hopeful that this Interim Report will restore some sense of professionalism and credibility to the criminal justice system in Rogers County. The citizens of Rogers County deserve better from their public and elected officials.

****

The time allotted this session did not permit the Grand Jury to complete its investigation of the matters heard. The Grand Jury will recess at this time to its next scheduled session on June 24-26, 2014, 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.

Respectfully submitted,

FOREMAN
Fourteenth Multicounty Grand Jury of Oklahoma