NO. D1DC14-100139

STATE OF TEXAS	§	IN THE DISTRICT COURT
	§	
VS.	§	OF TRAVIS COUNTY
	§	
JAMES RICHARD "RICK" PERRY	§	390TH JUDICIAL DISTRICT

MOTION FOR DISCLOSURE OF GRAND JURY TESTIMONY AND/OR FOR *IN CAMERA* INSPECTION OF GRAND JURY TESTIMONY AND EXHIBITS AND PRODUCTION OF MATERIALS RELATING TO GOVERNOR PERRY'S APPLICATION FOR WRIT OF HABEAS CORPUS AND FOR ALL EXCULPATORY AND IMPEACHING MATERIALS

TO THE HONORABLE JUDGE OF SAID COURT:

Comes now, JAMES RICHARD "RICK" PERRY, by and through his counsel of record, and would show this Court the following:

I.

Overview And Requested Relief

On October 10, 2014, Governor Perry filed an opposed motion for immediate transcription of grand jury testimony. Mr. McCrum has not yet responded to that motion and is required to do so before October 31, 2014. The instant motion advances additional legal authorities — Article 20.02(d) of the Texas Code of Criminal Procedure, Rule 615(f)(3) of the Texas Rules of Evidence, the Fifth, Sixth and Fourteenth Amendments to the Constitution of the United States, and Article I, Section 19 of the Texas Constitution — that support Governor Perry's previous request for transcription and also justify the additional relief requested in this motion.

Accordingly, Governor Perry again requests that the Court order Mr. McCrum to immediately have the grand jury testimony transcribed and further requests: (1) that the transcripts be produced to Governor Perry's counsel pursuant to Article 20.02 of the Texas Code of Criminal Procedure; or (2) that the transcripts be delivered to the Court and included in the record under seal so that the Court

Court may inspect them *in camera* for two purposes: (a) to ascertain whether evidence protected by Texas' Speech or Debate Clause was introduced before the grand jury; and (b) to ascertain whether the grand jury testimony contains exculpatory and/or impeaching materials. Grand jury testimony reflecting either of these must be ordered produced to Governor Perry under the Texas and Federal Constitutions and Article 39.14 of the Texas Code of Criminal Procedure. Alternatively, Governor Perry requests that any grand jury testimony not produced to the defense at this time be: (1) sealed and included in the record to facilitate appellate review; and (2) made available to Governor Perry in the future as mandated by Rule 615(f)(3) of the Texas Rules of Evidence.

II.

The Code Of Criminal Procedure Authorizes Production Of Grand Jury Testimony

Article 20.02(d) of the Texas Code of Criminal Procedure specifically authorizes this Court to order disclosure of grand jury testimony to a defendant. It states that:

> The defendant may petition a court to order the disclosure of information otherwise made secret by this article or the disclosure of a recording or typewritten transcription under Article 20.012 as a matter preliminary to or in connection with a judicial proceeding. The Court may order disclosure of the information, recording, or transcription on a showing by the defendant of a particularized need.

The case law is clear that the production of grand jury testimony lies with the sound discretion of the trial court and may be discovered where "some special reason" exists or upon a showing of a "particularized need" so as to outweigh the traditional policy of grand jury secrecy.[1]

Texas case law is devoid of any extended analysis addressing what facts, assertions and/or

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[1] *McManus v. State*, 591 S.W.2d 505, 523 (Tex. Crim. App. 1980); *Martin v. State*, 577 S.W.2d 490 (Tex. Crim. App. 1979); Torres v. State, 493 S.W. 2d 874, 876 (Tex. Crim. App. 1973).

legal positions actually constitute a particularized need.[2] However, in *United States v. Procter & Gamble Company*, 356 U.S. 677, 683 (1958), the Supreme Court described as "cases of particularized need" justifying disclosure of grand jury testimony "the use of the grand jury transcript at the trial to impeach a witness, to refresh his recollection, to test his credibility and the like."

Governor Perry asserts that he has demonstrated a particularized need far beyond these examples in his application for writ of habeas corpus, filed on August 25, 2014, and in his motion for immediate transcription of grand jury testimony, filed on October 10, 2014. Considered collectively, those documents demonstrate a clear factual and legal basis establishing a "special reason" and "particularized need" for the grand jury transcripts, because grand jury testimony reflecting violations of Texas' Speech or Debate Clause should be made available to this Court (and any appellate court). The full extent of the violations underlying the indictment, as alleged in Governor Perry's application for writ of habeas corpus, are essential to a vindication of his rights under the Speech or Debate Clause. The grand jury testimony and exhibits introduced before the grand jury undoubtedly will directly relate to and support Governor Perry's legal assertions in his application for writ of habeas corpus. Importantly, there is no longer any reason to protect the secrecy of the grand jury, as the grand jury expired on September 30, 2014, after returning the instant

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[2] MCCORMICK, BLACKWELL & BLACKWELL, 7 TEXAS PRACTICE § 58.16 (11th ed. 2014) — authored by former Presiding Judge of the Texas Court of Criminal Appeals Michael McCormick, now deceased former State District Judge Tom Blackwell, and Betty Blackwell — notes that after the action of a grand jury, the need for grand jury secrecy has dissipated. They also provide a list of reasons suggesting a "particularized need," including the following: (1) "The arrest and search of the Defendant was illegal;" (2) "The State's evidence was illegally obtained;" (3) "The identification procedure was impermissibly suggestive;" (4) "Statements of the Defendant were not legally obtained;" (5) "Entrapment was employed by law enforcement agents;" (6) "Exculpatory evidence inconsistent with Defendant's guilt;" (7) "Mitigating evidence relative to the offense and punishment;" (8) "Immunity or other agreements with State's witnesses;" and (9) "Specify other reasons."

indictment.

Governor Perry's showing of a particularized need is far stronger than the particularized need recognized by the Supreme Court in *Procter & Gamble Company*. The need to provide evidence to this Court and/or an appellate court that vindicate his Speech or Debate Clause claims is every bit as "particularized" as the need to impeach a witness, refresh a witness' recollection, and to test a witness's credibility.[3] Governor Perry needs access to this testimony in order to promptly vindicate his constitutionally protected rights to the fullest extent possible, as explained more fully by the arguments contained in Sections III and IV of this motion.

While Governor Perry believes the entirety of the grand jury testimony should be made available to him, it certainly must be made available for this Court to review in connection with his application for writ of habeas corpus and/or for inclusion in the record of any appeal relating thereto. Governor Perry is entitled to a full and fair judicial consideration of his Speech or Debate Clause claims which can only be accomplished by an inspection of all of the grand jury testimony as well as the exhibits introduced before the grand jury.[4] The concept of grand jury secrecy — particularly given the expiration of the grand jury and the return of the instant indictment — cannot prevail over the right to a full and fair consideration of Governor Perry's constitutional claims that he should not

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[3] Vindication of Governor Perry's constitutional right — not to be indicted and prosecuted based on evidence improperly considered by the grand jury under the Speech or Debate Clause — is every bit as "particularized" as the examples suggested by McCormick, Blackwell and Blackwell.

[4] Admittedly, Governor Perry believes that this Court should summarily grant him relief under his application as to Count I because there can be no question that the State cannot prove a violation of Section 39.02(a)(2) of the Texas Penal Code without introducing evidence of Governor Perry's legislative act of vetoing the line item appropriation for the Public Integrity Unit. Nevertheless, as explained in his August 25, 2014 application and again in his October 10, 2014 motion for immediate transcription of the grand jury testimony, the extent to which evidence protected by the Speech or Debate Clause was introduced before the grand jury can justify a dismissal of the entire indictment.

be subjected to an indictment or trial based upon violations of Texas' Speech or Debate Clause. The ability of any defendant to be given a full and fair opportunity to prove a violation of his constitutional rights is obviously important to the public administration of justice.

III.

Texas And Federal Law Mandate In Camera Inspection And Production Of Exculpatory And Impeaching Evidence Within The Grand Jury Testimony

Production of the grand jury testimony is also essential to ensure that Mr. McCrum timely complies with his obligation to ensure that all exculpatory and impeaching evidence is provided to Governor Perry. To date, no such evidence (or discovery, for that matter) has been provided by Mr. McCrum.

> In *Brady v. Maryland*, 373 U.S. 83, 87 (1963), the Supreme Court stated:
>
> We now hold that the suppression by the prosecution of evidence favorable to the accused upon request violates due process where the evidence is material to guilt or to punishment irrespective of the good faith or bad faith of the prosecutor.

Thus, a *Brady* violation occurs when the prosecution fails to disclose evidence materially favorable to the accused.[5]

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[5] Evidence is "material" if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different. A "reasonable probability" is a probability sufficient to undermine the confidence in the outcome of the trial. Importantly, a "showing of materiality does not require demonstration by a preponderance that disclosure of the suppressed evidence would have resulted ultimately in the defendant's acquittal." *Kyles v. Whitley,* 514 U.S. 419, 434 (1995). Rather, a reversal of a conviction is required upon a "showing that the favorable evidence could reasonably be taken to put the whole case in such a different light as to undermine confidence in the verdict" or, stated differently, where the citizen has not been afforded a fair trial. In other words,

> The question is not whether the defendant would more likely than not have received a different verdict with the evidence, but whether in its absence he received a fair trial, understood as a trial resulting in a verdict worthy of confidence.

Kyles, 514 U.S. at 434-35.

As developed by subsequent cases,[6] there is no question that the Supreme Court had clearly established the federal constitutional right to certain discovery. Additionally, the Court of Criminal Appeals has interpreted the due course of law clause contained within Article I, Section 19 of the Texas Constitution to give an accused the same rights he or she enjoys under *Brady* and its progeny. *See Ex parte Adams,* 768 S.W.2d 281, 293 (Tex. Crim. App. 1989).

These federal cases, as well as Texas cases interpreting them,[7] make clear that these constitutional rights include evidence that is favorable to the defendant. "Favorable" evidence is any evidence that, if disclosed and used effectively, may make the difference between conviction and acquittal.[8] Favorable evidence includes both exculpatory and impeachment evidence.[9] Evidence that is exculpatory is evidence which tends to justify, excuse, or clear the defendant from alleged fault or guilt.[10] Impeachment evidence is that evidence which is offered to dispute, disparage, deny, or contradict other evidence.[11]

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[6] *See Giles v. Maryland*, 386 U.S. 66 (1967), *Giglio v. United States*, 405 U.S. 150 (1972), *United States v. Agurs*, 427 U.S. 97 (1976), *United States v. Bagley*, 473 U.S. 667 (1985), *Kyles v. Whitley*, 514 U.S. 419 (1995), *Banks v. Dretke*, 540 U.S. 668 (2004), and *Youngblood v. West Virginia*, 547 U.S. 867 (2006). Since the Supreme Court's decision in *United States v. Agurs,* 427 U.S. at 110-111, a request for *Brady* material is not required. *See United States Bagley,* 473 U.S. 667, 682 (1985).

[7] *Little v. State*, 991 S.W.2d 864, 866 (Tex. Crim. App. 1999); *Thomas v. State*, 841 S.W.2d 399, 404 (Tex. Crim. App. 1992).

[8] *Little v. State*, 991 S.W.2d at 866; *Thomas v. State*, 841 S.W.2d at 404 (citing *Bagley*, 473 U.S. at 676).

[9] *Bagley*, 473 U.S. at 676; *Kyles*, 514 U.S. at 438; *Youngblood*, 547 U.S. at 869; *Little*, 991 S.W.2d at 866; *Ex parte Richardson*, 70 S.W.3d 865, 872 (Tex. Crim. App. 2002); *Ex parte Mitchell*, 853 S.W.2d 1, 4 (Tex. Crim. App. 1993).

[10] *Thomas*, 841 S.W.2d at 404; *Pena v. State*, 353 S.W.3d 797, 809 (Tex. Crim. App. 2011).

[11] *Thomas v. State*, 841 S.W.2d at 404; *Pena v. State*, 353 S.W.3d at 811-812.

Thus, a prosecutor has an affirmative, "unequivocally clear"[12] and ongoing duty — that attaches when the information comes into the possession of the prosecution, not when it is requested[13] — to disclose exculpatory and impeachment evidence favorable to an accused and material to his guilt or punishment under the due process clause of the Fourteenth Amendment and Article I, Section 19 of the Texas Constitution.

This affirmative duty is also contained in Article 39.14 of the Texas Code of Criminal Procedure, which states that "the state shall disclose to the defendant any exculpatory, impeachment, or mitigating document, item or information in the possession, custody, or control of the state that tends to negate the guilt of the defendant or would tend to reduce the punishment for the offense charged." A prosecutor, when unsure of whether to disclose evidence, should submit the evidence to the trial court for an *in camera* inspection, *United States v. Agurs*, 427 U.S. 97, 106 (1976); *Thomas v. State*, 841 S.W.2d 399, 407 (Tex. Crim. App. 1992).[14]

The Supreme Court has held that the defendant's right to exculpatory information mandates *in camera* review. *See Pennsylvania v. Ritchie,* 480 U.S. 39, 59 (1987). In *Pennsylvania v. Ritchie*, the Supreme Court held that an accused child sexual abuser had a right under the due process clause of the Fourteenth Amendment to have privileged records of a child abuse agency turned over to the

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[12] *Lagrone v. State*, 942 S.W.2d 602, 615 (Tex. Crim. App. 1997)(concluding that affirmative duty is "unequivocally clear" under *Brady v. Maryland*, 373 U.S. 83 (1963)).

[13] *Thomas v. State*, 841 S.W.2d at 407.

[14] Governor Perry would prefer his counsel to inspect these materials, as opposed to burden the Court, because as noted by the Supreme Court, an *in camera* review by a trial judge is not only burdensome, but an examination for exculpatory and impeaching materials is more reliably determined by defense counsel. *See Dennis v. United States*, 384 U.S. 855, 875 (1966) (noting that an inspection of grand jury materials for impeachment material "can properly and effectively be made only by an advocate").

trial court for *in camera* review for exculpatory information. The Supreme Court held that a judicial *in camera* inspection of privileged records strikes a constitutional balance between the defendant's and the State's competing interests. *Id.* at 58-61.

The Court of Criminal Appeals has also determined that there is a due process right to have the trial court examine the requested evidence *in camera* and then order disclosure of any appropriate information.[15] At most, a defendant must only make a preliminary showing of a "reasonable" or "plausible" probability that the information at issue contains evidence to which he is entitled under *Brady*.[16] *Thomas* detailed the procedure to be employed, as follows:

> [The] information should be inspected by the trial court in camera. Neither the attorneys for the State nor defendant should be present. It will be the responsibility of the court to determine if the produced information contains *Brady* evidence. The court must, in its sound discretion, take steps to ensure that, to the extent possible, the information remains confidential. If the information is deemed material at the time it is inspected or at any future stage of the trial, it must be released to the defendant.... At the conclusion of trial, the information shall be sealed and made part of the record.

Thomas, 841 S.W.2d at 114.[17]

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[15] *Thomas,* 841 S.W.2d at 113 (relying heavily upon *Ritchie,* 480 U.S. at 58 n.15).

[16] *See Ritchie,* 480 U.S. at 58 n. 15; 42 GEORGE E. DIX & JOHN M. SCHMOLESKY, TEXAS PRACTICE: CRIMINAL PRACTICE AND PROCEDURE § 27:30 (3d ed. 2014).

[17] The same procedure is utilized in federal court. For example, in *United States v. Muldering*, 120 F.3d 534, 540 (5th Cir. 1997), the defendant filed a motion to dismiss for preindictment delay and sought discovery of the government's documents which would reflect whether the government had intentionally engaged in preindictment delay with an eye towards gaining a tactical advantage. According to the Fifth Circuit, "the district court conducted an *in camera*, ex parte inspection of government documents and found meritless Mulderig's claim that the government's preindictment delay was intentionally aimed at obtaining a tactical advantage over Mulderig. The district court thereafter filed the government documents under seal." *Id.* The Fifth Circuit noted that "[w]e have held that `an in camera inspection by a district judge is a reasonable procedure and is protective of the defendant's rights.'" *United States v. Killian,* 639 F.2d 206, 210 (5th Cir. 1981), *Brunk v. United States*, 451 U.S. 1021, 101 S.Ct. 3014, 69 L.Ed. 2d 394 (1981). Moreover, a district court has the right after *in camera* inspection to withhold evidence which is irrelevant or not exculpatory. *Id.* The

Even when the defendant cannot make the required plausible showing, a trial court nevertheless has the discretion to engage in an *in camera* inspection. Indeed, as noted by Professor Dix, "[e]ven if a defendant does not have a right to *in camera* inspection under *Thomas,* a trial court has broad discretion to conduct an inspection anyway and order the material produced for it."[18] In light of the foregoing, Governor Perry requests this Court to enter an order directing Mr. McCrum to immediately transcribe the grand jury testimony and have it delivered to counsel for Governor Perry under Section II of this motion, or, at a minimum, to the Court for an *in camera* review for exculpatory and/or impeaching evidence under this Section of this motion.

If in fact this Court does not order Mr. McCrum to produce a copy of the grand jury transcripts and exhibits to counsel for Governor Perry, but the Court elects to order Mr. McCrum to produce it to the Court for *in camera* inspection, then Governor Perry would respectfully point out that in addition to his Speech or Debate Clause claims, the following facts and legal positions should be considered by the Court in its review for exculpatory information.

First, at least one defense to both counts is the "justification" of "public duty," as contained in Section 9.21 of the Texas Penal Code. That section provides the following:

> (a) Except as qualified by Subsections (b) and (c), conduct is justified if the actor reasonably believes the conduct is required or authorized by law, by the judgment or order of a competent court or other governmental tribunal, or in the execution of legal

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Fifth Circuit went on to note hold that "[w]e have reviewed the information presented to the district court and conclude that there was no abuse of discretion." *Id.*

[18] Professor Dix cites *Gowan v. State*, 927 S.W.2d 246, 249 (Tex. App.—Fort Worth 1996, pet. ref'd)(trial court ordered *in camera* inspection of files in uncharged similar offenses to which sexual assault defendant sought access). *See also Delapaz v. State*, 228 S.W.3d 183, 213-214 (Tex. App.—Dallas 2007, no pet.) (noting that prosecutor tendered seven boxes of materials to the trial court for *in camera* review, that the trial court found no "*Brady*" information and sealed the boxes for purposes of appellate review should they be required, and that appellate court reviewed the seven boxes and upheld the trial court's determination that there was no "*Brady*" information).

process.

(b) The other sections of this chapter control when force is used against a person to protect persons (Subchapter C), to protect property (Subchapter D), for law enforcement (Subchapter E), or by virtue of a special relationship (Subchapter F).

(c) The use of deadly force is not justified under this section unless the actor reasonably believes the deadly force is specifically required by statute or unless it occurs in the lawful conduct of war. If deadly force is so justified, there is no duty to retreat before using it.

(d) The justification afforded by this section is available if the actor reasonably believes:

> (1) the court or governmental tribunal has jurisdiction or the process is lawful, even though the court or governmental tribunal lacks jurisdiction or the process is unlawful; or
>
> (2) his conduct is required or authorized to assist a public servant in the performance of his official duty, even though the servant exceeds his lawful authority.

Section 9.21 establishes a defense that the State will have to disprove beyond a reasonable doubt under Section 2.03 of the Texas Penal Code in order to secure a conviction. Accordingly, any testimony before the grand jury that reflects, directly or indirectly, Governor Perry's "public duty" defense is thus subject to production as exculpatory, including any testimony by adverse witnesses acknowledging the Governor's duty and right to veto funding, announce his intended veto, or even notify, directly or indirectly, an affected State Senator (such as Kirk Watson) or the public (given the public controversy advocating Lehmberg's resignation as the Travis District Attorney due to her egregious conduct in April 2013).

Second, at least as to Count II, this case must necessarily be based on "party liability" under Section 7.01 et seq. of the Texas Penal Code. Unless someone has committed perjury, "party liability" is the only avenue available to Mr. McCrum because Governor Perry never spoke with

and/or directly communicated with Rosemary Lehmberg. Indeed, it was the "press" which characterized the Governor's intention to veto funding for the Public Integrity Unit as a "threat," paraphrasing Senator Watson and Rich Parsons in the original press story. *See* **Exhibit 4** attached to Governor Perry's August 25, 2014 Application. In this regard, the testimony of the reporter — Mike Ward, assuming he testified before the grand jury — may be extremely exculpatory since he interfaced with Rich Parsons and Senator Watson as well as Ken Oden, as reflected by this published story that gave rise to this prosecution. Any testimony and/or evidence which reflects that Governor Perry never communicated with Lehmberg, was not aware of and/or had not intentionally or knowingly authorized any communication with Lehmberg, would be exculpatory.

Third, as to Count I, any testimony reflecting that the Governor never had actual custody and control of the money which is identified in Count I, that it would be legally impossible for him to have "misapplied" any such money, that there was no money "misapplied," or that the funds appropriated for the 2014 and 2015 fiscal budget had not yet even been collected by the Texas Comptroller would also be exculpatory. Similarly, any testimony bearing upon the alleged (although currently unidentified) "agreement" under which Governor Perry allegedly held such property could also be exculpatory if it reflected the witness's lack of confidence that it was in fact superior to the Governor's Texas Constitutional right to veto any line item appropriation.

Fourth, as to Count II, any testimony reflecting disagreement, concern and/or hesitation regarding the applicability of the exception contained in Section 36.03(c) could be exculpatory. While the indictment attempts to negate the exception of Section 36.03(c) (by virtue of the allegation that the Governor and Lehmberg were not members of the "same" governing body), witnesses questioned about this, if any, could have provided testimony that qualifies as "exculpatory." So too,

any testimony questioning and/or acknowledging that a resignation by Lehmberg would not necessarily constitute a "specific performance" of one of her "official duties." Finally, the version of events as related by Senator Watson, and his conversations with Ken Armbrister, Rich Parsons, Mike Ward (the reporter) and/or Lehmberg may contain exculpatory information as to whether there was a "threat" or merely a statement of intended veto.

The foregoing is proffered to attempt to assist the Court in an *in camera* inspection and is not meant to be a dispositive list of the types of exculpatory information and/or impeaching information that may be present in the grand jury transcripts and/or exhibits.

IV.

Rule 615(f)(3) Of The Texas Rules Of Evidence Requires The Transcription Of The Grand Jury Testimony So It Can Be Produced At Any Trial

Even if this Court does not grant relief under Section II or III of this motion, transcription of the grand jury testimony is nevertheless necessary in the event a trial is ever held in this case.

Under Rule 615(f)(3) of the Texas Rules of Evidence, the prosecutor will be obligated to provide to the defense a transcription of the grand jury testimony of any witness it calls to testify prior to cross-examination. Rule 615 requires the production of a witness' prior "statement" upon request of the defense, and the "statement" of a witness is defined by Rule 615(f)(3) as "a statement, however taken or recorded, or a transcription thereof, *made by the witness to a grand jury*." (emphasis added). The prosecutor has a "mandatory"[19] duty to produce a witness' prior statements if those prior statements are within the prosecutor's control or readily accessible.[20] Since Mr. McCrum has control over the grand jury testimony, he should be ordered to have it transcribed so

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[19] *See Jordan v. State*, 897 S.W.2d 909, 914 (Tex. App.—Fort Worth 1995, no pet.).

[20] *Brooks v. State*, 901 S.W.2d 742, 746 (Tex. App.—Fort Worth 1995, pet. ref'd).

that the prosecution will be able to timely comply with Rule 615(f)(3),[21] if in fact it is not otherwise ordered produced to Governor Perry and/or to the Court for *in camera* inspection.

V.

Conclusion And Prayer For Relief

Immediate transcription of the grand jury testimony is necessary and appropriate for two particularized reasons: (1) to facilitate an accurate and reliable determination of Governor Perry's application for writ of habeas corpus; and (2) to protect Governor Perry's due process rights to production of all exculpatory and impeaching evidence. The Court should order Mr. McCrum to have that testimony transcribed and produced to counsel for Governor Perry or, in the alternative, to the Court for an *in camera* inspection. Such an order will also ensure that in the event this case ever progresses to a trial, the prosecution will be able to comply with its obligations under Rule 615(f)(3) of the Texas Rules of Evidence. Because this Court must ensure that Governor Perry's constitutional rights are fully protected, and since Mr. McCrum also has state statutory and constitutional duties to produce exculpatory evidence to Governor Perry, this Court should order the immediate transcription and production of the grand jury transcripts.

WHEREFORE, PREMISES CONSIDERED, Governor Perry respectfully prays that the Court hold a hearing on this motion and thereafter grant the relief requested herein, or for such other relief to which he may be entitled.

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[21] MCCORMICK, BLACKWELL & BLACKWELL, 7 TEXAS PRACTICE § 58.16 (11th ed. 2014), suggest that a motion to produce grand jury testimony should also seek to have the trial court order pretrial production of that testimony "[t]o prevent significant delay during the trial of the case." *See Ladner v. State*, 686 S.W.2d 417, 428-429 (Tex. App.—Tyler 1993, no pet.) (noting that although the State had provided the grand jury testimony of three witnesses prior to trial, the prosecutor's use of a fourth witness's grand jury testimony, which had not been provided, required the court to order it produced and thereafter afford the defense "as much time" as necessary to review it before resuming the defensive examination of the witness).

Respectfully submitted,

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Certificate Of Service

This is to certify that a true and complete copy of this document has been emailed to Mr. Michael McCrum at michael@McCrumlaw.com on the same date it was filed with the District Clerk.

DAVID L. BOTSFORD

NO. D1DC14-100139

STATE OF TEXAS	§	IN THE DISTRICT COURT
	§	
VS.	§	OF TRAVIS COUNTY
	§	
JAMES RICHARD "RICK" PERRY	§	390TH JUDICIAL DISTRICT

ORDER

Before the Court is the Motion For Disclosure Of Grand Jury Testimony And/Or For *In Camera* Inspection Of Grand Jury Testimony And Exhibits And Production Of All Materials Relating To Governor Perry's Application For Writ Of Habeas Corpus And All Exculpatory And Impeaching Materials. The motion is hereby GRANTED, as follows:

1. Mr. McCrum shall immediately direct the grand jury court reporter to transcribe all testimony presented to either of the two grand juries which have been impaneled to investigate the complaint in Cause No. D1DC13-100112, and further direct the grand jury court reporter to do so immediately, using all due diligence to complete the transcription of said transcripts as quickly as possible. Mr. McCrum shall obtain an electronic copy of the transcription of each witness' testimony on the same day the grand jury court reporter completes the transcription of each witness' testimony.

2. Copies of all transcriptions of the grand jury testimony and all exhibits introduced before the grand jury shall be delivered to counsel for Governor Perry, electronically, on the same day that the grand jury court reporter completes the transcription of each witness's testimony and transmits it to Mr. McCrum in electronic format.

3. Copies of all transcriptions of the grand jury testimony and all exhibits introduced before the grand jury shall be delivered to counsel for Governor Perry and to the Court within ten days from the date of this Order, or at such earlier time if possible; and

4. The Court shall review the transcripts of the grand jury testimony and exhibits and shall

DISTRICT COURT OF TRAVIS COUNTY TEXAS

make further orders as the Court deems necessary and appropriate after an in camera review.

Signed this ___ day of _____, 2014.

_____
JUDGE PRESIDING