

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION, CRIMINAL PART
MERCER COUNTY, NEW JERSEY
DOCKET NO. SGJ-MCJ-1-21
A.D. # _____

) TRANSCRIPT
)
IMO THE STATE GRAND JURY) OF
)
) DECISION

Place: Mercer County Criminal
Courthouse
400 South Warren Street
Trenton, NJ 08608

Date: May 25, 2023

S E A L E D T R A N S C R I P T

BEFORE:

THE HON. PETER E. WARSHAW, JR., J.S.C.

TRANSCRIPT ORDERED BY:

GREGORY G. GIANFORCARO, ESQ. (Gianforcaro Law Firm)

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1 THE COURT: Good afternoon, everybody. Thank
 2 you all for being punctual. We're on the record in a
 3 matter which is being addressed under seal. It's a
 4 State Grand Jury matter. It's In re the State Grand
 5 Jury. The docket number is SGJ-MCJ-1-21. That docket
 6 number was assigned by the Retired Assignment Judge
 7 Mary Jacobson when she started to deal with this
 8 matter.

9 Counsel, would you enter your appearances,
 10 please?

11 MS. DEMITRO: Good afternoon, Your Honor,
 12 Claudia Demitro on behalf of the State.

13 MS. SHANAHAN: Thank you, Your Honor. Deputy
 14 Attorney General Mallory Shanahan also on behalf of the
 15 State.

16 MR. MERINO: Good afternoon, Judge. Robert
 17 Merino, Special Deputy Attorney General on behalf of
 18 the State.

19 MR. LEVENSON: Lloyd Levenson, Cooper
 20 Levenson, on behalf of the Diocese of Camden.

21 MS. BARR: Jennifer Barr with Cooper Levenson
 22 on behalf of the Diocese of Camden.

23 THE COURT: I apologize, counsel. Finish.

24 MR. CRITCHLEY: Michael Critchley on behalf
 25 of the Archdiocese.

1 MR. GOODELL: Steve Goodell from Parker McCay
2 on behalf of the Diocese of Trenton.

3 MR. SULLIVAN: Also, Michael Sullivan from
4 Parker McCay on behalf of the Diocese of Trenton.

5 THE COURT: And, sir in the back, are you
6 entering an appearance?

7 MR. GODINO: Yes. James Godino of the
8 Diocese of Camden.

9 THE COURT: Okay. All right, Mr. Critchley
10 entered his appearance.

11 Mr. Lacey?

12 MR. LACEY: John Lacey of Connell Foley on
13 behalf of the Diocese of Paterson.

14 THE COURT: Ms. Wernick, please.

15 MS. WERNICK: Good afternoon, Your Honor.
16 Melissa Wernick from Chiesa Shahinian & Giantomasi on
17 behalf of the Diocese of Metuchen.

18 THE COURT: Okay, I think that's everybody.
19 Thank you all for your patience. The record will
20 reflect that some people are here in person. The
21 Attorney General's Office is here in person and the
22 Camden Diocese and the Trenton Diocese are here in
23 person. The Archdiocese in Newark appears virtually as
24 does the Diocese of Paterson and Metuchen.

25 Thank you, all. I appreciate your

1 accommodations. We tried to get this scheduled. I
2 appreciate your patience. I know this took me a very
3 long time to get done and, you know, I've addressed
4 that. I apologize for how long it took, but that's the
5 way it is.

6 I'm getting ready to place my decision on the
7 record. I expect it's going to be lengthy. If anybody
8 needs a break, just raise your hand, tell me that you
9 need a break, signal somehow. I'll try to take one in
10 the ordinary course though.

11 Before I place the decision on the record,
12 does anybody need to be heard as to anything?

13 (No audible response)

14 THE COURT: No? Okay, everybody is good.
15 I'll place the decision on the record.

16 On or about September 6 of 2018 New Jersey
17 Attorney General Gurbir S. Grewal announced the
18 formation of a task force to, quote, investigate
19 allegations of sexual abuse by clergy in Catholic
20 dioceses in New Jersey, end quote. This announcement
21 was accompanied by a press release which delineated the
22 Attorney General's intentions. The press release is
23 part of the record in this matter but this Court feels
24 it is important to specifically review certain portions
25 of the release.

1 The release is captioned AG Grewal
2 Establishes Task Force to Investigate Allegations of
3 Sexual Abuse by Clergy in Catholic Dioceses of New
4 Jersey. Beneath the headline it says Former Acting
5 Essex County Prosecutor Robert D. Laurino will lead the
6 task force and there's a phone number there for a new
7 New Jersey clergy abuse hotline.

8 The Court is not going to read the entirety
9 of this but I am going to read the first several
10 paragraphs. Attorney General Gurbir S. Grewal today
11 announced that he is forming a task force to
12 investigate allegations of sexual abuse by members of
13 the clergy within the Catholic Diocese of New Jersey as
14 well as any efforts to cover up such abuse. Attorney
15 General Grewal has appointed former acting Essex County
16 Prosecutor Robert D. Laurino to head the task force.

17 An experienced sex crimes prosecutor, Laurino
18 will oversee a team of detectives and prosecutors from
19 across the state's county prosecutor's office and the
20 Division of Criminal Justice and will report directly
21 to DCJ Director Veronica Allende. Attorney General
22 Grewal has authorized the task force to present
23 evidence to a State Grand Jury including through the
24 use of subpoenas to compel testimony and the production
25 of documents in addition to other investigative tools.

1 To help identify potential victims, Attorney
2 General Grewal has also established a new dedicated
3 hotline to report allegations of sexual abuse by
4 members of the clergy. The hotline will be staffed by
5 trained professionals and operate on a 24/7 basis. The
6 toll free number is 855-363-6548.

7 Today's announcement follows the recent
8 publication of a report by a Pennsylvania Grand Jury
9 alleging more than 1,000 victims of sexual abuse by
10 Roman Catholic priests in that state over a 70-year
11 period. The report which was the result of a multi-
12 year investigation led by Pennsylvania Attorney General
13 Josh Shapiro also detailed allegations of a coverup by
14 church leaders and accusations of sexual abuse against
15 at least four priests who spent part of their
16 ministries in New Jersey.

17 I was deeply troubled to read the allegations
18 contained in last month's Pennsylvania Grand Jury
19 report, said Attorney General Grewal. The report
20 revealed that sexual assaults on children and efforts
21 to cover up such assaults were far more widespread in
22 Pennsylvania than we ever thought possible. We owe it
23 to the people of New Jersey to find out whether the
24 same thing happened here. If it did, we will take
25 action against those responsible.

1 No person is above the law and no institution
2 is immune from accountability, continued Attorney
3 General Grewal. We will devote whatever resources are
4 necessary to uncover the truth and bring justice to
5 victims. I commend Attorney General Josh Shapiro for
6 his investigation in Pennsylvania and we will work to
7 ensure that our investigation in New Jersey is done
8 professionally and thoroughly.

9 The next paragraph contains a quote from Mr.
10 Laurino which is part of the record which I don't need
11 to read into this record now.

12 The next paragraph of relevance is that it
13 reads in addition to investigating allegations of
14 sexual abuse by clergy, the task force will conduct a
15 comprehensive review of existing agreements between the
16 Catholic Dioceses of New Jersey and state law
17 enforcement. In 2002 each of the state's dioceses
18 entered into a memorandum of understanding with the
19 Attorney General's Office and various county
20 prosecutor's offices.

21 These MOUs mandated that the dioceses
22 establish policies and procedures to ensure that their
23 leaders and employees report information to prosecutors
24 about potential cases of sexual abuse within their
25 churches and cooperate in any resulting law enforcement

1 investigations. As part of the efforts announced
2 today, the task force will determine whether the
3 dioceses complied with the MOUs' mandatory reporting
4 requirements and whether any additional action is
5 necessary.

6 The balance of the release contains certain
7 statements by the director of the Division of Criminal
8 Justice at the time and some statements concerning Mr.
9 Laurino which are also part of the record but need not
10 be read now.

11 The task force, as indicated in the press
12 release, includes at least one attorney and at least
13 one county detective from the 21 county prosecutor's
14 offices. Members of the Division of Criminal Justice
15 participate in this task force as well. According to
16 the State, after the task force was formed, the clergy
17 abuse hotline was established. Trained professionals
18 are available to answer the hotline 24 hours a day,
19 seven days a week and at the time briefs were written
20 in this case, the hotline was reported to have received
21 over 550 calls.

22 These calls are said to have reported sexual
23 abuse, physical abuse and mental abuse by clergy dating
24 back to the 1940s. Allegations have also been made as
25 to specific action by church officials to conceal

1 misconduct including moving priests from one parish to
2 another and in some cases, promoting clergy who were
3 alleged to have raped or molested children.

4 The task force has said to zealously and
5 diligently pursue every received tip in an effort to
6 bring justice to victims many of whom have never had
7 their voices heard or allegations investigated. At the
8 time of briefing and oral argument the task force's
9 efforts had led to the arrest of four individual
10 clergy. The State was understandably reluctant to
11 discuss the pending investigation or future plans to
12 charge.

13 The State did say that further indictments
14 were not being ruled out and that the potential charges
15 included broad-based conspiracy and racketeering
16 charges. The State asserted that because acts
17 committed outside the statute of limitations can prove
18 the existence and continuance of a conspiracy, even
19 decades-old conduct occurring outside the statute of
20 limitations may be relevant to potential criminal
21 charges; United States v. Jake, 281 F.3d 123 (2002),
22 State v. Cagno, 211 N.J. 488, 510 (2012).

23 The Court is advised that after the Attorney
24 General formed and announced the task force, there was
25 a meeting convened with counsel for the five Roman

1 Catholic Dioceses in New Jersey. These included the
2 Archdiocese of Newark and the Dioceses of Paterson,
3 Metuchen, Trenton and Camden. The task force is said
4 to have disclosed its purpose and intention which
5 specifically included subpoenaing relevant documents
6 from the diocese. Counsel agreed to cooperate.

7 Thereafter, on or about October 1 of 2018 the
8 State Grand Jury issued a subpoena to the diocese
9 requiring the production of records. A return date was
10 set and the dioceses were advised that personal
11 appearances before the Grand Jury would not be required
12 if the appropriate documents were produced.

13 The subpoenas or at least some representative
14 subpoenas are part of the record but I do think it's
15 important to very broadly review the subpoena. The
16 subpoenas do vary depending upon the recipient but I
17 just think it's important for the record to get an
18 additional flavor of what this is and the subpoena I'm
19 referring to is one that was forwarded by letter dated
20 October 1, 2018 to His Eminence Cardinal Joseph W.
21 Tobin of the Archdiocese of Newark and that was
22 forwarded by Assistant Attorney General Annmarie
23 Taggart.

24 The schedule to the subpoena lists 11
25 different items. Importantly, it is extremely broad.

1 I'm not going to read all of this into the record but,
2 for example, the first thing in Schedule A is any and
3 all files, records, forms, notes, documents, materials,
4 digital data, digital or electronic records or
5 statements related in whole or in part to allegations
6 of sexual abuse of children and adults, physical abuse
7 of children and adults, sexual contact or penetration
8 of children and adults as defined in N.J.S.A. 2C:14-1,
9 whether or not the act was determined to be consensual
10 or non-consensual or material related to any other
11 crime by priests, Monsignors, bishops, cardinals, nuns,
12 teachers, deacons or any current or former clergy or
13 employee of the Archdiocese of Newark from January 1,
14 1940 until the present day. There's a request for
15 personnel files for certain individuals going back to
16 the same January 1, 1940 date.

17 And that's the theme of the subpoena. The
18 subpoena, it's thorough, it's detailed and it's
19 carefully drafted. And the purpose of this subpoena is
20 to cover a very substantial period of time going back
21 to January 1, 1940 extending through the date the
22 subpoena was issued. This is a period of almost 79
23 years for which the State sought information.

24 The State agrees that the dioceses
25 collectively provided hundreds of thousands of pages of

1 relevant documents but asserts that there was not full
2 compliance. The State asserted that it has regularly
3 requested the production of specific documents
4 including evaluation and treatment records for priests
5 and other clergy members accused of sexual abuse. The
6 State is certain such reports exist.

7 It appears to the Court that the parties
8 worked collaboratively to try to resolve the compliance
9 issues. The State's position is that by September of
10 2020 the Dioceses of Paterson, Metuchen and Trenton
11 were in substantial compliance. On or about September
12 25 of 2020 the task force entered into an agreement
13 with the Archdiocese of Newark that the evaluation and
14 treatment documents would be limited to, (a) those
15 priests or deacons who were referred to evaluation or
16 treatment upon an accusation of sexual abuse, and (b)
17 those records of alcohol or substance abuse treatment
18 where the victim has alleged that he or she was
19 provided with such a substance as part of the abuse.

20 The task force offered the same agreement to
21 the Diocese of Camden. On or about January 11 of 2021
22 counsel for the Diocese of Camden advised the task
23 force that it objected to the production of the
24 records. The parties continued to negotiate without
25 resolution.

1 As such, on or about April 21 of 2021 the
2 Attorney General obtained an order to show cause
3 directing the Archdiocese of Newark and the Diocese of
4 Camden to explain why they should not be directed to
5 produce documents required by the subpoena under
6 penalty of contempt.

7 On April 23 of 2021 now Retired Assignment
8 Judge Mary C. Jacobson, A.J.S.C., entered an order in
9 connection with these matters and this order is part of
10 the record. And what Judge Jacobson did was she noted
11 that initially when she received the pleadings, she had
12 established a briefing schedule for the relief that was
13 sought in the order to show cause and at that point the
14 counsel for the Diocese of Camden contacted Judge
15 Jacobson's staff to raise the possibility of a conflict
16 of interest that could require recusal of Judge
17 Jacobson from handling the order to show cause and from
18 any further involvement relating to the issues
19 delineated in the order to show cause.

20 Judge Jacobson took that matter under
21 advisement and she considered the concerns that were
22 raised by counsel for the Camden Diocese and she
23 decided to recuse herself from the order to show cause
24 and from any further judicial involvement in the on-
25 going investigation. She did not require a formal

1 motion to do this.

2 Judge Jacobson having made that decision,
3 transferred responsibility for supervision of this
4 entire issue to me in my capacity as presiding criminal
5 judge in Mercer County. So, Judge Jacobson's order of
6 April 23rd constituted her recusal and her referral of
7 the matter in its entirety to me.

8 On or about May 3 of 2021 the Camden Diocese
9 responded to the State's order to show cause by
10 challenging the Grand Jury's authority to bring a
11 presentment concerning clergy abuse. The arguments
12 advanced by the diocese include that there is no
13 authority for a presentment under New Jersey law and
14 that such a presentment would violate the establishment
15 clauses of the United States and New Jersey
16 Constitutions.

17 In a letter accompanying its filed brief
18 regarding the State's order to show cause the Camden
19 Diocese requested that the Court consider the issue of
20 whether a Grand Jury presentment would be permissible
21 concerning a religious institution before it addressed
22 the issue of subpoena compliance. This Court over
23 objection from the Attorney General agreed that it was
24 appropriate for the Court to do so.

25 And before I go any further, I do want to

1 thank the parties for the very high quality of the
2 briefs that were submitted in this case. I think I did
3 it at oral argument. I'd like to do it again. Briefs
4 were submitted by the Camden Diocese and the State.
5 They were extremely good. They were thorough, detailed
6 and interesting as were the voluminous appendix
7 materials that were provided. I really appreciate the
8 high quality of the work that was done here.

9 The Camden Diocese argued that there is no
10 Constitutional authority, no legislative authority and
11 no court rule based authority for the State to proceed
12 with this anticipated Grand Jury presentment. The
13 Diocese further argued that the anticipated Grand Jury
14 presentment intends to address decades-old occurrences
15 in contravention of the requirements that any censured
16 public harm be imminent. The Diocese also argued that
17 specific authority exists in Pennsylvania for the type
18 of presentment issued by the Pennsylvania Grand Jury.
19 And finally, the Diocese argued that this type of Grand
20 Jury presentment would violate the establishment
21 clauses of the United States Constitution and the New
22 Jersey Constitution.

23 The State argues that the challenge to the
24 anticipated Grand Jury presentment is premature since
25 no presentment has been offered by a State Grand Jury.

1 The State asserts that this motion is an inappropriate
2 attack on the Grand Jury's subpoena. The State further
3 argues that a Grand Jury may issue a presentment on any
4 matter of public concern and that clergy abuse is a
5 matter of public concern. The State further argues
6 that the scope of a presentment need not be confined to
7 government officials, government institutions and
8 regulated commercial entities and there is no imminent
9 harm requirement for a Grand Jury presentment.

10 Article I Section 8 of the New Jersey
11 Constitution of 1947 provides that no person shall be
12 held to answer for a criminal offense unless on the
13 presentment or indictment of a Grand Jury except in
14 cases of impeachment or in cases now prosecuted without
15 indictment or arising in the army or navy or in the
16 militia when in actual service in time of war or public
17 danger.

18 A Grand Jury's authority to issue a
19 presentment originated in the 1844 Constitution. New
20 Jersey Statute 2B:22-1, et seq. pertains to the State
21 Grand Jury. N.J.S.A. 2B:22-1 requires that there be at
22 least one State Grand Jury with jurisdiction extending
23 throughout the state serving at all times.

24 At the time of oral argument and I believe
25 presently there are five State Grand Juries sitting,

1 one on each day of the week. The Attorney General and
2 the director of the Division of Criminal Justice have
3 the ability to request the impanelment of additional
4 State Grand Juries and that's what's occurred here, a
5 sixth State Grand Jury has been requested.

6 State Grand Juries have the same powers and
7 duties as County Grand Juries except that they have
8 state-wide jurisdiction, N.J.S.A. 2B:22-2(a). The
9 statute further recognizes that the Supreme Court may
10 promulgate rules to govern particularly the procedures
11 of State Grand Juries, N.J.S. 2B:22-2(b). This statute
12 goes on to delineate how a State Grand Jury is to be
13 selected, that's at 2B:22-3, and also how it's to be
14 summoned, that's at 2B:22-4.

15 N.J.S. 2B:22-5 provides that the judge
16 designated by the Chief Justice shall maintain judicial
17 supervision over the Grand Jury. All indictments,
18 presentments and formal returns of any kind made by a
19 State Grand Jury shall be returned to the designated
20 judge. N.J.S.A. 2B:22-6 is captioned return of
21 indictment or presentment but the statute itself says
22 nothing about presentments. The word presentment is
23 not defined in the State Grand Jury enabling statute.

24 The statute authorizing County Grand Juries
25 or the statutes authorizing County Grand Juries are

1 found in N.J.S.A. 2B:21-1, et seq. These statutes are
2 similar but not substantively identical to the State
3 Grand Jury statutes. The word presentment does not
4 appear in the statute.

5 The New Jersey Supreme Court has issued
6 comprehensive rules concerning the operation of County
7 and State Grand Juries. These rules are contained from
8 Rule 3:6-1 through Rule 3:6-11. Rule 3:6-9 pertains to
9 the finding and return of a presentment.

10 This rule finds in Subsection (a), a
11 presentment may be made only upon the concurrence of 12
12 or more jurors. It may refer to public affairs or
13 conditions, but it may censure a public official only
14 where that public official's association with the
15 deprecated public official is intimately and
16 inescapably part of them.

17 Subsection (b) reads, a presentment shall be
18 returned in open court to the assignment judge who
19 shall be notified in advance thereof by the foreperson
20 so that the Judge may arrange to be available in court
21 to receive it.

22 Subsection (c) of that same rule is captioned
23 examination referenced back striking and it reads as
24 follows. Promptly and before the Grand Jury is
25 discharged the Assignment Judge shall examine the

1 presentment. If it appears that a crime has been
2 committed for which an indictment may be had, the
3 assignment judge shall refer the presentment back to
4 the Grand Jury with appropriate instructions.

5 If a public official is censured, the proof
6 must be conclusive that the existence of the condemned
7 matter is inextricably related to non-criminal failure
8 to discharge that public official's public duty. If it
9 appears that the presentment is false or is based on
10 partisan motives or indulges in personalities without
11 basis or if other good cause appears, the Assignment
12 Judge shall strike the presentment either in full or in
13 part.

14 As an aid in examining the presentment, the
15 Assignment Judge may call for and examine the minutes
16 and records of the Grand Jury with or without the aid
17 of the foreperson or the prosecuting attorney to
18 determine if a substantial foundation exists for the
19 public report.

20 If the presentment censures a public official
21 and the assignment judge determines not to strike, a
22 copy of the presentment shall forthwith be served upon
23 the public official who may, within ten days
24 thereafter, move for a hearing, which shall be held in
25 camera. The public official may examine the Grand Jury

1 minutes fully, under such reasonable supervision as the
2 court deems advisable, and be permitted to introduce
3 additional evidence to expose any deficiency.

4 Subsection (d) pertains to filing and
5 publication and it reads such portions of the
6 presentment as are not referred back to the Grand Jury
7 for further action or are not stricken in accordance
8 with Paragraph (c) of this rule shall be filed and made
9 public, and the assignment judge shall instruct the
10 clerk of the Grand Jury to send copies thereof to such
11 public bodies or officials as may be concerned with the
12 criticisms and recommendations made therein and to the
13 Administrative Director of the Courts.

14 The presentment or any portion thereof shall
15 not be made public by any person except the assignment
16 judge. The assignment judge shall withhold publication
17 of the presentment until the expiration of the time for
18 the making of a motion for a hearing by a public
19 official pursuant to R. 3:6-9(c), and if such motion is
20 made, shall withhold publication of the presentment
21 pending the judge's determination.

22 Finally, Subsection (e) is captioned Review
23 and it says the action taken by the assignment judge
24 pursuant to this rule is judicial in nature and is
25 subject to review for abuse of discretion by the State

1 or by any aggrieved person, including any member of the
2 Grand Jury making the presentment.

3 Now, as regards the case law here, the
4 parties agree that certain decisions of the New Jersey
5 Supreme Court provide an important historical
6 foundation for the decision that the Court has to make
7 here. One such case is In the Matter of the
8 Presentment made to the Superior Court of New Jersey
9 Camden County by the Camden County Grand Jury on or
10 about October 11, 1951. The cite there is 10 N.J. 23
11 (1952), and this is referred throughout the pleadings
12 and in argument as Camden-1.

13 This presentment concerned the operation and
14 management of the Camden County Jail and catalogued
15 numerous irregularities. Several indictments alleging
16 misconduct in office were returned as were indictments
17 alleging other criminal offenses. The Grand Jury also
18 presented a lengthy report to the Camden County
19 assignment judge on its investigation of irregularities
20 at the jail.

21 The Grand Jury's report contained a series of
22 specific recommendations for future management and
23 operations of this county-run facility. The Camden
24 County sheriff moved to have defamatory portions of the
25 Grand Jury's presentment expunged from the report and a

1 Camden County assignment judge ultimately issued the
2 presentment.

3 The brief that was submitted in this matter
4 by the Camden Diocese refers to this Camden-1 decision
5 as, quote, a historical and Constitutional tour de
6 force, that's Page 6 of their brief. And this is an
7 apt description and it's not my intention to try to
8 fully summarize the Camden-1 opinion but I want to look
9 at several concepts that are key concepts that were
10 discussed in the opinion.

11 One of the things Camden-1 does is recognize
12 the important role that a Court with oversight
13 responsibility over the Grand Jury has and this is
14 necessary to ensure that justice is done and that the
15 public welfare is to be safeguarded, Camden-1 at Page
16 33.

17 The term presentment, according to Camden-1,
18 has long been employed to designate the findings of a
19 Grand Jury with respect to derelictions in matters of
20 public concern, particularly of officials which may
21 fall short of being criminal offenses. This type of
22 presentment differs from the obsolete criminal
23 presentment in that it does not lead to a trial but
24 merely notice to the offender, that's Camden-1 at 35.

25 And Camden-1 delineates a variety of

1 presentments that occurred beginning at Page 35 of the
2 opinion and running through Page 59. And the opinion
3 observes that as one reads these presentments, the
4 conviction rose that they have been a great force in
5 bringing about many substantial improvements in public
6 affairs which otherwise would have been long delayed.
7 There can be no doubt that the use of Grand Jury
8 presentments to call attention to public abuse was
9 consistently recognized under the 1844 Constitution,
10 Camden-1 at Page 59.

11 Camden-1 recognizes that Grand Jury
12 presentments serve a need that is not met by any other
13 procedure. At Page 66 the opinion states the Grand
14 Jury provides readily-available group of representative
15 citizens of the county empowered as occasion may demand
16 to voice the conscience of the community.

17 There are many official acts and omissions
18 that fall short of criminal misconduct and yet are not
19 in the public interest. It is very much to the public
20 advantage that such conduct be revealed in an effective
21 official way. No community desires to live a hair
22 breath above the criminal level which might well be the
23 case if there were no official organ or public protest.
24 Such presentments are a great deterrent to official
25 wrongdoing. By exposing wrongdoing, moreover, such

1 presentments inspire public confidence in the capacity
2 of the body politic to purge itself of untoward
3 conditions. Again, this is Camden-1 at Page 66.

4 Camden-1 further notes that the chief
5 objection to the Grand Jury presentment of public
6 affairs is that a public official or even a private
7 citizen who is in some way associated with public
8 affairs may have charges proffered against him which he
9 has not been afforded an opportunity to answer. The
10 Supreme Court recognized this concern and observed that
11 the possibility exists but it notes that at that time it
12 was not infrequent for persons to be named in
13 indictments without their being indicted. Again,
14 that's Page 66 in Camden-1.

15 Camden-1 recognizes, as well that the
16 acceptance of a presentment of public affairs, unlike
17 that of an indictment, is not a ministerial act. The
18 acceptance by the court of a presentment of public
19 affairs is a judicial act, Camden-1 at Page 67.

20 Another important precedent is In the Matter
21 of the Presentment made to the Superior Court of New
22 Jersey Camden County by the Camden County Grand Jury
23 1959 term, first dated session on or about June 7,
24 1960. This is 34 N.J. 378 (1961) and the parties refer
25 to this decision as Camden-2. The case concerned

1 illegal gambling in the City of Camden, and the
2 connection it may have to the City of Camden's Police
3 Department. The Grand Jury prepared a presentment
4 which was issued and distributed by the assignment
5 judge. A substantial portion of the presentment was
6 directed at the Mayor of Camden who also served as the
7 director of Public Safety. This individual moved to
8 expunge certain portions of the presentment.

9 The Supreme Court in Camden-2 made important
10 statements regarding the history of the presentment in
11 New Jersey. Camden-2 notes that originally,
12 presentments were delivered to the appropriate Court
13 after knowledge of criminal activities had come to a
14 Grand Jury's attention through its own independent
15 investigation or study or otherwise, but without the
16 intervention of the prosecutor and without any action
17 or recommendation on his part in pursuit of an
18 indictment. The presentment then served to call the
19 criminality to the notice of the proper authorities and
20 to authorize or request the preparation of an
21 indictment. It operated as an accusation upon which the
22 prosecutor was ordinarily expected to act.

23 The practice grew and evolved for Grand
24 Juries to make an occasional report concerning comments
25 or criticisms on the state of public affairs or

1 conditions in a particular area or on a matter of
2 general interest. It was a written communication, an
3 impersonal broadside according to the case, calling
4 attention to matters of public concern but charging no
5 crime and reciting no facts upon which an indictment
6 could be framed, Camden-2 at Page 388.

7 Camden-2 expressly states that reports of the
8 presentment type have been held to serve a valid
9 purpose. When discreetly used, they are regarded as
10 serving a public purpose if they refer to public
11 affairs and conditions, and even if they occasionally
12 censure public officials whose association with the
13 deprecated public affairs or conditions is intimately
14 and inescapably a part of them, Camden-2 at 389.

15 The Court went on to note that it was in
16 connection with the censure of public officials that
17 such presentments most frequently come under attack.
18 The Court recognized the fundamental reason for
19 imposing restraint upon the privilege of a Grand Jury
20 to hand up a presentment reprobating a public officer
21 by name or inescapable imputation where no evidence
22 warranting indictment for crime has been submitted to
23 it.

24 The Court recognized that when an indictment
25 has been returned, the official becomes entitled to a

1 trial. He has an opportunity to face his accuser and
2 to achieve public exoneration from a court or jury.
3 Not so with a presentment. It castigates him, impugns
4 his integrity, points him out as a public servant whose
5 official acts merit loss of confidence by the people,
6 and it subjects him to the odium of condemnation by an
7 arm of the judicial branch of the government, without
8 giving him the slightest opportunity to defend himself.
9 Such a presentment unless thoroughly justified is a
10 foul blow. It wins the importance of a judicial
11 document; yet it lacks the principal attribute of a
12 judicial document, the right to answer and to appeal.

13 It accuses, but it furnishes no forum for a
14 denial. No one knows upon what evidence the findings
15 are based. An indictment may be challenged even
16 defeated. The presentment is immune. It is like the
17 hit and run motorist. Before application can be made
18 to support it, it is the subject of public gossip. The
19 damage is done. The injury it may unjustly inflict may
20 never be healed, Camden-2 at 390, and I'm not giving
21 the other citations.

22 To recognize complete freedom in Grand Juries
23 to censure public officials when at the same time they
24 acknowledge a lack of evidence on which to indict is to
25 confer on them the absolute right to establish their

1 own standard of right and wrong and of public and
2 private morality, and to impose those standards on such
3 officials without any responsibility for their abuse.
4 Such freedom would subvert the very principle they were
5 created to protect, Camden-2 at 390.

6 Camden-2 found that Camden-1 provides support
7 for reprobatory presentments related to public affairs
8 and matters of general public interest even though
9 officials connected therewith or said to be responsible
10 therefor are incidentally identified by name or
11 otherwise. The proposition is acceptable that a Grand
12 Jury may investigate conditions or offenses affecting
13 the morals, health, sanitation or general welfare of
14 the county, as well as county institutions, buildings
15 and departments, and make presentments concerning them,
16 Camden-2 at 390 and 391.

17 Camden-2 says the plain implication of
18 Camden-1 is that the subject of the presentment must be
19 a matter of general public interest or relate to some
20 aspect of public affairs, or to some public evil or
21 condition to which, in the discretion of the jury, the
22 intention of the community should be directed. And
23 censure of a public officials is permissible only where
24 it may be said with absolute certainty that his
25 connection with the condemned matter is such that its

1 existence is inextricably related to non-criminal
2 failure to discharge his public duty, Camden-2 at 391.

3 More particularly, the criticism of the
4 individual is allowable only where it is integrally
5 associated with the main purpose of the report, to draw
6 critical attention to some undesirable condition in the
7 affairs of the public, Camden-2 at 391.

8 The presentment cannot be used to single out
9 persons in private or official positions and impugn
10 their motives, or by word or innuendo hold them to
11 scorn or to censure. It cannot simply accuse, and by
12 the device employed compel the accused to stand mute.
13 The jury cannot forage at will upon any whim it may
14 entertain. The probability of damage to the reputation
15 of public officials far overshadows any benefit the
16 public might receive from such unlimited license,
17 Camden-2 at 391.

18 The parties also reference In the Matter of
19 the Presentment made to the Superior Court of New
20 Jersey Monmouth County by the Monmouth County Grand
21 Jury on or about May 2, 1956, 24 N.J. 318 (1957). This
22 case was decided between Camden-1 and Camden-2. A
23 Monmouth County Grand Jury sought to return two
24 presentments to the assignment judge. One concerned
25 the sale and publication of obscene and indecent

1 literature and the other suggested that municipal
2 courts be authorized by legislation to hear and
3 determine cases involving desertion and non-support.

4 The assignment judge refused to file the
5 presentments and ordered them stricken. The Grand Jury
6 appealed. The Supreme Court reversed the assignment
7 judge's decision and ordered that the presentments be
8 filed and published.

9 Of importance to this matter, the Supreme
10 Court noted that the practice of Grand Jury is to
11 investigate, make inquiry, take testimony and render
12 reports springs from the common law right when it
13 related to matters affecting the public interest and
14 general welfare. The Court notes that a Grand Jury, of
15 course, cannot forage at will upon anyone it may
16 entertain. Its expression must be limited to matters
17 imminent and pertinent relating to the public welfare
18 and of the ultimate benefit to the community served by
19 the Grand Jury, and this is the Monmouth case at Pages
20 324 and 325.

21 Other decisions concerning presentments and
22 form the issues before the Court; In re Presentment to
23 Superior Court, 14 N.J. Super. 542 (Law Div. 1951),
24 concerned an application by commissioners in the City
25 of Hoboken who sought to expunge all or part of the

1 Grand Jury's report. Generally, this report concerned
2 whether the Police Department was protecting or
3 suppressing gambling operation investigations.

4 In reviewing the matter, the Law Division
5 noted that the Grand Jury was a creature of common law
6 constitutionally authorized to proceed by presentment
7 or indictment. It was noted that sometimes a Grand
8 Jury makes a written report to the Court which is not
9 intended to be followed by an indictment. This is not
10 a true common law presentment but the practice has
11 existed for Grand Juries to consider methods of
12 administration of municipal government and to point out
13 where there are defects or where improvements may be
14 made.

15 The Court opines that much can be said of
16 this custom. Such reports commenting on or condemning
17 general conditions which the Grand Jury finds to exist
18 can do no harm but may be followed by beneficial
19 results to the community for the reason that the
20 recommendations of a Grand Jury, an arm of the court,
21 carry great weight in the public mind.

22 Conceding that criticism of public officials
23 raises questions of public interest just as truly as a
24 report concerning conditions, nevertheless, it is
25 contrary to fair play and sound public policy when in

1 such a report the Grand Jury, without intending it to
2 be the basis for an indictment, condemns the acts and
3 impugns the motives of individuals, whether they be
4 public officials or private citizens. In the public
5 mind such a report or presentment is the equivalent of
6 a judicial finding, yet it lacks a fundamental
7 principle in our system of judgment, the right to
8 defend oneself, Pages 545, 546.

9 The Law Division quoted Chief Justice
10 Gummere, G-u-m-m-e-r-e, in his charge to the Grand Jury
11 of Essex County in 1907: In dealing with the matter,
12 however, you must bear in mind that a presentment is
13 sometimes a cruel thing. When a man is indicted his
14 character is tainted because the general public
15 believes that he would not be indicted if he had not
16 violated the law. If he is innocent, however, he has
17 the opportunity to demonstrate it. Where a presentment
18 besmirches the reputation of a man, he has not the
19 opportunity to justify himself. He goes through life
20 with a stigma and there are no charges which he may
21 meet. He is charged with matters not subject to the
22 criminal law, although not looked on with credit.

23 Such a presentment accuses but furnishes the
24 accused with no right to his day in court. There is no
25 forum in which he can test the truth of the charges

1 contained therein as the Grand Jurors in submitting
2 such presentment are clothed with an absolute
3 privilege, that's Page 46 of that opinion and it quotes
4 O'Regan v. Schermerhorn, 25 N.J. Misc. 1 (1946).

5 In re Presentment of Essex County Grand Jury,
6 110 N.J. 24 (App. Div. 1970) involved an application by
7 the Mayor of Newark to expunge all references to him in
8 a presentment returned by the Grand Jury. The Mayor's
9 application was denied. The Court recognized the power
10 of a Grand Jury to make a presentment on matters of
11 public concern unaccompanied by indictments. The Court
12 noted that a Grand Jury by means of a presentment may
13 call to the attention of the public conditions within
14 the county which in its view ought to be remedied, Page
15 27.

16 State v. Porro, 152 N.J. Super. 179 (App.
17 Div. 1977) did not directly concern a Grand Jury
18 presentment but it did discuss presentments. This case
19 recognizes the Grand Jury practice of making a report
20 or presentment on the state of public affairs or
21 conditions of a particular area or on matters of
22 general governmental interest with comments and
23 criticisms of those affairs. The opinion also noted an
24 enduring criticism of presentments which censure a
25 public official. When the official is not indicted, he

1 or she is denied the opportunity to face accusers and
2 refute accusations.

3 In re Presentment of Bergen County Grand
4 Jury, 193 N.J. Super. 2 (App. Div. 1984) concerned a
5 Grand Jury presentment regarding a county health
6 institution. The Appellate Division noted that the
7 first obligation of an assignment judge in reviewing a
8 presentment is to determine whether the matter is a
9 proper one for the presentment.

10 Daily Journal v. Police Department of City of
11 Vineland, 351 N.J. Super. 110 (App. Div. 2002)
12 recognized an anomaly concerning Grand Jury
13 presentments. The Court observes that pursuant to Rule
14 3:6-9(c), a public official censured in a presentment
15 is entitled to a hearing to clear his or her name
16 before the presentment is made public. No such right
17 is afforded to a private citizen who is named in a
18 presentment but is not charged with a criminal offense,
19 Page 129. The opinion notes the unique nature of the
20 presentment process and its capacity to destroy the
21 reputation of those who have not had an opportunity to
22 defend themselves.

23 So, the first issue which the Court is going
24 to address is the question of whether it should even
25 consider the question as to whether a Grand Jury would

1 have the legal authority to return a presentment
2 concerning clergy abuse issues.

3 The State argues that the challenge which is
4 advanced by the Camden Diocese is premature. The State
5 asserts that it's not possible to have a coherent
6 discussion as to the propriety of a report which has
7 not been written. The State urges the Court to empanel
8 the State Grand Jury which has been requested,
9 supervise that Grand Jury consistent with the
10 appropriate statutes and court rules and wait to see
11 what, if anything, that Grand Jury ultimately seeks to
12 return to the Court for filing. The State asks the
13 Court to strictly interpret the court rules and in
14 essence stay out of the way until the promised
15 presentment is referred to the Court for filing.

16 The Court strongly disagrees with this and I
17 note that the circumstances which present here are
18 highly unique. I note my own deep and abiding respect
19 for the Grand Jury and its venerated role in New
20 Jersey's criminal justice system. The Court fully
21 respects the Grand Jury's independence and understands
22 that prosecutors decide whom to prosecute and how to
23 present cases for a Grand Jury's consideration. The
24 Court also understands the deference which is afforded
25 by law to a Grand Jury's work product in the form of

1 indictments.

2 But the unique circumstances which present
3 here drive the conclusion that the Court's early
4 involvement is appropriate. The Attorney General has
5 made no secret as to its intentions. The Attorney
6 General has stated that New Jersey should produce a
7 report similar to what a Pennsylvania Grand Jury did.
8 The Court takes judicial notice of that report
9 published by order of the Pennsylvania Supreme Court on
10 or about July 27 of 2018.

11 It's approximately 887 pages long. It's the
12 product of 24-months work. It made several pages of
13 recommendations but was largely a comprehensive report
14 as to alleged sexual misconduct by Catholic priests.
15 The Camden Diocese refers to numerous times where a
16 member of the New Jersey clergy abuse task force
17 publicly stated that a New Jersey Grand Jury would be
18 producing a presentment.

19 There are presently five sitting State Grand
20 Juries. Judges in the Mercer vicinage preside over the
21 impanelment process and thereafter are involved as
22 administratively necessary. That is, the Court handles
23 Murphy hearings, it addresses requests by Grand Jurors
24 to be excused early from service, it receives
25 indictments for filing, and it establishes venue.

1 Otherwise, the Court has no real involvement
2 in the day-to-day operations of the Grand Jury and
3 that's entirely appropriate and consistent with the
4 law. Most times the Court has no idea what the Grand
5 Jury is doing until it's done. In theory, the State
6 could go before a Grand Jury, prepare a presentment and
7 have that brought to the Court for filing before the
8 Court had an actual understanding of what was going on.

9 The magnitude of what the Attorney General
10 seeks to do here presents an entirely different
11 circumstance. Bluntly, this is a massive undertaking
12 that the State contemplates. The State wants to
13 convene a Special State Grand Jury which will sit for
14 at least one year and almost certainly longer. This
15 involves bringing citizens to Trenton once a week from
16 all corners of the State. This is a substantial
17 imposition on the time of the 23 citizens asked to
18 serve.

19 Additionally, selecting this Grand Jury will
20 present challenges like no other. A Grand Jury is
21 comprised of 23 members. An indictment or presentment
22 requires the concurrence of 12 or more Grand Jurors.
23 These Grand Jurors are required to disclose any
24 possible bias or interest they may have in a specific
25 case. This includes a bias or interest which is

1 financial, proprietary or personal. Normally, this is
2 done on a case-by-case basis, and it is easily and
3 routinely handled.

4 Seldom, if ever, issues as to whether a
5 specific Grand Juror can sit threaten the quorum of the
6 Grand Jury. The nature of the presentment that this
7 Grand Jury is being asked to write or being told to
8 write makes it clear that issues as to bias would have
9 to be addressed during the selection process. It's
10 plainly evident that many prospective Grand Jurors
11 would struggle with being asked to serve.

12 The Attorney General advises the Court that a
13 high percentage of New Jersey citizens identify as
14 Catholic and in my estimation, the only way to select
15 the Grand Jury in this situation would be to
16 preemptively address conflict issues in advance and I
17 believe the State agrees with that. That would involve
18 disclosing the dioceses being investigated, the names
19 of the churches at issue and probably even the names of
20 the priests and the clergy who would be referenced in
21 testimony. This broad disclosure would reasonably be
22 expected to result in many people being excused for
23 cause.

24 Additionally, it is reasonable to assume that
25 many prospective Grand Jurors would struggle with the

1 subject matter of the Special Grand Jury's focus.
2 Historically, that's so in any sexual assault case and
3 the problem would certainly be exacerbated in cases
4 concerning such allegations against religious leaders.

5 And I make this point for the following
6 reason. What this means is that there's a high volume
7 of jurors who would have to be summoned. Again, based
8 on my experience selecting Grand Juries, this means
9 individualized interviews would have to be conducted of
10 many, if not all, to avoid tainting other panel
11 members. No doubt the Court would liberally excuse
12 those who question their capacity to be fair or who
13 felt uncomfortable with the subject matter.

14 Also, many prospective jurors would suffer
15 personal or financial hardship if asked to serve on an
16 in-person State Grand Jury for more than one year.
17 Sixteen weeks is challenging enough. And if based on
18 that during oral argument there was a discussion about
19 how the Grand Jury selection process would take at
20 least a week and probably more, I think we generally
21 agree we'd be lucky if you got this Grand Jury in a
22 week.

23 Would this selection be done virtually or in
24 person? Right now as I understand it all Grand Jury
25 selections throughout the state are still being done

1 virtually. How long would it take to properly instruct
2 and then voir dire these prospective jurors? How long
3 would it take to review the list of churches and clergy
4 members for potential conflicts? How many jurors would
5 need to be interviewed as to a perceived conflict?

6 And I want to be very clear about this. I
7 make these observations not because I'm concerned about
8 the time or the work. If it's appropriate for that to
9 be done, we'll do it. But, rather, we are in a
10 situation here where a legitimate challenge has been
11 raised as to whether this prospective Grand Jury is
12 legally authorized to do what the Attorney General's
13 Office has promised it will do.

14 And the Supreme Court case relating to
15 Loigman, 183 N.J. 133 (2005) makes it clear that the
16 Grand Jury is a judicial investigative body serving a
17 judicial function. It's an arm of the court, not a law
18 enforcement agency and it's not an alter ego of any
19 prosecutor's office. So the Court in my estimation is
20 absolutely entitled to consider a challenge such as
21 that made by the Camden Diocese before plunging
22 headlong into a protracted jury selection process.

23 The Court's role here, again, it's not
24 ministerial. It's judicial. And the Court is allowed
25 to consider all this now and I think at this point in

1 the process while the Attorney General urges the Court
2 to select the Grand Jury, the Court, I believe, is
3 allowed to consider the ramifications on selected Grand
4 Jurors. Why would we ask 23 individuals to accept the
5 imposition that this Grand Jury service would entail if
6 addressing a legitimate legal challenge first could
7 obviate the need for service at all? And it's for that
8 reason the Court believes that it has the right to
9 decide the substantive issue here.

10 The Court's supervisory authority over the
11 Grand Jury is real. It uses it sparingly and only when
12 necessary to ensure the fairness and integrity of the
13 process. Recently in State v. Vega-Larregui, V-e-g-a,
14 hyphen -- I'm just going to spell the last name,
15 L-a-r-r-e-g-u-i -- 246 N.J. 94 (2021), the Supreme
16 Court said that in authorizing Grand Juries to operate
17 in a virtual format for a temporary period during an
18 unprecedented public health emergency the Court was
19 simply exercising a quintessential judicial power that
20 was not in any way in conflict with legislative
21 enactment concerning the Grand Jury and I believe that
22 an analogous situation presents here.

23 The Court argues that counsel and the Court
24 are speculating as to the content of a potential
25 presentment, and I disagree on that though through its

1 press releases and through its public statements the
2 Attorney General has made it crystal clear what's
3 coming.

4 The State argues that judicial modesty
5 requires the Court to take a wait-and-see attitude.
6 Again, I disagree. This is a highly unusual
7 circumstance. It's one not likely to recur any time
8 soon. But these unusual situations compel unique
9 resolutions and I don't believe that I'm obligated to
10 refrain from considering the Camden Diocese's challenge
11 until I see precisely what the Grand Jury produces.
12 The broad outline of what's coming has been promised by
13 the Attorney General and to paraphrase Bob Dylan, you
14 don't need a weatherman to know which way the wind
15 blows.

16 The Court, in my opinion, has not only the
17 legal and administrative authority to consider the
18 challenge raised but also the duty to do so. In a time
19 of scarce resources in the criminal justice system
20 perhaps this has never been more true and I reference
21 State v. Mackroy-Davis though I don't have the cite
22 written in my notes here. Thus, the Court will decide
23 the question of whether the State Grand Jury has the
24 legal authority to issue a presentment regarding clergy
25 abuse.

1 This Court's conclusion is that the Grand
2 Jury does not have the legal authority to return a
3 presentment which focuses exclusively or almost
4 exclusively on misconduct by Catholic priests. First,
5 a presentment should refer to public affairs and
6 conditions. The presentment promised here does not.
7 Misconduct, especially criminal misconduct by a priest
8 is something the public cares about. That something is
9 of great public importance or interest does not make it
10 something which relates to public affairs or
11 conditions. The priests are not public officials and
12 the Catholic Church is not a public entity no matter
13 how expansive a definition of the term public is
14 contemplated.

15 And I'm going to make an analogy here that I
16 know is an imperfect analogy but I do think it is
17 useful. And what I'm going to do is look at the
18 definition of public servant that's used in the
19 Criminal Code and that's at N.J.S.A. 2C:27-1(g). And
20 that defines public servant as any officer or employee
21 of government including legislators and judges and any
22 person participating as a juror, advisor, consultant or
23 otherwise in performing a governmental function but the
24 term does not include witnesses.

25 N.J.S.A. 2C:27-1(b) defines government to

1 include any branch, subdivision or agency of the
2 government, of the state or any locality in it. These
3 definitions apply to criminal defenses delineated in
4 Chapters 27 through 30 of Title 2C which include
5 important public corruption and misconduct crimes
6 including but not limited to official misconduct,
7 deprivation of civil rights as well as bribery and
8 related offenses.

9 The definitions I reference are intentionally
10 broad. They are designed to cover all three branches
11 of government and those who interact with them. It is
12 intended to address conduct by those given the power to
13 exercise public authority even if that person is not a
14 government employee. One must consider whether a
15 governmental function is being carried out; State v.
16 Perez, 185 N.J. 204 (2005).

17 It is also clear that not all persons who
18 perform roles connected with government are public
19 servants. Persons are not public servants if they are
20 not exercising authority of a uniquely governmental
21 nature or performing a function exclusive to government
22 in any traditional sense; State v. Morrison, 227 N.J.
23 295 (2016).

24 And, again, I concede this is an imperfect
25 analogy but I find it to be useful because it

1 recognizes limitations as to what can be considered
2 public. And even under the most sweeping applications
3 of these definitions Catholic priests and the Catholic
4 Church would not qualify.

5 To say that a presentment is appropriate
6 because this is a matter of public concern is not
7 enough. There are many things about which the public
8 cares deeply and which are greatly important. This
9 does not make private conduct eligible for Grand Jury
10 presentment. Of course, crimes can and should be
11 prosecuted. No one suggests that the State is not free
12 to bring any criminal case it chooses to bring. A few
13 such cases have been brought since the formation of the
14 task force.

15 The State is correct when it argues that the
16 Church and its clergy members have a direct and
17 intimate relationship with New Jersey citizens. It is
18 also true that the Church fulfills an important need
19 within the community and its leaders are endowed with
20 the public trust and that the public may well be
21 incensed with what has occurred within the Catholic
22 Church. This type of special and important
23 relationship exists between the public and numerous
24 other entities.

25 And I've tried to come up with good examples.

1 I really haven't but, Little League, Boy Scouts, Girl
2 Scouts, various 12-step organizations, these are all
3 special, important relationships but it does not confer
4 upon the Grand Jury the right to construct a report
5 about that which might be on the public mind.

6 The procedural posture of this matters as
7 well. The State wants the Court to empanel a Special
8 Grand Jury to ultimately release a presentment which
9 has been written by the Attorney General. The idea for
10 this presentment will never be said to have originated
11 with this Grand Jury. It is the Attorney General's
12 publicly-stated objective to produce this report. And
13 for that reason the Court is unpersuaded by the State's
14 reference to the Grand Jury serving as the conscience
15 of the community which has the ability to act as to
16 matters of public concern. This Grand Jury would be a
17 conduit to implement the will of the Attorney General.

18 When one considers whether this anticipated
19 presentment concerns public affairs and conditions,
20 it's useful to consider the Grand Jury instruction
21 concerning presentments. And to the best of my
22 knowledge, Directive 1206 which was published by
23 memorandum of Philip S. Carchman, Judge of the
24 Appellate Division, on July 20 of 2026 (sic) remains
25 controlling, and I reference that directive. But it

1 does have a standard supplemental charge for Grand
2 Juries regarding presentments which was approved by the
3 conference of assignment judges and promulgated by
4 Directive 1206 and I'm going to read this into the
5 record.

6 When I charged you at the beginning of your
7 Grand Jury service, I instructed you briefly about the
8 Grand Jury's ability to return a presentment and
9 briefly explained how it differed from an indictment or
10 a no bill. I also informed you that I would instruct
11 you in greater detail should you indicate that you
12 wanted to consider a presentment. I shall now provide
13 that additional instruction.

14 A presentment is a formal document presented
15 by you to the public to call to the community's
16 attention your recommendations as to some aspect of
17 public affairs or conditions. The Grand Jury is an
18 independent investigative body that represents the
19 public and may, therefore, inquire into matters
20 concerning community morals, health, safety and general
21 welfare. In this connection you may inspect and visit
22 public institutions, agencies, buildings and
23 departments. If you find unsatisfactory conditions
24 that are of such importance that they should be brought
25 to the attention of the public and the officials

1 concerned, you may return a presentment for that
2 purpose.

3 You may, for example, determine that there
4 are certain conditions in a public office or public
5 institution which demand correction or improvement and
6 which should be revealed to the public for that purpose
7 even though the evidence does not reach the level of
8 constituting criminal conduct which would normally
9 warrant an indictment. In other words, a presentment
10 generally deals with non-criminal conduct.

11 To investigate such matters, you have the
12 same broad, comprehensive and independent powers
13 previously discussed. In an investigation that may
14 lead to a presentment, you may cause witnesses to
15 appear before you and, again, you are not limited
16 simply to a consideration of matters that are presented
17 to you by the prosecutor.

18 Unlike an indictment, a presentment is not
19 the beginning of a criminal process and does not result
20 in trials of individuals. A person who is named in a
21 presentment has no defense nor any way of answering the
22 presentment except under very limited technical
23 procedures. For this reason presentments require the
24 exercise of sensitive judgment on your part as well as
25 a review by the Assignment Judge before they can be

1 made public.

2 If the public should be made aware of a
3 condition that is caused by the non-criminal misconduct
4 of a public official, that individual may be named and
5 criticized. Before such presentment seeking censure of
6 any individual is proved, you must be satisfied that
7 proof of such wrongdoing is conclusive to show that the
8 conduct of the individual is unquestionably related to
9 the undesirable condition reported upon.

10 Criticism of a public official is allowable
11 only where it is closely associated with the need to
12 draw critical attention to the undesirable public
13 condition. It would not be fair to name a person
14 unjustifiably in a presentment and perhaps destroy that
15 person's reputation and standing in the community.

16 And so, as a matter of fundamental fairness,
17 if you return a presentment naming and censuring a
18 specific individual, it will not be made public until I
19 as assignment judge obtain and review the full record
20 of the testimony and exhibits and determine that
21 sufficient evidence has been presented to support such
22 charges. If the Assignment Judge determines that the
23 presentment is proper, it will be filed with the Clerk
24 of the Court, and disclosed to the public. Please be
25 aware that secrecy provisions relating to your service

1 as a Grand Juror also prevent you from disclosing any
2 matters relating to a presentment.

3 And it is clear to me reviewing that charge,
4 it's more clear to me that this matter does not concern
5 public affairs or conditions as contemplated by the
6 court rule and by the case law.

7 Second, the Court believes that it would be
8 wrong for the Court to empanel a Grand Jury to prepare
9 a presentment because this promised presentment and the
10 procedures employed to produce it are systemically,
11 fundamentally unfair in a way that can't be remedied or
12 addressed. We all know that if a Grand Jury returns an
13 indictment against someone, that person is entitled to
14 a speedy and public trial. The defendant has the right
15 to file motions which attack the State's case including
16 motions to dismiss the indictment and motions which
17 allege that evidence should be suppressed because the
18 police violated Constitutional, statutory, common law
19 or rule-based rights.

20 The defendant has the right to testify on his
21 or her own behalf and to confront those who would
22 accuse him, that the defendant enjoys the presumption
23 of innocence and has -- strike that, please. The
24 defendant enjoys the presumption of innocence and has
25 the right to have a jury determine guilt beyond a

1 reasonable doubt.

2 Those who would be accused by this promised
3 presentment, and I use the word accused deliberately,
4 enjoy no such protection. They have no recourse.
5 There isn't a trial. There aren't any motions.
6 There's no opportunity to attack the evidence as
7 insufficient, fabricated, misinterpreted or the product
8 of a statement of a person with a motive to lie or
9 perhaps the product of a statement of a person who's
10 mentally ill. There's no right to say the assertion is
11 simply wrong and there is no right to generally say the
12 proofs that are offered are unpersuasive.

13 Indeed, it appears that many of the priests
14 who are covered by the time frame of the Grand Jury
15 subpoenas are dead or of such advanced age that
16 speaking up for oneself would be nearly impossible.
17 And the Court wonders who speaks for these individuals?
18 A Grand Jury issuing a presentment isn't even bound by
19 a probable cause standard. There's no Judge present to
20 monitor the admissibility of evidence, no witness gets
21 cross examined, there's no gatekeeper as to anything.
22 And the Grand Jury, is it really free to hurl
23 accusations at those who are not provided any sort of a
24 mechanism to fight back? This constitutes what years
25 ago Camden-2 called a hit-and-run. It accuses, and by

1 the device that is used compels the accused to stand
2 mute.

3 These priests, dead or alive, are not and
4 were not public officials so the protections afforded
5 by Rule 3:6-9 will not protect those individuals and
6 I'm not going to review those rules again but I
7 reference them. The rights there apply to public
8 officials and in my estimation, a priest doesn't
9 qualify as a public servant or official. The priest
10 has no right to be heard before the issuance of the
11 presentment. Many of them can't be heard for reasons
12 far more complicated. They're not here to be heard.
13 A church or the diocese has no right to push back and
14 more importantly, no real forum to push back in.

15 And this document, this presentment becomes a
16 public document readily available on the Internet to
17 anyone in the world who wants it. And it's important
18 to note that this presentment is not the equivalent of
19 a book, a scholarly article or some kind of television
20 documentary.

21 This presentment is issued only under the
22 authority of the Superior Court. Once it's issued, it
23 will ever seem to bear the court's imprimatur. The
24 Court would become complicit in releasing a report
25 which accuses people of criminal conduct but gives them

1 no forum to respond or to be heard. And a person who's
2 not a public official ends up being given fewer rights
3 than a person who is and this Court doesn't believe the
4 Superior Court can allow that to happen. Again,
5 consistent with Loigman, this is the Court's Grand Jury
6 and that's a point which cannot be lost.

7 Third, the Court believes that the
8 presentment is inappropriate because it's clearly
9 intended to be a historical review of sexual abuse
10 allegations against Catholic priests which were enabled
11 by the Church's willful concealment. The In re
12 Monmouth County Grand Jury case, 24 N.J. 318 (1957)
13 indicates that a Grand Jury can't forage at will upon
14 anyone it may entertain and that expression must be
15 limited to matters which are imminent and pertinent.

16 There's no imminence to the history that the
17 Attorney General seeks to right here. There has been
18 substantial public discourse concerning these important
19 topics. It will continue. Law enforcement officials
20 remain free to criminally charge any person when it is
21 appropriate to do so. Everybody involved in this case
22 urges law enforcement to charge when they've got a
23 case.

24 No matter how important it might be to
25 chronicle a comprehensive account of the sexual abuse

1 in New Jersey's Catholic Churches, it is not the Grand
2 Jury's history to write. And it is certainly not for
3 the Superior Court to create the impression that a
4 countenance of such a report particularly when the
5 subjects of the report are deprived of any meaningful
6 due process. This is not a situation where there is
7 any official wrongdoing to be deterred.

8 Now, it might be argued that the history
9 could be written fully without naming names and the
10 Court concedes that it does not know ultimately how the
11 Attorney General intends to proceed. However, the
12 reality here is that the curious will easily be able to
13 draw associations which enable priests to be
14 identified. Suppose the presentment identifies an
15 occurrence which occurred at Church A in Town A between
16 1983 and 1985. It's relatively simple for inferences
17 as to identity to be drawn. Any person interested in
18 playing connect the dot could do so easily.

19 I think it's also somewhat relevant to take a
20 step back and reflect upon why we're here. When the
21 Attorney General announced the formation of the clergy
22 abuse task force, he did so in clear reaction to the
23 report issued by the Pennsylvania Grand Jury. The
24 General said so himself. The report is approximately
25 887 pages. A 12-page introduction is followed by

1 approximately 284 pages which address six separate
2 dioceses, individually.

3 The third section contains approximately ten
4 pages entitled The Church and Child Abuse Past and
5 Present. Next is a section entitled Recommendations
6 which is a mere seven pages. Last is an appendix of
7 offenders which exceeds 500 pages. Indeed the
8 introduction to the presentment directly stated the
9 Grand Jury's intention is to, quote, name their names
10 and describe what they did, end quote.

11 Now, if one looks at the presentment that
12 came from the Pennsylvania Grand Jury, one can see that
13 the first recommendation they made and arguably the
14 most important recommendation that they made was to
15 eliminate the statute of limitations for sexually
16 abusing children. And this is at Pages 307 and 308 of
17 the report. It reads as follows. This Grand Jury
18 exists because Pennsylvania dioceses routinely hid
19 reports of child sex crimes while the statutes of
20 limitations of those crimes expired. We just do not
21 understand why that should be allowed to happen. If
22 child abusers knew they could never become immune for
23 their crimes by outrunning the statute of limitations,
24 maybe there would be less child abuse.

25 We know our statute of limitations has been

1 extended recently so that now abusers can be
2 potentially prosecuted until the victim reaches age 50
3 and that's good. It just doesn't help a lot of the
4 victims we sought. No piece of legislation can predict
5 the point at which a victim of child sex abuse will
6 find the strength to come forward and no victim can
7 know whether anyone will believe her or how long she
8 will have to wait for justice.

9 If that seems hard to understand, think about
10 Julianne. She was taught without question that priests
11 are superior to other adults, even superior to her own
12 parents because they are God in the flesh. So, when
13 one of these flesh Gods put his finger in her vagina,
14 who was going to tell? Julianne was 14 when she was
15 assaulted. Now, she's almost 70.

16 Or Joe from Scranton. At the time he
17 couldn't find anyone who was willing to hear about the
18 naked masturbating priest who told him to take off his
19 pants and get into bed. It took 55 years before he
20 found us.

21 Or Bob from Reading. He told us that not a
22 day goes by that he doesn't think about what happened
23 to him. He can't bear to be touched by a man, not even
24 to shake hands or to hug his own sons. He never
25 reported it because he thought I was the only one. But

1 if he could still put that priest on trial even now, he
2 would. Somebody has to be accountable, he told us.
3 This has to stop. Bob is 83.

4 So, yes, we say no statute of limitations at
5 all, not for this kind of crime. And it's not like
6 we're asking for anything that unusual. It turns out
7 that this is the rule in well over half the states
8 across the country. No free pass for serious sexual
9 violation of children, no matter how long it takes.
10 That includes almost every State in our region, except
11 us. If we lived in New Jersey, or Delaware, or New
12 York or Maryland, we would today be issuing a
13 presentment charging dozens of priests. But because we
14 happen to live here instead, the number is two, not
15 something for Pennsylvania to be proud of.

16 New Jersey's statute of limitations for
17 sexual assault offenses is set forth in N.J.S.A. 2C:1-
18 6. In 1990 the limitations period was five years.
19 Since then it has been amended several times including
20 in 1996 when it was amended to provide that a
21 prosecution for a sexual assault may be commenced at
22 any time.

23 Earlier this year in State v. Rosado, 256
24 N.J. Super. 126 (App. Div. 2023) the Appellate Division
25 wrote regarding this change in the law in other words,

1 the Legislature decided to treat sexual assault like
2 murder and eliminated the time limitation for bringing
3 a prosecution for sexual assault. The Appellate
4 Division noted that the 1996 amendment took effect
5 immediately and was applicable to all offenses not yet
6 barred from prosecution under the statute of
7 limitations as of the effective date. And Rosado goes
8 on to give a fairly lengthy and thorough history of New
9 Jersey's statute of limitations concerning these sexual
10 assault offenses.

11 The second recommendation of the Pennsylvania
12 Grand Jury was to create a two-year civil window for
13 child sex abuse victims who couldn't file lawsuits
14 before. In 2019 the New Jersey Civil Statute of
15 Limitations as to child sexual abuse was amended to
16 provide victims the right to sue their abusers without
17 a hearing pursuant to Lopez v. Swyer, 62 N.J. 267
18 (1973), until they reached 55 years of age.

19 Anyone over 55 was given seven years to bring
20 an action from the date of reasonable discovery of the
21 injury and its causal relationship to the act of child
22 sexual abuse. The amendment also opened a window from
23 December 1, 2021 through -- I'm sorry, my notes are
24 wrong on that. My dates are wrong and I apologize for
25 this. I just realized I wrote down the wrong dates.

1 But the amendment opened a window for people to bring
2 an action for child sexual abuse whenever it occurred
3 without having to first hold a Lopez hearing.

4 The third recommendation was to clarify the
5 penalties for a continuing failure to report child
6 abuse. N.J.S.A. 9:6-8.10 has long required any person
7 having reasonable cause to believe that a child has
8 been subject to child abuse including sexual abuse, to
9 report same immediately to the Division of Child
10 Protection and Permanency. N.J.S.A. 9:6-8.14 makes
11 knowing a violation of this statute a disorderly person
12 and a fourth degree crime if the abuse is sexual abuse.

13 And the fourth recommendation is one that
14 prohibits non-disclosure or agreements regarding
15 cooperation with law enforcement.

16 And the point of that detour to talk about
17 Pennsylvania which I understand was created completely
18 under a different framework in terms of statutes and
19 rules was to point out that the Pennsylvania document
20 upon which New Jersey seeks to model itself was one
21 that contained very few substantive recommendations.
22 What it really intended to do was tell the story and
23 write the history and that's what that Grand Jury
24 sought to do and they very much said it up front and I
25 quoted that language directly.

1 There are a couple of other additional points
2 which I think is important for me to make. The
3 Attorney General argues that this Special Grand Jury is
4 necessary because it hasn't ruled out investigating or
5 charging racketeering or a large scale conspiracy. The
6 Court views this as something plausible in theory only.
7 I respect the argument. It's a creative argument well
8 made, but in my estimation that has no real chance of
9 occurring.

10 The State also argues that the Special Grand
11 Jury is needed to conduct a comprehensive review as to
12 compliance with the 2002 memorandum of understanding
13 with the dioceses, the Attorney General and the 21
14 county prosecutor's offices. The dioceses of all
15 indicated a willingness to cooperate in this review.
16 Oral argument indicated that the State had not
17 initiated that dialogue since the memorandum had been
18 written. And a review such as this, it's just fine but
19 it doesn't require the Court to empanel a Special Grand
20 Jury.

21 And the States also opined that the Camden
22 Diocese's position is really just an improper sideways
23 attack on the Grand Jury subpoena. Again, the Court
24 disagrees and by the decision today I think it's clear
25 that the Camden Diocese raised an important legitimate

1 substantive issue which is worthy of being addressed
2 immediately.

3 Also, in its brief the State attached a
4 presentation relating to a situation in Middlesex
5 County. It was referred to it in oral argument I think
6 as the pipeline case, the Dorham Woods case, and I've
7 reviewed that and I certainly saw it. It's part of the
8 record. And it doesn't appear that that was ever
9 challenged by anybody. The right to have that
10 presentment does not appear to have ever been
11 challenged or contested by anybody.

12 The State also argues that the anticipated
13 presentment here may be the only justice available for
14 certain victims and this Court should not intervene.
15 And to that I incorporate my previous conclusions and
16 note indeed there should be great compassion for
17 anybody who's been truly victimized here. And there's
18 no doubt there are victims here.

19 But a just system requires giving a person
20 against whom accusations are made a fair chance to
21 defend and it is not this Court's role to allow the
22 Court's Grand Jury to participate in some form of a
23 reckoning which is arranged by the State through the
24 Grand Jury against people who are completely without
25 ability to fight back and defend themselves. The Grand

1 Jury can't be given the opportunity to do a score
2 settling which has been arranged by somebody else.

3 There's a case that was published in 2020, a
4 Supreme Court case, State v. Shaw, which I think also
5 points up the Court's role in supervising a Grand Jury
6 and noting that while it's certainly rare that a Court
7 is insinuated into what's going on in front of an
8 active Grand Jury, it's not inappropriate and there are
9 times when it is completely appropriate. And the cite
10 for Shaw is 241 N.J. 223. The facts are very different
11 than this but the principle, I think, is an important
12 one.

13 In Shaw the Chief Justice considered the
14 question as to whether there should be any limits on
15 the number of times a prosecutor could submit a case to
16 a Grand Jury to seek an indictment after a prior Grand
17 Jury declined to indict so it's something very, very
18 different than this. But the Court invoked its
19 supervisory authority which is clear and it held that
20 if Grand Jury has declined to indict on two prior
21 occasions, the State has to obtain advance approval
22 from the assignment judge before it can submit the case
23 to a third Grand Jury. And the Assignment Judges were
24 given a number of factors which they have to consider
25 to determine whether re-present, presentment for a

1 third time is appropriate.

2 And this opinion also contains a fairly
3 lengthy statement as to the Grand Jury's evolving role
4 which is generally to decide if there's probable cause
5 to believe that a crime has been committed and to
6 protect citizens against unfounded criminal
7 prosecutions. It doesn't talk about presentments.
8 Presentments are fairly rare.

9 But this opinion also says that judicial
10 review of what happens in the Grand Jury is generally
11 limited and it's speaking about indictments here and
12 that's something which is very different than a
13 presentment. But it also says that the judiciary's
14 power of review is ultimately rooted in the Doctrine of
15 Fundamental Fairness which is an integral part of due
16 process and the doctrine ultimately operates to protect
17 citizens against unjust and arbitrary governmental
18 action and specifically against government procedures
19 that tend to operate arbitrarily.

20 It's applied sparingly, only when the issues
21 involved are especially compelling. And the Court
22 discussed those factors at length. I just think the
23 record should be clear that these situations, they're
24 unique, they're unusual but they are compelling in a
25 very different way that requires the Court's early

1 involvement.

2 And I want to reiterate that the Court does
3 fully comprehend how unusual it is for a Court to
4 intervene and dispute as to whether certain evidence
5 can be presented to a Grand Jury. The unique situation
6 here is one which ultimately requires the Court to
7 stray from its traditional, limited hands off practices
8 concerning the Grand Jury. This is not a situation
9 where the Court is intervening in the indictment
10 process.

11 The State in seeking this Special Grand Jury
12 came to the Court seeking a sixth Grand Jury panel
13 which would be asked to sit for at least one year and
14 likely much more. The State seeks this Grand Jury
15 truly not to indict criminal offenders but to issue a
16 presentment just like a Pennsylvania Grand Jury did.

17 The targets of this presentment aren't public
18 agencies, they aren't public servants and the Diocese
19 of Camden voiced objection in this case and the Court
20 exercised what it believes to be its ever present right
21 and authority to supervise the operation or prospective
22 operations of a Grand Jury. And in this instance the
23 Court operates to prevent an unjust practice as opposed
24 to remedy it or seek to remedy it after it has
25 occurred.

1 And for the reasons which I've discussed, the
2 purposes for which the State seeks to use this Grand
3 Jury would be fundamentally unfair to so many living
4 and dead who would be forever accused in a document
5 released by the Court but to whom the Court gave no
6 opportunity to defend and this distinct situation
7 requires the Court's early intervention. Again, I use
8 the language from I think it was the Camden case that
9 this is judicial, not ministerial.

10 The Court has stated on multiple occasions
11 that the presentment proposed by the State is
12 ultimately fundamentally unfair and violative of
13 elementary principles of due process. I want to make
14 sure that this conclusion is construed as a legal
15 conclusion and not in any way as an attack which is in
16 any way personal to the good people who comprise the
17 task force and the people who are representing the
18 State in this matter.

19 The State is absolutely correct in arguing
20 that the issue of sexual abuse by clergy members is
21 vitally important. The public would no doubt benefit
22 from the rendering of a comprehensive history. But it
23 is not for well-intentioned prosecutors to use the
24 court's Grand Jury to write a history which can never
25 be meaningfully disputed.

1 Now, just as a couple of other things. I'm
2 aware that since we've had oral argument there's been
3 something that's come out in Maryland. I'm aware that
4 something from Illinois came out this week. I'm not
5 going to get into comparisons of what's happened in
6 other states.

7 I do note that in Illinois what happened
8 appears to have been a report from the Attorney
9 General. It doesn't appear to have been a report
10 issued by a Grand Jury. I understand the complicating
11 factors here. Every state is different. And I just
12 note this because I just think the record should note
13 I'm aware. Here, I understand principles of Grand Jury
14 secrecy would ultimately operate to keep the Attorney
15 General from just being able to write a report. I know
16 that, but I just think it's interesting.

17 And the Maryland report was issued a couple
18 of months ago and that also speaks for itself, but I
19 just thought it was appropriate to address that.

20 It's also interesting to note, I think, you
21 know, using Illinois here and what they did I think
22 Monday of this week, it's one thing for a prosecutor to
23 stand up and say something. You see things on the news
24 fairly regularly around the country where a prosecutor
25 stands up and says through the application of new DNA

1 technology we have solved a particular murder.

2 From time to time including a recent one in
3 New Jersey prosecutors go public and they say that. A
4 person who they believe committed the murder is dead.
5 They go public and they say that. There's no trial,
6 there's no charge, there's no nothing, there's no
7 opportunity to defend. That's a prosecutor doing it
8 though. That's the executive branch doing it. That's
9 not the Court doing it.

10 And here, I think one of the really
11 controlling facts is that this report gets issued by
12 the Court's Grand Jury and it is the Court that allows
13 these allegations, however they are, and it promises to
14 be big, to be put out there, to remain out there
15 forever and to give absolutely no opportunity for any
16 of the people who are named or called out by
17 inescapable imputation, as I think Camden-1 says the
18 opportunity to defend themselves and as the old
19 expression goes, there's nowhere for them to go to get
20 their reputation back. That just doesn't exist.

21 So, later today the Court will issue an order
22 which in essence does the following. The Court is
23 going to deny the Attorney General's request to have
24 the Court empanel a Special State Grand Jury to serve
25 the Attorney General's clergy abuse task force. There

1 are five sitting Grand Juries, and this Court concludes
2 no additional panel is necessary.

3 The Court also concludes that the anticipated
4 State Grand Jury presentment concerning clergy abuse
5 within the Catholic Church is not authorized by law and
6 this Court will not take any action which enables the
7 process of preparing such a presentment to move
8 forward.

9 As regards the issue of subpoena compliance,
10 we didn't brief that. Based upon this ruling, the
11 parties are to confer and to advise the Court whether
12 further proceedings are necessary given this Court's
13 order.

14 And the order is further going to clearly
15 indicate that there's nothing in this order that
16 prevents the Attorney General or any county prosecutor
17 from pursuing an indictment against any specific
18 individual and nothing in this order prevents the
19 Attorney General from undertaking a comprehensive
20 review of the 2002 memorandum of understanding.

21 And the record will reflect -- I know we
22 spent time on the establishment clause issue. I don't
23 need to reach that and I'm not going to reach that.

24 So, that completes the Court's decision.
25 Thank you all for your patience. I'm sorry it took me

1 so long to get this decided. You've all been very
2 patient and courteous. I can say it's a shortage of
3 judges and that's, of course, a large part of it. It's
4 just the demands of trying to come out of a pandemic
5 have been -- they've been demanding. Demands are
6 demanding. But I thank everybody for your courtesy and
7 we'll get you the order by the end of the day today or
8 tomorrow morning. Everybody have a nice weekend and
9 we'll see you soon.

10 UNIDENTIFIED ATTORNEY: May I ask one
11 question, Your Honor?

12 THE COURT: Yes, sir.

13 UNIDENTIFIED ATTORNEY: Your opinion as set
14 forth from the bench, is it going to be --

15 THE COURT: It is not. I'm not going to
16 write it. You would have waited longer if I tried to
17 formulate it into something that I could release.
18 That's why I did it orally.

19 UNIDENTIFIED ATTORNEY: Can we obtain a
20 transcript?

21 THE COURT: Transcript? Sure. Anybody can
22 get a transcript if they want one. It's under seal so
23 you have to follow the normal procedures.

24 UNIDENTIFIED ATTORNEY: Yes.

25 THE COURT: But I can put in the order if

1 that's helpful to everybody that while the proceeding
2 was under seal, counsel may obtain a transcript.

3 UNIDENTIFIED ATTORNEY: Thank you.

4 UNIDENTIFIED ATTORNEY: Your Honor?

5 THE COURT: Yes?

6 UNIDENTIFIED ATTORNEY: I'm sorry. One point
7 for the record. Just, Your Honor, it's the State's
8 position that the order to show cause on the issue of
9 subpoena compliance is still live, and we request it to
10 be before Your Honor and heard.

11 THE COURT: Okay. Well, what I'm directing
12 is that you folks -- the lay of the land has changed
13 considerably and I appreciate that you've taken this
14 position regarding subpoena enforcement. But I think
15 given the fact that the lay of the land has changed, we
16 should at least try to have a conversation about where
17 you stand.

18 I don't like to guess, but I'm fairly certain
19 an appellate review is contemplated here and it may be
20 that we need to wait and see what happens there before
21 we go further because I've ruled and, you know, I
22 explained where I stand. But if you're going to go to
23 the Appellate Division, they'll have control over this
24 issue and, you know, I don't want to start -- any
25 decision I make now would be based upon where I am

1 right now. So, you know, but your position is noted,
2 but I would urge counsel to talk.

3 UNIDENTIFIED ATTORNEY: Just, you know, I
4 always learn --

5 THE COURT: You guys weren't going to just
6 let me finish today, right?

7 UNIDENTIFIED ATTORNEY: I always learned
8 Judge Fusca many years ago in Essex County
9 (indiscernible) stand still, but we made the argument
10 previously with regard to the order to show cause that
11 it was issued by Judge Jacobson who realized after she
12 signed it that she was --

13 THE COURT: Yes, if you're with me, we're
14 doing it again. I'm not going to rely on any past
15 argument or any past briefing. Again, the lay of the
16 land has changed here.

17 UNIDENTIFIED ATTORNEY: Thank you.

18 THE COURT: Okay, anybody else have anything?

19 UNIDENTIFIED ATTORNEY: No, sir.

20 THE COURT: Okay, thank you, all. I
21 appreciate it. Everybody be well.

22 UNIDENTIFIED ATTORNEY: Thank you, Your
23 Honor.

24 UNIDENTIFIED ATTORNEY: Thank you, Your
25 Honor.

* * * * *

C E R T I F I C A T I O N

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