

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

**IN RE:     MULTICOUNTY GRAND JURY                     ) District Court  
          SC 99-56   ) No. CJ 99-7238**

**FINAL REPORT**

We, the undersigned members of the State of Oklahoma's seventh Multicounty Grand Jury, having been duly empaneled on the 15<sup>th</sup> day of November, 1999, upon the verified application of the Attorney General of the State of Oklahoma and by order of the Supreme Court of the State of Oklahoma on the 30<sup>th</sup> day of September, 1999, and pursuant to provisions of the Constitution and Statutes of the State of Oklahoma Const. Art. II, §18 and 22 O.S. 1991, §350 et seq., have been charged with the responsibility of investigating in all seventy-seven (77) counties of the State, alleged public offenses against the State of Oklahoma, to include murder, rape, bribery, extortion, arson, perjury, fraud, embezzlement, violations of the Uniform Controlled Dangerous Substances Act, organized crime, public corruption, securities violations and crimes involving the sale or purchase of goods or services by state and local subdivisions. We have met and faithfully investigated allegations of criminal conduct within these enumerated areas over the last twenty-one (21) months.

The grand jury has also issued two Partial Reports to the Court during this term and intends that those reports be taken in context with, and be considered together with this Final Report.

The Multicounty Grand Jury, sitting in Oklahoma City, Oklahoma County, Oklahoma, as its principal meeting place, having met for fifty-four (54) days over seventeen (17) sessions, and having issued 2,462 subpoenas and having heard the sworn testimony of 351 witnesses, and having received 1783 exhibits from said witnesses, and having in a fair and impartial manner duly considered all such testimony and exhibits to the best of our ability and understanding, with due regard to the Court's

instructions, and having heretofore, after due deliberation, voted according to law, submits to this Honorable Court its Final Report as follows:

## **I. BACKGROUND**

During this term, the Multicounty Grand Jury has extensively used its statutory powers to investigate various types of alleged criminal activity throughout the State. Ever mindful of the protection of individual rights under the Constitutions of the United States of America and the State of Oklahoma, it has become very apparent to us that the powers to subpoena documents, records and other evidence, compel the attendance and testimony of witnesses under oath and investigate allegations unrestrained by county boundaries are extremely effective weapons to combat the far-reaching crimes for which the Multicounty Grand Jury was created. The power to compel testimony has enabled the Multicounty Grand Jury to obtain the testimony of reluctant witnesses whose vital information would not likely have been obtained in any other circumstance apart from the Multicounty Grand Jury process. The authority to subpoena records of bank accounts, telephone subscriber information and toll logs, and other financial data and business records has been pivotal in discovering and documenting criminal activity throughout the State without prematurely alerting those under investigation and giving them the opportunity to dispose of evidence, change their method of operation or otherwise hinder lawful investigations.

Much public attention has been focused on our investigation of employees/employment practices of the Oklahoma State Department of Health (the "OSDH"). Dubbed the "ghost employee" investigation by the media, our investigation was followed closely by the public. As the investigation centered around the OSDH, one of the largest state agencies in Oklahoma, the interest shown by the

public was understandable. While this grand jury returned numerous indictments as a result of the OSDH investigation, our inquiry revealed additional activity, although not rising to the level of criminal activity, all the same violates the public policy provisions of state law. We will address those issues more specifically later in this report.

The grand jury process is critical to a free citizenry in a representative republic such as ours. The Multicounty Grand Jury is composed of ordinary citizens from our State. The grand jury process ensures that no government agency, power, or person should unjustly or unfairly accuse or incriminate another citizen or public official without due process. It is important that no person, either governing or governed, be subjected to unfair or unjust accusation without access to a court of competent jurisdiction in which to meet his or her accusers. The Multicounty Grand Jury does not decide guilt or innocence but rather, determines whether or not there is sufficient evidence which, if unexplained or uncontradicted, and presented in court to a jury of one's peers, would prove the defendant's guilt beyond a reasonable doubt and result in a conviction. When there is sufficient evidence of both type and quality, the grand jury's responsibility is to bring an indictment, or accusation of crime, so that the State may require the indicted to face his accusers and stand trial. We have worked diligently and believe we have fulfilled our responsibility to the best of our ability in this regard. The necessity and effectiveness of the Multicounty Grand Jury has been demonstrated by the assistance this body has rendered to the numerous federal, state, and local law enforcement agencies investigating crimes within this body's jurisdiction. Again, most law enforcement agencies either by manpower, resources and/or authority do not have the tools available to them that the Multicounty Grand Jury brings to the investigative table. It is this body's belief that the Multicounty Grand Jury has made a difference in

many investigations.

The Multicounty Grand Jury has employed its powers to investigate a variety of crimes. These include: Murder, False Personation of Another to Accrue a Benefit, Embezzlement by Public Official, Conspiracy Against the State, Conspiracy to Commit a Felony, Possession of Forged Instrument, Use of Sham Legal Process, Perjury, Obtaining Money by False Pretense, Diversion of State Funds, Making a False or Fictitious or Fraudulent Claim, Controlled Dangerous Substance violations, Workers' Compensation Fraud, Medicaid Fraud, Consumer Protection Fraud, Voter Registration Fraud, Willful Omission of Duty by Public Officer and Public Corruption. The Multicounty Grand Jury has assisted the following agencies in the investigation of the above-referenced crimes: Department of Corrections; Federal Bureau of Investigations; FBI White Collar Task Force, Oklahoma City, Oklahoma; Oklahoma Bureau of Narcotics and Dangerous Drug Control; Oklahoma City Fire Department; Oklahoma Department of Environmental Quality; Oklahoma Department of Human Services Office of the Inspector General; Oklahoma State Auditor and Inspector; Oklahoma State Bureau of Investigations; Southwest Cattlemen's Association; Tulsa Fire Marshall's Office; U.S. Department of Veteran Affairs; U.S. Marshal Service; U.S. Secret Service, Oklahoma City, Oklahoma; Violent Crimes Task Force, Oklahoma City, Oklahoma, and the Office of the Attorney General. Local law enforcement agencies assisted by the Multicounty Grand Jury include County Sheriff Offices from the following counties; Bryan, Beckham, Cleveland, Comanche, Custer, Delaware, Garfield, Grady, Grant, Haskell, Johnston, Kay, LeFlore, Oklahoma, Osage, Payne, Pawnee, Pittsburg, Pontotoc, Texas, Tulsa and Woods, and a total of forty-five (45) police departments. Similarly, the Multicounty Grand Jury and its investigative powers were used by the following District

Attorneys' offices: Adair, Carter, Cherokee, Cimarron, Cleveland, Comanche, Delaware, Grady, Jackson, Kay, LeFlore, McClain, Muskogee, Okfuskee, Oklahoma, Ottawa, Pontotoc, Pottawatomie, Stephens, Texas, Tulsa, Washington and Woodward.

## **II. ACTIONS TAKEN**

The Grand Jury, during the course of its investigations issued 2,464 subpoenas for the purpose of securing both witnesses and evidence. We issued numerous indictments containing 177 separate felony counts. There were a total of thirty-one (31) individuals indicted by this Grand Jury.

The Multicounty Grand Jury also assisted in the investigation of homicides, assaults, numerous workers' compensation fraud cases, public corruption cases, drug cases, and others. The grand jury makes the following specific recommendations relating to matters presented during its term:

1. We would like to encourage more State involvement and funding for the training and development of local law enforcement skills in the initial investigations of crimes.
2. We would further encourage the Attorney General's Office to continue and carry on all investigations currently ongoing with this Multicounty Grand Jury.

## **III. INVESTIGATION OF EMPLOYEES AND EMPLOYMENT PRACTICES OF THE OKLAHOMA STATE DEPARTMENT OF HEALTH OSDH**

This grand jury has focused a significant portion of its time and attention investigating allegations of wrongdoing at the OSDH. In that regard, of the foregoing totals, the grand jury issued 302 subpoenas for the purpose of securing both witnesses and evidence. The grand jury has heard 150 witnesses, and examined 1242 exhibits, many of which were collective exhibits involving multiple documents. The grand jury returned 12 indictments as a result of this investigation, composed of 15

defendants and 159 separate counts. The substantial amount of time we devoted to this investigation is but a portion of the man hours expended. The Office of the Attorney General, through its attorneys and investigators, along with investigators from the Oklahoma State Bureau of Investigations (“OSBI”) and the Federal Bureau of Investigations (“FBI”), spent countless hours in preparation before, during and after each of our sessions to ensure that our time was spent efficiently during each session. When we requested additional information or witnesses on specific issues, the attorneys and investigators were always accommodating.

The sworn testimony of the witnesses and the information provided by the exhibits have allowed us to reach the following conclusions:

### **General Observations**

Our examination of OSDH employment practices has revealed serious deficiencies, and at times blatant disregard for State statutes, regulations and polices and procedures, in the following areas: the manner in which employees are hired, supervised and retained; the manner in which state funds are disbursed for employees’ salary and travel; the lack of regulation regarding employees’ work hours and leave use; and improper use of state equipment. While we acknowledge with the indictments returned by this grand jury that we believe violations of state criminal law occurred, we are further of the opinion that the areas outlined above raise important issues affecting the general public. In that regard, the legal advisors from the Attorney General’s office provided us with language from Oklahoma Statutes Title 74, § 840-1.2, cited as the Oklahoma Personnel Act, which states in part:

It is the purpose of this act to protect the public from improper use of authority, to protect public officials and employees from unwarranted assaults on their integrity . . . It is further the general purpose of this

act to establish for the state a system to recruit, select, develop and maintain an effective and responsive work force; to provide for administrative flexibility and adequate and reasonable protection and security for those who have entered and will enter into the service of the state; . . .; and to provide policies and procedures for the selection, hiring, retention, advancement, career development, job classification, salary administration, discipline, discharge and other related activities, all in accordance with principles of merit and fitness and equal employment opportunity, and to maintain a high level of morale, motivation and productivity among state employees.

We were also provided with section 257:20-1-1 of Title 74 of the Ethics and Conflicts of Interest Statutes which provides as follows:

- (a) The rules of this chapter 1 have been adopted for the purpose of complying with the provisions of the Oklahoma Constitution, Article XXIX, Section 3(B). The Ethics Commission finds that the proper operation of state government requires:
  - (1) that a state officer or state employee be independent and impartial;
  - (2) that government policy and decisions be made through established processes of state government;
  - (3) that a state officer or state employee not use state office to obtain private benefits;
  - (4) that a state officer or state employee avoid action which creates the appearance of using state office to obtain a private or inappropriate benefit; and
  - (5) that the public have confidence in the integrity of its government and state officers and state employees.
- (b) It is the intent of the Ethics Commission:
  - (1) to protect against conflicts of interest and establish standards of conduct of elective officers and state employees in situations where conflicts may exist;
  - (2) to attract those citizens best qualified to serve. Thus the rules against conflicts of interest must be designed as not to impede unreasonably or unnecessarily the recruitment and retention by government of those best qualified to serve. State officers should not be denied the opportunity, available to all other citizens, to acquire and retain private economic interests except when such interests conflict with the responsibility of such officers to the public;
  - (3) to discourage state officers and state employees from acting upon a private or business interest in the performance of a public duty;
  - (4) to develop public confidence in persons seeking or holding state office or employment, to enhance the dignity of state government, and to make it attractive to citizens who are motivated to public service;

(5) that state officers and state employees shall exercise their powers and prerogatives without prejudice or favoritism.

Title 74, c. 62, App., 257:20-1-1

Definitions provided to us are as follows:

**“State Officer”** means an elective, appointed or employed officer, including a public member, in the executive, judicial or legislative branch of the State of Oklahoma.

**“State Employee”**

(1) means :

(A) an elective or appointed officer or an employee of any governmental entity, except members of the House of Representatives or State Senate; and

(B) an employee, other than adjunct professor, in the service of an institution of higher education comprising the Oklahoma State System of Higher Education.

(2) does not mean a public member.

Title 74, c. 62, App., 257:20-1-2

From the language of the state law, it is apparent to us that the legislature, in enacting this law, intended state agencies to be impartial and equitable in employment practices, while also protecting the public from the consequences of inequities and abuses of authority. Our investigation has revealed that various officials, supervisors and employees of the OSDH were lax or in direct violation of the public policy directive contained in the referenced statute. Without violating the secrecy provisions regarding grand juries, we believe it is imperative to report to this Court in general terms some of the conclusions we have reached as a result of the OSDH investigation.

#### **A. Hiring, Supervision and Retention of OSDH Employees**

It is clear from the information we have obtained that the OSDH failed to follow the directive of the referenced state law with respect to the hiring, supervision and retention of OSDH employees.

Employees were hired for positions even though they lacked proper training, skills, education or experience to fulfill the duties. Standard OSDH hiring procedures were circumvented on numerous occasions resulting in new employees without proper paperwork processed through the personnel and finance departments. Based on the information obtained in this investigation, we believe standard procedures were bypassed in these instances due to the nature of the employee referral. We have been informed that various members of the Oklahoma legislature may have circumvented policies and procedures at the OSDH in order to obtain or protect employment for certain employees, supervisors and officials of the OSDH. In fact, we were informed that it was common knowledge in the OSDH that certain legislators directed OSDH officials and supervisors to take, or refrain from taking, specific actions and to pay political appointees a higher salary regardless of their qualifications. We have also learned of instances when legislators would give specific directives to OSDH employees to perform certain tasks regardless of the employees job duties and absent approval from the employee's chain of command. If accurate, such conduct further disrupted proper policy and procedure in employment at the OSDH. We were informed that numerous former OSDH employees were former members of the State Legislature, relatives of legislatures or were referred by members of the State Legislature. We believe OSDH officials had the authority and power to refuse such referrals, but we also were informed that OSDH officials felt some pressure to accept political referrals for fear that the refusal might result in a budget cut for OSDH by the State Legislature.

We were informed of two employees at the OSDH who were allowed to remain on the state payroll for the sole purpose of increasing their retirement benefits. OSDH officials and supervisors had knowledge of this practice. Additionally, with respect to one of the employees, we were informed that

a member of the state legislature encouraged officials and supervisors at the OSDH to continue such employment.

We were also informed of the standard practice at OSDH of hiring family members. To avoid violations of rules against nepotism, the salary of the employee would be paid from a budget other than that controlled by the family member. However, we were advised that supervision of such employees was not always provided by the department or division funding the employee, but rather by that of the employee's family member.

Further, we were informed of the practice by OSDH officials and supervisors of utilizing different duty station assignments and the use of non-classified consultant positions. For example, an employee might be placed in a position of "Consultant" and be paid accordingly; however, the employee would continue to perform the duties of a receptionist. We were made aware of numerous examples where an individual would simultaneously resign from one unclassified consultant position and be immediately hired in another unclassified consultant position at a higher salary. We were further made aware of numerous examples where these unclassified consultant positions were utilized to place individuals on the OSDH payroll at a salary greater than the merit position employees performing the same duties.

Various employees were authorized by their supervisors to work from home. However, our investigation revealed a total or substantial lack of supervision and accountability in numerous such arrangements. Some employees who claimed to work from home were unable to show any work product for extended periods of time.

We were further informed that it was common practice at the OSDH for one employee to sign

official documents for another. Specifically, this occurred in one instance on a regular basis due to the fact that the supervisor was seldom at work. Accordingly, an assistant signed her supervisor name to employees' time sheets and other OSDH documents approving such as accurate. We were informed that an OSDH internal audit concluded that this practice should be stopped. However, that recommendation was ignored.

We believe such practices are indicative of poor management decision making and promoted a negative atmosphere for OSDH employees as a whole.

### **Specific Recommendations**

1. We recommend enactment of procedures requiring full documentation of OSDH's hiring practices for all positions.
2. We recommend periodic review of OSDH positions to ensure appropriate personnel fill appropriate positions at salaries within the salary ranges established by State Office of Personnel Management for comparable positions.
3. We recommend enactment of a policy requiring strict supervision and accountability for employees and particularly those employees allowed to work from locations or duty stations other than OSDH offices.
4. We recommend enactment of a policy restricting the practice of signing official documents for another employee absent compliance with clear guidelines.

We acknowledge and commend the OSDH for re-issuing a policy entitled "Hiring of Relatives" in September of 2000, which prohibits employees from being directly supervised or in the chain of command of a relative. We encourage the OSDH to strictly enforce this policy.

## **B. Disbursement of State Funds for OSDH Employees' Salary and Travel**

This grand jury returned numerous indictments against former OSDH employees for Obtaining Money by False Pretense. The evidence supported allegations that these employees represented through official documents that they were eligible to receive salary payments even though they were not providing services to the OSDH.

Additionally, two former employees were indicted for filing false travel claims with the State. These employees represented through official documents that they were conducting official OSDH business when they were not.

Improper signing of official OSDH forms was another problem identified by this grand jury. We were advised that numerous employees signed blank travel claims and employee time reports on a routine basis. These blank, signed forms were then provided to another OSDH employee who was instructed to fill out the form for the signing employee. These forms were then forwarded to the appropriate department for processing and payment of salary or travel expenses. The OSDH supervisors signed such employee time reports and travel claims thereby attesting to their accuracy, even though they knew the information contained therein was inaccurate.

### **Specific Recommendations**

1. We recommend that OSDH implement a mechanism to conduct routine audits and training designed to ensure compliance with laws, rules and regulations.
2. We recommend enactment of a policy restricting the practice of signing official documents for another employee absent compliance with clear guidelines.

## **C. Regulation of OSDH Employees' Work Hours and Leave Use**

The problem identified in the foregoing section regarding blank forms applies here as well. We were informed that some employees signed blank employee time report forms and directed another employee to complete the form and forward it to the appropriate department.

We were further informed that officials, supervisors and employees signed employee time reports as the approving authority with knowledge that the reports were false. We were advised that certain employees either failed to report for work or consistently worked shortened hours.

Nonetheless, their time reports reflected perfect attendance, with no use of sick or annual leave.

Witnesses advised this grand jury that employees failed to report such violations due to fear of personal reprisal. Such fear fostered an abusive environment at the OSDH that affected a large part of the work force.

The failure of OSDH officials and supervisors to hold employees accountable for work attendance and leave use resulted in an organizational culture ripe with favoritism for some and inequity for others. This result is a direct violation of the public policy stated in the Oklahoma Personnel Act and the Ethics Act.

### **Specific Recommendation**

1. We recommend OSDH institute and follow supervisor accountability procedures by way of required periodic employee reviews and reporting.

We wish to acknowledge that OSDH re-issued a policy entitled “Employee Annual Performance Management Process” in September of 2000, requiring annual reviews for all employees. OSDH also re-issued a policy entitled “Employee Time Reports” in September of 2000, which requires the signature of both employee and supervisor on time reports and states that “the supervisor is

accountable for the accuracy of the time worked and leave used as reported.”. OSDH re-issued a policy entitled “Working Hours” in September of 2000, establishing official working hours for the central office and county health departments. Further, OSDH re-issued a policy entitled “Leave” in September of 2000, which requires leave approval by a supervisor and reporting of leave on the employee’s time report. We commend the OSDH for re-issuing these policies and encourage strict compliance therewith. However, we strongly advise enactment of the supervisor accountability procedures recommended above due to the fact that the specific policies re-issued were in effect in substantially the same form during the relevant period of time covered by this investigation.

#### **D. Improper Use of State Equipment by OSDH Employees**

We also received information that employees misused State equipment provided by the OSDH. We were informed that several employees extensively utilized their OSDH computers for personal use. Additionally, we were informed of the use of a State-issued cellular telephone for personal calls and failure to reimburse the State for the charges.

It is our understanding that the OSDH enacted a policy entitled “Misuse of Department Equipment & Property” in September of 2000, holding all employees accountable for use of OSDH equipment and subjecting employees to discipline, including dismissal, for violation thereof. We commend the OSDH for the implementation of this policy and recommend strict compliance therewith.

#### **Conclusion**

It is apparent from the information provided to us that from the highest level of the agency, the OSDH failed to follow clearly stated public policies found in the Oklahoma statutes. Specifically, with respect to employment practices, the numerous indictments returned by this grand jury are indicative of

that failure. The citizens of Oklahoma deserve state government and state agencies that they can rely upon to conduct state business in an equitable manner. This investigation has led us to conclude that there were serious deficiencies in the manner in which the OSDH was run in past years. By utilizing the state appropriations, federal funds and OSDH fee revenue for salaries of patronage, ill-qualified or non-working employees, the resources available for protecting the public and delivering services by the OSDH are significantly compromised. Moreover, because of the expanding nature of the regulatory function over professions, businesses, facilities and health concerns for which the OSDH is responsible, such diversion of resources as described in this report undoubtedly profoundly impaired the well being of citizens throughout the State of Oklahoma. In an effort to assist in correcting the deficiencies and restoring the OSDH to a position of trust and respect, this grand jury makes the following additional recommendations:

1. We recommend that the OSDH Commissioner of Health appoint a committee of knowledgeable employees from positions throughout the agency to review, revise and update, with approval, the current policies and procedures of the OSDH to ensure their conformity with state law and the public policy contained therein.
2. That once completed, all OSDH employees, supervisors and officials be required to follow said policies and procedures and failure to do so result in dismissal.

#### **IV. EXPRESSIONS OF APPRECIATION**

The Multicounty Grand Jury wishes to express our **appreciation** to several individuals and agencies who have contributed to a successful term. In appreciation, we thank the Supreme Court of the State of Oklahoma for its Order convening the Grand Jury and for their appointment of retired

Supreme Court Justice Robert D. Simms as presiding Judge of the Multicounty Grand Jury. We express appreciation to Judge Simms for his patience and wise guidance throughout the term. We commend Attorney General Drew Edmondson and the members of his staff for their professionalism, support, legal advice and assistance. We would like to thank Cyndi White, Melia Melton and Freddy Leggett, Court Reporters. Also, to Dr. Martha Dauway and staff at Langston University, to the Office of the Court Administrator, Howard Conyers and staff, Shelia Sewell, Oklahoma County Court Administrator, and staff, and the Oklahoma County Commissioners and staff, for their indulgence in having this body convene in their conference rooms; to Oklahoma County Public Defender Bob Ravitz and staff for providing counsel to indigent witnesses; to Charlotte Andrews and Lloyd Iverson who served as bailiffs; to Oklahoma County Court Clerk Patricia Presley and her staff, Chief Deputy Timothy Rhodes, Assistant Chief Deputy James Merritt, and Deputies Teresa Davis and Susan Keltch. To all of you, our grateful thanks for a job well done.

We also wish to thank our families for their support, patience and understanding. We also express our appreciation to our employers for their support and understanding over the past twenty-one (21) months.

## **V. ADMINISTRATIVE RECOMMENDATIONS**

During our twenty-one (21) month tenure, this Grand Jury has met in three (3) different locations for various reasons beyond our control. While the accommodations have been reasonable, we believe it to be in the best interest of future Multicounty Grand Juries to have a single, permanent meeting place. Further, we recommend that adequate parking availability be considered in selecting a location.

**IV. CONCLUSION**

We are unanimous in stating that we believe, based upon our experience, that the Multicounty Grand Jury is an essential and invaluable tool for law enforcement in the State of Oklahoma. Information and evidence was obtained and cases solved that would likely not have been otherwise due to the use of the subpoena and investigatory powers of the Multicounty Grand Jury. We believe it is a process which should be continued, funded and fully supported by the citizens, legislature, Governor, judiciary and law enforcement community of the State.

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This Final Report of the Oklahoma Multicounty Grand Jury is received and ordered filed this \_\_\_\_ day of July, 2001.

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ROBERT D. SIMMS  
PRESIDING JUDGE OF THE 7TH  
MULTICOUNTY GRAND JURY