NO. 416-81913-2015
NO. 416-82148-2015
NO. 416-82149-2015

THE STATE OF TEXAS	§	IN THE DISTRICT COURT
	§	
V.	§	COLLIN COUNTY, TEXAS
	§	
WARREN KENNETH PAXTON JR.	§	416TH JUDICIAL DISTRICT

STATE'S REPLY TO DEFENDANT'S MOTION TO QUASH INDICTMENTS BECAUSE JUDGE OLDNER'S CUMULATIVE ACTIONS COMPROMISED THE INTEGRITY OF THE INDICTMENT PROCESS

TO THE HONORABLE GEORGE GALLAGHER, PRESIDING JUDGE:

COMES NOW, THE STATE OF TEXAS, by and through its undersigned Collin County District Attorneys *Pro Tem*, Brian Wice, Kent Schaffer, and Nicole DeBorde, and files its Reply to Defendant's Motion to Quash Indictments Because Judge Oldner's Cumulative Actions Compromised the Integrity of the Indictment Process ["Motion"[1]**].** The State challenges all factual assertions in this Motion and submits the following factual account within its reply.

[1] On November 4, 2015, Paxton filed an "Amended Motion to Quash Indictments Because Judge Oldner's Cumulative Actions Compromised The Integrity of the Indictment Process," apparently because of a filing glitch with the original motion. Because the two motions are identical, all references are to the original motion.

I. Introduction: "It's gotta work better than the truth."[2]

Judge Chris Oldner is a well-respected and veteran jurist. He was appointed as judge of the 416th District Court of Collin County, Texas by Gov. Rick Perry in 2003, and re-elected without opposition on November 6, 2012. Prior to his appointment to the bench, Judge Oldner was a chief felony prosecutor for the Collin County District Attorney's Office. Judge Oldner has been honored with the Outstanding Judicial Faculty Award from the Texas Center for the Judiciary.[3]

Paxton's motion asks this Court to set aside two first-degree felony indictments and a third-degree felony indictment that were the result of a comprehensive investigation spearheaded by the Texas Rangers. Paxton seeks this extraordinary relief by claiming that he is the victim of a judicial conspiracy led by Judge Oldner, whom Paxton believes is solely responsible for his seat at the defense table. There is, however, one major flaw in Paxton's pre-trial shell game: none of what he claims Judge Oldner allegedly did comes close to meeting the high standard for the relief he seeks. *Wheat v. State*, 537 S.W.2d 20, 21 (Tex.Crim.App. 1976)(defendant bears the burden of proof on a motion to quash these indictments).

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[2] Paxton's insistence at crafting an alternative narrative, one that avoids any mention of his own criminality, while it re-writes, distorts, or simply ignores the historical facts that inform his claim, calls to mind the following cinematic exchange. "OTTER: "We'll tell Fred you were doing a great job taking care of his car, but you parked it out back last night and this morning ... it was gone. We report it as stolen to the police. D-Day takes care of the wreck. Your brother's insurance company buys him a new car. FLOUNDER: Will that work? OTTER: It's gotta work better than the truth." ANIMAL HOUSE (Universal Pictures)(1978).

[3] www.ballotpedia.org (last visited November 3, 2015).

Paxton's motion is constructed on the quicksand-like foundation of supposition, conjecture, conclusory assertions, selective and misleading parsing of its own exhibits, and a stunning lack of any controlling legal authority to support his unsupported and unsupportable claims. Paxton wants this Court to quash these indictments based on the cumulation of non-errors, in the face of long-standing authority to the contrary. *See e.g.*, *Chamberlain v. State*, 998 S.W.2d 230, 238 (Tex.Crim.App. 1999)("We are aware of no authority holding that non-errors may in their cumulative effect cause error."). Paxton's motion is a tale of sound and fury calculated to cast himself as a victim, and not a criminal defendant, in the court of public opinion. That Paxton's motion is not only desperate, but utterly without merit is predictable; that it recklessly and unnecessarily tars both a respected jurist and his spouse without a legal or factual basis to do so is unconscionable.

II. Judge Oldner Did Not Abuse His Judicial Discretion in Impaneling the Grand Jury that Indicted Paxton

Paxton asserts that Judge Oldner's impanelment of the 416th Grand Jury was improper because he "only impaneled persons summoned who were 'willing to serve'" and so "improperly added a qualification for grand jury service not included within the statute." Motion at 3. This notion is at odds with a commonsense reading of Judge Oldner's voir dire, the one case it deigns to cite, and contrary authority it pretends does not exist. Moreover, sustaining Paxton's evanescent claim would call into question the hundreds of indictments handed up by the 416th Grand

Jury without regard to Paxton demonstrating either harm or prejudice.

Article 19.25[4] of the Code of Criminal Procedure sets out five "Excuses From Service," including §5, affording Judge Oldner the judicial discretion[5] to excuse any potential grand juror whom he "determines has a reasonable excuse from service." In interpreting this provision, this Court is guided by what the Texas Supreme Court noted almost a century ago in *Simmons v. Arnim*, 220 S.W. 66, 70 (Tex. 1920):

> Courts must take statutes as they find them. More than that, they should be willing to take them as they find them. They should search out carefully the intendment of a statute, giving full effect to its terms. ... They are responsible for a true and fair interpretation of the written law. It must be an interpretation which expresses only the will of the makers of the law, not forced or strained, but simply such as the words of the law in their plain sense fairly sanction and will clearly sustain.

These sentiments have long been echoed by the Court of Criminal Appeals and the Texas Supreme Court. *See e.g., Moreno v. Sterling Drug, Inc.*, 787 S.W.2d 348, 352 (Tex. 1990)("When language in a statute is unambiguous, [courts] must seek the intent of the legislature as found in the plain and common meaning of the words and terms used."); *Iglehart v. State*, 837 S.W.2d 122, 126 (Tex.Crim.App. 1992)("When

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[4] Paxton erroneously refers to this provision as Article 29.25. Motion at 4.

[5] A trial court's decision is not an abuse of discretion so long as it is not arbitrary or unreasonable or outside the zone of reasonable disagreement. *State v. Mechler*, 153 S.W.3d 435, 439 (Tex.Crim.App. 2005). A trial court does not abuse its discretion merely because the court of appeals would have decided an issue differently. *See Downer v. Aquamarine Operators, Inc.*, 701 S.W.2d 238, 241 (Tex. 1985)("The mere fact that a trial judge may decide a matter within his discretionary authority in a different manner than an appellate judge in a similar circumstance does not demonstrate that an abuse of discretion has occurred.").

the literal text of a statute is clear, the court must give effect to the plain meaning of such text."). This Court must enforce Article 19.25(5) as enacted by the Legislature without regard to policy, wisdom or the mischievous results Paxton claims occurred. *In re Smith*, 333 S.W.3d 582, 586 (Tex. 2011). So long as a commonsense interpretation of this statute's plain language does not lead to absurd results the Legislature could not have imagined, this Court must give effect to its plain language. *Boykin v. State*, 818 S.W.2d 782, 785-786 (Tex.Crim.App. 1999).

A commonsense reading of the plain language of this failsafe provision that does not expressly prohibit Judge Oldner from asking such a question, one that does not lead to absurd results, clearly gave Judge Oldner the discretion to inquire of the panel in such a way as to ensure that those individuals who were not willing to serve, who were unwilling to make the extraordinary commitment of time and energy required of any grand juror – the consummate "reasonable excuse from service" in Article 19.25(5), could be excused from service. *See Morrison v. State*, 845 S.W.2d 882, 906 (Tex.Crim.App. 1992)(Benevides, J., *dissenting*)("[I]n our system of jurisprudence, that which is not forbidden is generally allowed."). Paxton does not, because he cannot, point to any provision in Chapter 19 of the Code of Criminal Procedure, let alone Article 19.5(5), precluding Judge Oldner from asking any question, so long as it was not driven by a discriminatory intent, in an effort to ensure that only those individuals willing to serve as grand jurors were, in fact, selected.

Indeed, the best evidence that Paxton's claim that Judge Oldner lacked discretion to seat only those individuals expressing a willingness to serve is devoid of merit is the transcripts of the selection and impanelment of the grand juries Paxton fought so strenuously to obtain, readily reveal that Judge Roach,[6] Judge Cynthia Whales,[7] and Judge Tucker[8] all empaneled their grand juries in a manner virtually identical to that employed by Judge Oldner.

Ironically, the sole case Paxton cites, *Ex parte Becker*,[9] 459 S.W.2d 442, 444

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[6] As Judge Roach told the panel of prospective grand jurors,"In a moment – and this is what is going to make half of you feel better – in a moment I am going to ask for volunteers to serve on the grand jury. The way we used to do it, or the way I can do it is just go, 'I need you, you, you, you,' and then you figure it out, if you don't otherwise have an excuse. But that's not how we are going to do it anymore, because if you want to volunteer, that sure is a lot easier than being compelled to do something that you ... don't want to do. ... I am going to ask for volunteers, but I am going to tell you when we say volunteers, it is not like you are signing up to ring the bell at the kettle at the Salvation Army; because once you volunteer to do it, you are then compelled to be here, okay? ... [I] am going to ask for volunteers who would like to be compelled to be here. ... And so what I am probably going to do is ask for volunteers to come – this is going to be kind of a musical chairs thing. I am going to ask all of the volunteers to come sit here in front of me so I can talk to them." (RR 9-12).

[7] As Judge Whales noted, "We should probably start taking volunteers. ... [There's a new method, and that method is ... I can begin to take volunteers." (RR 12-14). Judge Whales' grand jury, including alternates, was composed of volunteers.

[8] As Judge Tucker pointed out, "And if you know of reasons why you wouldn't potentially be available later, [the prosecutors] don't want you to volunteer. ... [The prosecutors] are going to – they're asking that we start with volunteers. (RR 21, 24). Judge Tucker's grand jury, including alternates, was composed of volunteers.

[9] Paxton's motion fails to provide the full citation to *Becker*. Motion at 6. In *Becker*, the trial judge who empaneled the grand jury failed to honor "the custom and tradition" in Texas of selecting the first 12 names of those who were qualified to serve as grand jurors. The judge failed to seat a woman (because he believed there were too women on the grand jury) and an Hispanic male (because he "was too young" and did not "reflect[] the beliefs and opinions held by the majority of the people in Dallas County." *Id*. at 443.

(Tex.Crim.App. 1970), for the tenet that "an arbitrary disregard" of the statutes regarding the selection and impanelment of a grand jury "vitiates and renders [a] grand jury without authority," Motion at 6, actually defeats his claim. First, Paxton inexplicably does not favor this Court with perhaps the most important part of the holding in *Becker*, one almost a century old, that "the statutes relating to the organization of grand juries are directory and not mandatory," *id*. at 443-444, a canon that eviscerates Paxton's argument. Second, Paxton also conveniently ignores what the court in *Becker* made clear in rejecting the claim that the trial court's conduct did not vitiate the impanelment of the grand jury:

> We are unable to agree with appellant's contention as set forth in his bill of exceptions No. 1 that the trial court committed error in excusing from the list of grand jurors certain men drawn thereon, and in instructing the sheriff to summon other men to take the places of those so excused. We do not think the law regarding the formation of a grand jury should have such rigid and inflexible construction as that the trial court may not excuse from service on such grand jury citizens whose reasons as presented to the court appeal to his sound discretion and were such as to seem to justify such action.

Id. at 444-45, citing *Robinson v. State*, 244 S.W. 599, 599 (Tex.Crim.App. 1922). Third, because Judge Oldner's conduct does not come within a time zone of the irregularities in *Becker*, the deliberate exclusion of a woman and an Hispanic male based on the trial judge's *ad hoc* sentiments, Paxton can no more demonstrate harm or prejudice than the defendant in *Becker*. *See id.* at 445 ("However unique the irregularity, it is not of sufficient gravity to warrant holding the Grand Jury illegally

constituted rendering void ipso facto every indictment returned by such Grand Jury, particularly without any showing of harm or prejudice.").

III. Judge Oldner Did Not Abuse His Discretion in Sealing the Names of his Grand Jurors

Paxton argues that Judge Oldner's decision to seal the names of his grand jurors was "contrary to Texas law" and "hammered] Paxton's ability to challenge the grand jury array." Motion at 6-7. Neither contention will support the great weight rested upon it.

While Paxton relies on an Attorney General's Opinion[10] that he avers "addressed this exact issue," Motion at 7, Paxton's assertion is informed by his unwillingness or inability to fully understand the parameters of the question the Attorney General was tasked with answering. The discrete question at issue was not, as in this case, whether Judge Older had the *discretion* to seal his grand jurors' names, but whether a trial judge was *required* by law to keep confidential the identities of grand jurors who were chosen to serve. While Paxton quotes at length from the Attorney General's Opinion, Motion at 7-8, tellingly, he does not favor the Court with the two sound bites from the opinion that derail his contention:

- "Returning to [the] specific questions…a clerk or judge has *no duty* to keep a grand jury list confidential after the clerk has opened the names of prospective grand jurors."
- "You do not ask about and *we do not consider a judge's discretionary*

[10] It is well settled that an Attorney General's Opinion does not have the force and effect of law and is of no precedential value.

> *authority to seal court records, including grand jury lists,* or a clerk's responsibility in such case."

Id. at 4 (emphasis added).

The policy reasons fortifying Judge Oldner's discretion to seal the names of his grand jurors, especially in a high-profile matter such as this are obvious. As the Fourteenth Court of Appeals has remarked in this regard, such confidentiality "ensures the utmost freedom to the grand jury in its deliberations. ... [No undue influence should be permitted to sway its counsels or govern its action."[11] *Stern v. State ex rel Angel*, 869 S.W.2d 614, 623 (Tex.App.– Houston [14th Dist.] 1994, writ den'd).

IV. Judge Oldner's Entry in the Grand Jury Room was not Improper

Paxton contends that his "investigation indicates" that Judge Oldner "improperly and without authority, twice entered the Grand Jury room where the 416th Grand Jury was in session and meeting." Motion at 8. He speculates that, while in the grand jury room, Judge Oldner presumably answered questions the grand jury might have had, and insists that Judge Oldner was present while the grand jury was "conducting proceedings." *Id*. at 9. Because Paxton's assertions are wholly conclusory, and without any support in the record he has brought forth, they are non-starters.

[11] Given the repeated attempts by at least one blogger to contact the members of Judge Tucker's grand jury at home and at their places of business, this reasoning fortifies the notion that Judge Oldner was well within his judicial discretion in ordering the names of his grand jurors sealed.

As a threshold matter, so long as the grand jury was not "conducting proceedings" by either hearing testimony or voting on whether to return true bills, Paxton cannot show that Judge Oldner lacked authority to enter the grand jury room. Tellingly, yet not surprisingly, conspicuous by its absence is a single case Paxton can cite for the notion that the judge overseeing a grand jury has no authority to enter the grand jury room in the absence of any evidence the grand jury was "conducting proceedings." In fact, there is authority to the contrary that Paxton's research of the length and breadth of Article 20.02 failed to uncover. *See Ray v. State*, 561 S.W.2d 480, 482 (Tex.Crim.App. 1977)(rejecting claim indictment should be quashed where no witnesses testified that any unauthorized persons "sat with the grand jury during the time it deliberates or voted on the indictments before it."); *Carter v. State*, 691 S.W.2d 112, 116 (Tex.App. – Fort Worth 1985, no pet.)("It is well settled that unauthorized persons are not allowed in the grand jury room during deliberations. However, there is no rule prohibiting persons from appearing before the grand jury at other times.").

Second, the one case Paxton does cite, *Mason v. State*, 322 S.W.3d 251, 257 (Tex.Crim.App. 2010), is clearly distinguishable. In *Mason*, the State conceded that it may have violated Article 20.011 of the Code of Criminal Procedure when unauthorized persons had questioned a witness while the grand jury was in session. *Id*. at 254-55. The Court of Criminal Appeals held that the defense could not show that this violation resulted in "a substantial and injurious effect on the grand jury's

decision to indict Appellant." *Id.* at 257. For Paxton to claim that Judge Oldner's presence in the grand jury room somehow had "a substantial and injurious effect on the grand jury's decision to indict" him on the third-degree felony of failing to register as an investment advisor[12] when he is unable to show, unlike the defendant in *Mason*, that a violation of Article 21.011 even occurred, is laughable. This Court need not linger long in rejecting Paxton's claim.

V. Judge Oldner Acted Properly in Retaining the July 7 Indictment

Paxton goes to great lengths to assert that Judge Oldner's conduct in retaining the July 7 indictment violated Article 20.21 of the Code of Criminal Procedure, claiming that, "It is unknown why Judge Oldner held the First Indictment and did not immediately surrender it to the District Clerk."[13] Motion at 13. By ignoring the clear import of Article 20.21 and by being willfully blind to the agreement his initial lawyer made with the Special Prosecutors about the July 7 indictment being sealed, Paxton's contention comes perilously close to being frivolous.

At the outset, Paxton inexplicably ignores the fact that Article 20.21 authorizes the grand jury foreman, upon the return of an indictment, to "deliver the indictment to

[12] Tellingly, Paxton does not, because he cannot, argue how or why Judge Oldner's entry in the grand jury room on July 7 somehow had "a substantial and injurious effect on the grand jury's decision to indict" him weeks later for the first-degree felonies of securities fraud.

[13] The affidavits Paxton brings forward in support of his contention are redacted as to the authors of the affidavits. The State is clearly entitled to know their identities. While Paxton claims that he "[does] not want to publish the names of the involved employees at this juncture to avoid intrusion into their private lives," Motion at 11 n. 3, his munificence is trumped by the State's right to confront and cross-examine these potential witnesses.

the judge" overseeing the grand jury, exactly what took place on July 7. It strains credulity for Paxton to nevertheless argue that Judge Oldner somehow violated Article 20.21. While Paxton claims that Judge Oldner "thwarted [the District Clerk] in discharging her duty to deliver the capias/summons to the proper party," Motion at 13, this claim is absurd. As Paxton's own narrative reveals, Judge Oldner did, in fact, permit the District Clerk's office to process the indictment before he properly took custody of it pursuant to Article 20.21.

Moreover, Paxton's assertion that," It is unknown why Judge Oldner held the First Indictment and did not immediately surrender it to the District Clerk," Motion at 13, seeks to re-write, if not ignore, history. As Exhibit A reveals, in his letter to Special Prosecutor Kent Schaffer, dated June 30, 2015, Paxton's original lawyer, Joe Kendall acknowledges that:

> You told me that it is your intention to seek an indictment from the Collin County Grand Jury next week. *You told me that if a True Bill is returned it will be kept under seal until the week of ... [July] 20th, presented directly to Judge Oldner*, and you will notify me by Summons for [Paxton] to appear before Judge Oldner on Tuesday, July 28, 2015, rather than have him arrested. You also told me you would agree to a personal bond.
>
> I appreciate your agreements[14] and it is my belief that this is the reasonable approach...

[14] Part and parcel of the "agreements" the Special Prosecutor made with Kendall as to why the indictments would be sealed was that Kendall would be out of town and Paxton would be on vacation in Hawaii.

(emphasis added). While Paxton's lawyer in June "appreciated" the agreement he made with the Special Prosecutors, Paxton's current cadre of lawyers apparently neither appreciates the agreement their predecessor made nor do they see fit to acknowledge it. Notwithstanding Paxton's proclivity to ignore unassailable facts that do not dovetail with his grand conspiracy theory – reason enough for this Court to summarily reject this decidedly tenuous assertion – Paxton is estopped from even making it. By agreeing that the July 7 indictment would remain sealed and presented directly to Judge Oldner, Paxton is estopped from now complaining of any purported irregularity. *See e.g., Prystash v. State*, 3 S.W.3d 522, 531-32 (Tex.Crim.App. 1999)(defense estopped from claiming trial court erred in submitting jury instruction defendant requested). Paxton's allegation is without merit.

VI. Judge Oldner did not Violate Grand Jury Secrecy

Paxton's next salvo, that Judge Oldner violated grand jury secrecy by telling his wife that Paxton had been indicted, is no more compelling than his earlier claims. First, at the time Judge Oldner told his wife that Paxton had been indicted, the indictments *had not* been sealed.[15] Second, once his wife learned the indictments were sealed, she did what she could to un-ring the bell by immediately telling Collin

[15] Even the use of the term "sealed" is misleading inasmuch as Texas, unlike the federal courts, has no provision expressly authorizing the "sealing" of an indictment by court order. In other words, there is a critical distinction between an indictment that is "sealed" by court order, and one, as here, that is returned before the defendant is arrested or surrenders.

County Commissioner Susan Fletcher not to relate what she had been told.[16] There was simply nothing more Ms. Oldner could do. Third, and most important of all, Paxton cites no authority to buttress his claim that Judge Oldner telling his wife about the indictments when they were not sealed entitles him to the extraordinary pre-trial relief he seeks.

After Judge Oldner received the indictments on July 28, he ordered the District Clerk to enter them into the system, and making them public as Paxton had made plans to voluntarily surrender the following Monday. Judge Oldner then left, secure in the belief that the indictments had not been sealed. When a deputy district clerk, in the presence of Judge Scott Becker and Special Prosecutors, noted that normally indictments remain sealed when the defendant is not in custody, did Judge Becker suggest that the Special Prosecutors inform Judge Oldner of the District Clerk's policy when he recessed his trial later that day. The Special Prosecutors did so shortly after 5:00 p.m. and Judge Oldner made the decision seal the indictments. Critically, yet tellingly absent from Paxton's narrative, is the unassailable fact that the indictments were unsealed for approximately 90 minutes that day.

Simply stated, Judge Oldner did not violate the spirit and tenor of Article 20.22(b), when he told his wife in this 90-minute gap that Paxton has been indicted.

[16] he texts and screen captures of the texts between Judge Oldner's wife that Paxton has included, Motion at 15-17, are a mere sideshow for the public's titillation that Paxton employs like a drunk uses a lamppost – for support and not illumination.

The legislative intent behind Article 20.22(b) is to keep a defendant who has been indicted from fleeing jurisdiction before he can be arrested. *See Rothschild v. State*, 7 Tex.Ct.App. 519, 537 (1880)(grand jury secrecy designed, *inter alia*, to prevent the escape of defendants who will be indicted). Paxton's core claim, that Judge Oldner violated grand jury secrecy, crumbles in light of what one court of appeals has remarked:

> The requirement of secrecy should be imposed only to the extent that it contributes to the effectiveness of the grand jury as that institution carries out is investigative and screening functions. Beyond that, however, the requirement of confidentiality serves no purpose.

Stern v. State ex rel Ansel, 869 S.W.2d 614, 624 (Tex.App.– Houston [14th Dist.] 1994, writ den'd). Viewed against this backdrop, the residue of Paxton's narrative, one that does not even begin to explain how Judge Odner telling his wife of Paxton's indictment prejudiced Paxton, is merely white noise

Paxton's then offers the *piece de resistance* of his *magnum opus*, his cut-from-whole-cloth fictional rant that, "The only conceivable way Ms. Oldner could have learned about Paxton's indictments was through her husband, Judge Oldner; who presided over the Grand Jury and *somehow arranged to have Paxton's case assigned to his trial court*." Motion at 15 (emphasis in original). What poetic license, writer's embellishment, or suspension of disbelief gives Paxton the inalienable right to advance such an inherently speculation-laden and defamatory concoction? Where is one iota of proof that a veteran and respected jurist was

somehow, some way, capable of putting his thumb on the scale of justice, and managing to bypass the random assignment of criminal cases?[17] To the contrary, Paxton's exhibits – statements from members of the District Clerk's office he ignores – belie his groundless and gratuitous avowal.[18] Paxton's unwarranted, unsupported, and ultimately unsupportable avowal that Judge Oldner, the focal point in his Grassy Knoll-like conspiracy to indict Paxton "somehow arranged to have Paxton's case assigned to his trial court" has no place in a legal pleading – it is far more appropriate as a plot point in an Oliver Stone motion picture. *See Elmore v. Ozmint*, 661 F.3d 783, 884 (4th Cir. 2011)(Wilkinson, J., *dissenting*)("While this story may make for a good movie, it does not stand up as a piece of legal analysis or bear resemblance to reality.").

Finally, the one case that Paxton cites, albeit in the amorphous "see also" context, *Stern v. State ex rel Ansel*, 869 S.W.2d 614, 623 (Tex.App.– Houston [14th Dist.] 1994, writ den'd), does not avail him.[19] In *Stern*, the court of appeals concluded that the prosecutor violated Article 20.02, not by publicly disclosing that

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[17] Paxton's contrived and indefensible character assassination of Judge Oldner, accusing him of putting the fix in to get these cases assigned to his court, adds insult to injury by coming perilously close to accusing Judge Oldner of at least two felony offenses. *See* TEX. PENAL CODE, §39.02 (Abuse of Official Capacity) and §39.06 (Misuse of Official Information).

[18] *See* Exhibit G (""I proceeded to file the three cases and number them. As Judge Oldner instructed, I let Odyssey [case management system] automatically assign the three cases instead of manually assigning them."); Exhibit H ("The indictments fell in the 416th court.").

[19] While Paxton presumably read *Stern*, it speaks volumes that he managed to miss that portion of its holding about the limits of, and reasons for, grand jury secrecy alluded to above.

indictments had been returned, but by publicly disclosing transcripts of testimony given by witnesses who had appeared before the grand jury. *Id*. Paxton's unjustified and unproven accusations against Judge Oldner should be swiftly and summarily rejected.

VII. Judge Oldner Never Entered Arrest Warrants in the System

Paxton's final assertion, that Judge Oldner issued arrest warrants for Paxton as "a vindictive action meant to publically embarrass and humiliate Paxton," Motion at 20, true to form, is driven by his penchant for ignoring the uncontradicted historical facts, and his unwillingness to buttress his averments with any legal authority.

First, as Paxton's Exhibit K reveals, although Judge Oldner issued arrest warrants for Paxton, Judge Oldner agreed he would not enter the warrants into the system, a pivotal fact Paxton ignore, no doubt because it eviscerates any conceivable showing of Judge Oldner's bad faith, let alone harm to Paxton. Second, unless Judge Oldner issued the warrants, Paxton would be unable to voluntarily surrender himself. Judge Oldner and this Court agreed that the warrants be held until Paxton appeared at to voluntarily surrender, when the warrants be turned over to the Ranger who would process Paxton at the Collin County Jail. Paxton's assertion turns a blind eye to the fact that the arrest warrants were issued but held, not in bad faith, but as a courtesy to him.

Moreover, Paxton refuses to acknowledge that, as a result of their courtesy and professionalism, the Special Prosecutors afforded him the benefits of answering to a

summons instead of being arrested, personal bonds on three indictments, including a pair of first-degree felonies, and a voluntary surrender, none of which are usually afforded to a typical defendant. That Paxton now claims, without citing a single case in support of his contention, that he is somehow entitled to the extraordinary relief of having these indictments quashed because arrest warrants were issued but never entered into the system, let alone served on him, is stunningly ironic. Had the Special Prosecutors been part of what Paxton terms as "unnecessary and heavy-handed" behavior, Motion at 19, they could have insisted that the arrest warrants be entered into the system on July 28. Once the warrants were entered, Paxton was subject to arrest by his own security detail. Such is the unsatisfying, unpersuasive, and unsupported coda to Paxton's tale of sound and fury that, in the end, signifies nothing.

VII. Prayer for Relief

For all of these reasons, the State asks that this Court deny Paxton's motion to quash.

Respectfully submitted,

/s/ Kent A. Schaffer

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CERTIFICATE OF SERVICE

Pursuant to TEX.R.APP.P. 9.5(d), I hereby certify that a true and correct copy of the above and foregoing reply was served via e-mail delivery through eFile.TXCourts.gov on November 5, 2015 to all defense counsel listed below:

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