

State Grand Jury
Trenton, New Jersey
State Grand Jury Number SGJ 270-90-4

IN THE MATTER OF STATE GRAND :
JURY INVESTIGATION CONCERNING :
MISUSE OF STATE FUNDED :
PERSONNEL AND EQUIPMENT AT :
THE LEGISLATURE OF NEW JERSEY :

DATE: February 7, 1991

Richard J. Hughes Justice Complex
25 Market Street
Trenton, New Jersey

Lester P. Saunderlin, FOREPERSON
and the State Grand Jury

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New Jersey State Library

New Jersey State Library

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INTRODUCTION

On July 20, 1990 a State Grand Jury inquiry was initiated to investigate allegations of improper use of public employees and equipment at the Legislature of New Jersey and to determine whether such conduct, if it occurred, violated the criminal laws of New Jersey. The investigation arose after information was received so questioning the possible misuse of State property and personnel and also indicating that Democratic computer libraries had been surreptitiously and improperly accessed.¹

More than thirty individuals provided information by way of statements, statements under oath and/or testimony under oath before the State Grand Jury. In addition, seven custodians of records were subpoenaed and produced thousands of records and other documents. Additional documents were produced by various witnesses interviewed under oath or called to testify. And computer logs were reviewed to determine the dates and times relevant documents had been created.

We have determined: (a) that the evidence does not support the proposition that any Legislator either participated in or had knowledge of the improper accessing of confidential computer libraries and the retrieval of documents from them until after the transgression became public²; (b) that the evidence does

¹Our inquiry also involved assessing the extent, if any, of legislator knowledge and involvement in the "accessing" affair.

²There was evidence that a member of the Assembly Republican Staff communicated the contents of a stolen document to a Legislator without revealing the source of the contents. According to the testimony, when the Legislator asked for the

confirm there was improper use of State personnel and equipment for political campaign related purposes; (c) that, while the evidence does reveal matters which demand comment and remediation, it does not identify conduct warranting criminal attention and accordingly no indictments are being returned as the result of our inquiry; and (d) that we have an obligation to the public to identify and address, by way of Presentment, the more salient instances of the conduct mentioned in (b), above.

This Presentment is intended to be a constructive document, designed to identify problems and to suggest remedies for them. When indictments are returned by a Grand Jury, those charged have a public forum in which to defend against and to contradict the crimes and facts alleged. The same opportunity is not available to individuals who may be named in a Presentment. Accordingly, and in light of the aforestated purposes for which this Presentment is being issued, we have decided not to identify the individuals involved in the conduct to which we shall refer because such action would not be constructive and is most unnecessary to our goals. Among other things, the improper conduct, while of course performed by individuals, is institutional because it represents and reflects the failure of

source of the material the staff member replied "you don't want to know." When asked about this incident by State Investigators, the Legislator had no recollection of the incident. In one other instance, a stolen document was briefly produced to a Legislator on the floor of the Legislature but it was neither reviewed nor kept by the Legislator. It appears that the Assembly Republican Staff attempted to keep information concerning its ability to access confidential Democratic documents to itself.

the Legislature to adequately administer and monitor the behavior of its staffs.

SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS

1. The "partisan" staffs of the New Jersey Legislature, primarily the Assembly staffs, participated in campaign related activities during regular working hours utilizing the Legislature's computer and information system.
2. The Legislature did not establish uniform guidelines concerning its "partisan" staffs' responsibility and obligation to refrain from campaign related work on state time and/or by the use of public equipment.
3. In the absence of uniform legislative guidelines, the campaign related conduct performed by staff on State time with State equipment described herein, while improper, does not warrant prosecution under the criminal laws of New Jersey.
4. We recommend that legislation should be enacted clearly prohibiting both State employees working on State time and State resources from being used for campaign activity.
5. We recommend that attendance records for State employees should be kept in a sufficiently detailed manner so as to insure that campaign activity can be clearly identified as voluntary.

PARTICIPATION OF LEGISLATIVE PARTISAN STAFF IN
CAMPAIGN RELATED ACTIVITY

Both the Democratic and Republican parties in each house of the Legislature are served by full-time "partisan" staffs which operate under the direction of the respective legislative party leadership. These staffs, formally known as Senate or Assembly majority or minority staffs, are supported and paid by public funds and, in performing certain of their tasks, utilize the publicly funded Legislative Computer and Information System maintained by the Data Management Unit of the Office of Legislative Services.

Partisan staffs "provide research, policy, public relations and administrative services for their respective party leaders, committee chairmen, and individual legislators." (New Jersey State Legislator's Handbook 1990 - 1991 Edition at p. 50) During the course of this investigation we discovered instances in which the computer and information system, as well as employees of these partisan staffs while on State time, were utilized in the furtherance of the election campaigns of both incumbent and non-incumbent candidates for elected office. The evidence before us demonstrates that most of this improper conduct was committed by the Assembly Partisan Staffs.

The Grand Jury recognizes that the line between governmental and political responsibilities and functions is necessarily blurred for legislators. The Legislature, after all, is inherently political in both the broad and narrow sense of the

THE HISTORY OF THE
CITY OF BOSTON

The city of Boston, situated on a neck of land between the harbor and the bay, has a history of more than three centuries. It was first settled by English Puritans in 1630, and has since that time been a center of political, commercial, and intellectual activity. The city has grown from a small fishing village to a metropolis of over a million inhabitants. Its history is marked by significant events, including the Boston Tea Party, the American Revolution, and the Civil War. The city is known for its universities, museums, and cultural institutions. It is a city of contrasts, with a mix of old and new, tradition and innovation. The city's history is a testament to the resilience and spirit of its people.

word. In a partisan setting its members are elected by, and are accountable to, the people and of necessity must have continued contact with their constituencies. The Legislature itself is structured along party lines with the majority and minority parties in both houses organized behind elected party leaders. The legislators, as well as their staffs, must perform functions to gain support in the community which may include meeting constituents, distributing press releases and other actions which may similarly have both governmental and political overtones and characteristics. These activities are part of the job for elected representatives and their staffs and result in collateral benefits to a legislator and a political party during campaigns for political office. It is not these functions that we criticize. Rather, we direct our attention to the use of publicly funded equipment and employees on state time for the primary purpose of assisting partisan campaigns for election.

We have heard the testimony of the Director of the Eagleton Institute of Politics, a nationally recognized expert concerning issues of state legislatures. He has provided us with a background in which to view the evidence accumulated in this case. He has described to us the increasing partisanship and party competition in American state legislatures, including the Legislature of New Jersey. He has also described the weakening of state and local parties in New Jersey with the result that the legislative parties have filled the vacuum. The legislative leadership has now assumed much of the party responsibility in

election years. The leadership has become more and more active in raising and allocating campaign funds, producing coordinated campaign strategy and in generally providing leadership for their respective political parties. We have heard testimony that "the campaign never ends" and that campaign activity by elected officials and their staffs begins immediately after one election rather than just before the next.³

The partisan staffs work for the party caucus through the legislative party leadership. Because the responsibilities of the legislative parties now include electoral, as well as governmental, leadership, these added responsibilities seem to have filtered down to staff who have then pursued the same goals as the elected leadership including the objective of winning or maintaining a majority in the Senate or Assembly.⁴

During our inquiry we subpoenaed and obtained copies of more than one thousand documents that were unlawfully obtained by an Assembly Republican Staff member from the Democratic computer libraries. These documents indicated that the use of the computer system by the Assembly Democratic Staff was for the most part for legislative purposes. But as Assembly elections drew near, an increased percentage of documents were for election

³We note that some of the documents we have obtained from the Legislature's computer system reflect this attitude. For example, one Democratic document dated November 27, 1989 states, in pertinent part, "Now that we have the majority, the overall 'mission' of leadership, staff and the party should be to keep it."

⁴The demands of campaign related activity are felt and seen more keenly in the Assembly primarily because the period between elections there is only two years.

campaign use and distribution and most were prepared on State payroll time.⁵

Documents reviewed included logistical campaign plans containing analysis of "mail pieces", "slogans" "phone banks" "voter registration" "absentee ballot program" "personalized letters" and criticisms of opposing candidates; solicitations for campaign contributions including invitations to contributors for "a day at the races", and requests for donations to political action committees; and data on fundraising activity for political action committees including dollar amounts attributable to specific donors.

We observed invitations to campaign events. Documents communicated specific instructions to campaign workers including campaign "captains." These instructions defined a captain's responsibility "for securing promises from twenty people to vote for" particular candidates. Also included was a form to be returned to campaign headquarters upon which one was to identify the twenty persons.

Also found were forms of traditional campaign literature, letters by candidates, and letter by friends of candidates soliciting voter support. The computer logs indicate that these letters were created by partisan staff employees. Other

⁵A review of the computer logs maintained by the Office of Legislative Services reveal that of more than eighty three document titles (some titles containing many more than one document) appearing to relate to campaign related subject matters, all but nine were created between the hours of 9:00 a.m. and 5:00 p.m. None was prepared on weekends.

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documents included forms of campaign related letterhead and campaign material to be utilized in municipal election campaigns.⁶

In addition to the creation of campaign documents, we also heard testimony and reviewed other evidence indicating that shortly after primary elections members of the Assembly Democratic staff were divided into teams which were responsible for assisting candidates in various "targeted districts". These teams would provide briefing books, briefings, voting histories and party positions to candidates for their elections. Although many of these documents were created and briefings were conducted on State time, much of the content the publications consisted of information the partisan staffs would have prepared for legislators during their ordinary course of business. One of our concerns, however, is based upon the fact that non incumbent as well as incumbent legislators were recipients of this material, much of which were not ordinarily available to the general public.

The evidence also establishes that Assembly Republican Staff engaged in the same kind of conduct as Assembly Democratic Staff.

⁶State Police and State Investigators also received a document dated February 9, 1990 entitled "Intergovernment Relations Department." On its face it purports to establish a Department within the Democratic Assembly Staff designed to "re-elect the 44 incumbent Democratic Assembly members and to challenge incumbents in marginal Republican district." The testimony, as well as other related documents, demonstrates that this document was first in a series of drafts resulting in a March 9, 1990 document. This resulting document eliminated the overt campaign related purposes and concentrated on legitimate partisan staff related activity.

Testimony from current and former staff members confirmed the existence of campaign related documents produced in the Assembly Republican computer libraries, but this testimony also established that more care was taken to insure that such documents were not stored on the computer system. For example, one supervisor testified that when he observed campaign related material on the computer, he would order that it be deleted from the data base. We have heard testimony that these documents included tactical campaign plans for Republican Assembly candidates, press releases, briefing materials and campaign literature.⁷

One former intern employed by the Assembly Republican Staff and assigned to its Intergovernmental Affairs Department, testified that he had been assigned to work at a campaign headquarters for three or four days without having been required to take requisite vacation or unpaid leave. When attendance records were subpoenaed to corroborate these allegations, we learned that they did not exist.

Testimony also established that the Assembly Republican Staff, as with the Democratic counterpart, provided teams of staffers to incumbent and non incumbent Republican Assembly candidates to assist them in their campaigns by supplying them

⁷We were able to obtain Democratic computer documents because they had been stolen without having been deleted. Assembly Republican Staff members who testified could not articulate specific enough information for us to seek specific documents and, as stated, the practice was to remove them from the computer records.

with briefings and briefing books on relevant public issues. Witnesses from both staffs expressed doubt that such briefings and briefing books, produced by state workers on state time, would have been available to independent and non affiliated candidates.

By way of attempted explanation, witnesses from both parties testified that the members of the candidate teams were volunteers notwithstanding indications that personnel was assigned to campaign tasks. They testified that the term "assignment" was a misnomer. Other witnesses from both Assembly Republican and Assembly Democratic Staffs testified that they were expected to volunteer their time to campaign related activity. We do not condemn, but encourage, volunteerism in campaign related activity. The inherent nature of partisan staffs suggest that campaign related activity brings a benefit to a staff's ability to perform in a partisan environment. What we are concerned about, however, is the utilization of state employees on state time to assist legislators and non incumbents in their quest for political office. The job of the full time partisan staffs is to assist legislators to be good, effective legislators, not at public expense to assist incumbents to perpetuate their incumbency and to assist non-incumbents to become legislators. The latter goals should be performed on a clearly voluntary or privately funded basis.

The issue of when an employee is "volunteering" services is interrelated with attendance records and the nature of an

employee's work schedule. We have heard testimony from Assembly Democratic and Republican staff members relating that their job responsibilities often required working late hours and that some staff members accordingly volunteered their time for campaign related activities during the regular work day while working at their staff assignments late into the night. We do not approve of the use of the state funded computer system for campaign related purposes at any hour of the day. Further, these explanations of volunteerism during regular working hours had no supporting evidence. Particularly, attendance records which were presented to us were not accurate enough to be audited in order to assure the public that volunteer campaign activities were not subsidized by public funds. Attendance records also failed to contain adequate detail to justify campaign related work during a part of a regular work day unless the worker took vacation time or unpaid leave; and if a worker took such leave there could be no justification for his or her use of the OLS computer system.

IN THE ABSENCE OF UNIFORM LEGISLATIVE GUIDELINES
THE IMPROPRIETIES CITED DO NOT VIOLATE CRIMINAL STATUTES

The Legislature has not promulgated rules which uniformly prohibit or regulate campaign related activities of Partisan Staffs.⁸ The absence of such regulation prevents one from adequately delineating between authorized and unauthorized functions of its employees relating to campaign related activity for purposes of the criminal laws and impedes possible successful prosecution of the crimes of Official Misconduct in violation of N.J.S.A. 2C:30-2, or of Theft of Services in violation of N.J.S.A. 2C:20-8, the most relevant criminal statutes.⁹

The recent November 27, 1990 State of New York Court of Appeals decision in the matter of The People v. Manfred

⁸The vacuum in uniform regulation by the Legislature is the salient, important point. It should be noted, however, that some of the Staffs themselves attempted to provide some guidance. The Assembly Republican Staff sought to prohibit such activity. An internal memorandum prepared by the Assembly Republican Staff on December 31, 1984 and distributed to that staff in 1987 and again in 1989 sets forth prohibitions against campaign related activity on state time and also concludes that "there appears to be no authority for service by the paid partisan staff to non-incumbents seeking office. Simply put, there can be no public purpose for such activity." Unfortunately we have found a pattern of non-adherence to these standards by both Assembly partisan staffs. The Assembly Democratic Staff and the Senate Republican Staff had no internal guidelines at all. The Senate Democratic Staff promulgated less detailed guidelines emphasizing the same principals as set forth in the Assembly Republican Staff's memoranda.

⁹A statute defining "paid personal services" found at N.J.S.A. 19:44A-3F describes what services a legislator must report as a campaign contribution to the Election Law Enforcement Commission. In doing so it states that services performed by a legislative aide which are publicly funded are for public purposes only but that such aide may contribute services on a voluntary basis.

Ohrenstein, et al, is instructive in this regard. There, the Court dismissed hundreds of counts of an indictment in a case containing issues which are dramatically similar to the allegations which we have reviewed.

The Ohrenstein indictment charged the Minority Leader of the New York State Senate and others with theft for having assigned employees of his Senate staff to work on political campaigns for members of his party seeking election or reelection to the Senate. All of the charges relating to the campaign workers were based upon the premise that political campaign activities were not a "proper duty" of a legislative staff member. In the trial court, the Prosecutor urged that the power to assign duties to legislative assistants should be limited to governmental and not include political activities. The Court, noting that relevant statutes provided the Legislature with an "extensive grant of authority..." to determine "the terms and conditions..." of staff employment, attached significance to the fact that at the time of the alleged criminal events the Legislature had not promulgated any rule or regulation prohibiting political campaign activities by staff. The Court went on to rule that, absent such specific rule or regulation, "there was no law which, either expressly or as interpreted by the Courts, declared the acts to be criminal." The Court of Appeals affirmed the dismissals. Indicating that it did not "condone the challenged expenditures...", the Court defined its focus as being on whether the conduct would subject the defendants "to criminal prosecution under the circumstances

of this case." The Court made clear that under the then existing circumstances, the defendants could not have known that they were subject to criminal prosecution for their acts. The Court also recognized that subsequent to the return of the indictment, the Legislature adopted regulations imposing restrictions on its employee's campaign related activities and noted that "those who engage in such conduct in the future will not be able to make the arguments that we find determinative here in the event they are criminally prosecuted."

The reasoning is persuasive and applies to the situation at hand. Like the Ohrenstein Court, we do not condone the conduct we have found to exist. After all, quite apart from criminal jurisprudence, New Jersey has long held a fundamental policy that "public money should be raised and used only for public purposes." Roe v. Kervick, 42, N.J. 191 (1964); Citizens to Protect Public Funds v. Board of Education, et al., 13 N.J. 172 (1953). But we are satisfied that in the absence of uniform legislative guidelines we would be hard pressed to suggest that the conduct revealed by the evidence violates New Jersey criminal statutes.

CONCLUSION AND RECOMMENDATIONS

The intrusion into the Democratic computer libraries, and the activities undertaken by the partisan staffs, stem from the intense political competition at the Legislature. These staffs may have lost sight of the fact that, notwithstanding their function as support to the partisan legislators, they are full time public employees who have the obligation to differentiate job functions from campaign related volunteerism. We again emphasize that our review of the matter has demonstrated that the percentage of campaign related work was relatively small; most of the staffs' time was spent performing proper legislative business. Notwithstanding this, the public has a right to know that all of its tax dollars are being utilized for public purposes. Partisan campaigns for either incumbent or non-incumbent candidates are obviously for private purposes.

In short, the public deserves to be assured that public money is not used to subsidize campaign related activity except as is expressly authorized by law and that sufficient penalties exist to deter and punish persons who engage in such prohibited conduct. Accordingly, we urge that the recommendations set forth above be implemented.

DISTRIBUTION

The State Grand Jury directs that copies of this Presentment be distributed to the following:

A. State Government - Executive Branch

1. Honorable James J. Florio, Governor
State of New Jersey
2. Honorable Robert J. Del Tufo, Attorney General
State of New Jersey
3. Each County Prosecutor
4. Election Law Enforcement Commission

B. State Government - Legislative Branch

1. Each Member of the Senate of the State of New Jersey
2. Each Member of the Assembly of the State of New Jersey
3. Executive Directors of the Assembly and Senate
Partisan Staffs
4. Executive Director of the Office of Legislative
Services

C. State Government - Judicial Branch

1. Honorable Robert N. Wilentz, Chief Justice Supreme
Court of New Jersey
2. The Administrative Director of the Courts

3. Each Assignment Judge of the Superior Court
D. Representatives of the Press and Broadcast Media

BY: Lester P. Saunderlin

DATED: February 7, 1991

Lester P. Saunderlin, Foreperson