

THE STATE OF TEXAS

V.

THOMAS DALE DELAY

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IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

331ST JUDICIAL DISTRICT

FILED

2005 OCT -7 PM 3:39

RR

Amber Rodriguez
DISTRICT CLERK
TRAVIS COUNTY, TEXAS

DEFENDANT'S MOTION TO QUASH THE INDICTMENT ON THE BASIS OF PROSECUTORIAL MISCONDUCT

Congressman Tom DeLay ("Defendant") respectfully files this Motion to Quash the Indictment and would show the Court as follows:

1. On Wednesday, September 28, 2005, Congressman Tom DeLay was indicted on one count of conspiracy to violate the Texas election code and the 167th Grand Jury, its term expired, was discharged.

2. That night or early the next day, District Attorney Ronnie Earle determined that the indictment, which caused the immediate removal of Tom DeLay as Majority Leader of the U.S. House of Representatives, charged a crime that did not exist in Texas law.

3. During the five-day period of September 29, 2005 to October 3, 2005 Ronnie Earle and his staff engaged in an extraordinarily irregular, and desperate attempt to contrive a viable charge and get a substitute indictment of Tom DeLay before the expiration of the Statute of Limitations on October 3, 2005. During the course of this time period, Ronnie Earle and his staff committed the following acts of prosecutorial misconduct:

a. unlawfully participated in Grand Jury deliberations and attempted to browbeat and coerce the 390th Grand Jury, before it had formalized its No Bill decision, to change its decision so that there would be no public knowledge that a No Bill had been found.

b. unlawfully attempted to cover up and delay public disclosure of a No Bill voted by the 390th grand jury that would have revealed that his, Earle's, first presentation of a new, contrived charge of Money Laundering had been rejected.

c. unlawfully incited the foreman of the 167th grand jury, John Gibson, to violate the grand jury secrecy law, TEX. CRIM. PROC. CODE ANN. arts. 19.34 & 20.02, by talking publicly, and on the record, to the media, in an effort to bias the public and sitting grand jurors.

d. unlawfully, and in direct violation of the secrecy law, discussed ongoing grand jury matters with a select few members of the discharged 167th Grand Jury to get their opinion of what they might have done had they known the indictment rendered by the 167th had no basis in law.

e. unlawfully, upon information and belief, submitted this additional information (the opinion of former grand jurors) to yet another grand jury, the 403rd, to persuade them to issue a replacement indictment. Such "additional information" is not evidence and thus its use before a grand jury violates Tex. Crim. Proc. Code art. 27.03, that prohibits a prosecutor from participating in a grand jury's deliberations by discussing extraneous reasons for or against the issuance of an indictment.

WHEREFORE, TOM DELAY MOVES THE COURT TO SET ASIDE THE INDICTMENT THAT WAS THE PRODUCT OF PROSECUTORIAL MISCONDUCT AND A DIRECT VIOLATION OF TEXAS LAW.

Respectfully submitted,

DeGUERIN DICKSON & HENNESSY



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By Permission

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CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of **Defendant's Motion to Quash the Indictment on the Basis of Prosecutorial Misconduct** has been served on District Attorney Ronnie Earle by ~~facsimile~~ on this the ____ day of October, 2005.

Handwritten signature

Dick DeGuerin

Dick DeGuerin

By Person

NO. D1DC-05-900725

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ORDER

UPON PRESENTATION of the above and foregoing **Defendant's Motion to Quash the Indictment on the Basis of Prosecutorial Misconduct**, the same is GRANTED, and the indictment herein is QUASHED and DISMISSED.

SIGNED in Austin, Travis County, Texas on this the ____ day of October, 2005.

JUDGE PRESIDING