

The Texas Political Farce

It would be laughable if it wasn't so dang serious. A few days ago a grand jury in Travis County, that's Austin, the most Democrat county in Texas, handed down an indictment of Governor Rick Perry asserting that he had coerced an elected official and misappropriated public funds. Here is the indictment:

The State of Texas v. James Richard Rick Perry

INDICTMENT

Count I - Abuse of Official Capacity 39.02 DPS 23990064

Count II - Coercion of Public Servant 36.03 DPS 13990027

In the 390th Judicial District Court of Travis County, Texas

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF TEXAS:

THE GRAND JURY for the County of Travis, State of Texas, duly selected, empanelled, sworn, charged, and organized as such at the January 2014 Term, A.D., of the 390th Judicial District Court for said County, upon its oath presents in and to said Court at said term, that in Travis County, Texas, and anterior to the presentment of this indictment, James Richard "Rick" Perry, committed the following offenses:

Count I

On or about June 14, 2013, in the County of Travis, Texas, James Richard "Rick" Perry, with intent to harm another, to-wit, Rosemary Lehmberg and the Public Integrity Unit of the Travis County District Attorney's Office, intentionally or knowingly misused government property by dealing with such property contrary to an agreement under which defendant held such property or contrary to the oath of office he took as a public servant, such government property being monies having a value of in excess of \$200,000 which were approved and authorized by the Legislature of the State of Texas to fund the continued operation of the Public Integrity Unit of the Travis County District Attorney's

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defendant's office as a public servant, namely, Governor of the State of Texas.

Count II

Beginning on or about June 10, 2013, and continuing through June 14, 2013, in the County of Travis, Texas, by means of coercion, to-wit: threatening to veto legislation that had been approved and authorized by the Legislature of the State of Texas to provide funding for the continued operation of the Public Integrity Unit of the Travis County District Attorney's Office unless Travis County District Attorney Rosemary Lehmberg resigned from her official position as elected District Attorney, James Richard "Rick" Perry, intentionally or knowingly influenced or attempted to influence Rosemary Lehmberg, a public servant, namely, the elected District Attorney for Travis County, Texas, in the specific performance of her official duty, to-wit: the duty to continue to carry out her responsibilities as the elected District Attorney for the County of Travis, Texas through the completion of her elected term of office, and the defendant and Rosemary Lehmberg were not members of the same governing body of a governmental entity, such offense having been committed by defendant, a public servant, while acting in an official capacity as a public servant.

AGAINST THE PEACE AND DIGNITY OF THE STATE OF TEXAS.


Foreperson of the Grand Jury

The laws that special prosecutor Michael McCrum used to justify the indictments are as follows:

Sec. 36.03. COERCION OF PUBLIC SERVANT OR VOTER. (a) A person commits an offense if by means of coercion he:

(1) influences or attempts to influence a public servant in a specific exercise of his official power or a specific performance of his official duty or influences or attempts to influence a public servant to violate the public servant's known legal duty; or

(2) influences or attempts to influence a voter not to vote or to vote in a particular manner.

(b) An offense under this section is a Class A misdemeanor unless the coercion is a threat to commit a felony, in which event it is a felony of the third degree.

(c) It is an exception to the application of Subsection (a)(1) of this section that the person who influences or attempts to influence the public servant is a member of the governing body of a governmental entity, and that the action that influences or attempts to influence the public servant is an official action taken by the member of the governing body. For the purposes of this subsection, the term "official action" includes deliberations by the governing body of a governmental entity.

39.02. ABUSE OF OFFICIAL CAPACITY. (a) A public servant commits an offense if, with intent to obtain a benefit or with intent to harm or defraud another, he intentionally or knowingly:

(1) violates a law relating to the public servant's office or employment; or

(2) misuses government property, services, personnel, or any other thing of value belonging to the government that has come into the public servant's custody or possession by virtue of the public servant's office or employment.

(b) An offense under Subsection (a)(1) is a Class A misdemeanor.

(c) An offense under Subsection (a)(2) is:

(1) a Class C misdemeanor if the value of the use of the thing misused is less than \$20;

(2) a Class B misdemeanor if the value of the use of the thing misused is \$20 or more but less than \$500 ;

(3) a Class A misdemeanor if the value of the use of the thing misused is \$500 or more but less than \$1,500;

(4) a state jail felony if the value of the use of the thing misused is \$1,500 or more but less than \$20,000;

(5) a felony of the third degree if the value of the use of the thing misused is \$20,000 or more but less than \$100,000;

(6) a felony of the second degree if the value of the use of the thing misused is \$100,000 or more but less than \$200,000;

or

(7) a felony of the first degree if the value of the use of the thing misused is \$200,000 or more.

(d) A discount or award given for travel, such as frequent flyer miles, rental car or hotel discounts, or food coupons, are not things of value belonging to the government for purposes of this section due to the administrative difficulty and cost involved in recapturing the discount or award for a governmental entity.

The history of this blatantly political filing dates back to April 2013 when Travis County District Attorney Rosemary Lehmborg (who happens to be a lesbian) was arrested for driving while intoxicated and jailed. Now, the Texas Statutes state that:

Sec. 87.013. GENERAL GROUNDS FOR REMOVAL. (a) An officer may be removed for:

(1) incompetency;

(2) official misconduct; or

(3) **intoxication on or off duty caused by drinking an alcoholic beverage.**

(b) Intoxication is not a ground for removal if it appears at the trial that the intoxication was caused by drinking an alcoholic beverage on the direction and prescription of a licensed physician practicing in this state.

In the above statute the term “officer” includes district attorneys. However, no action was taken to remove Lehmberg from office by the Travis County court even though she had not only been arrested for intoxication, she had verbally abused, threatened and coerced the law enforcement officers who arrested and incarcerated her. The whole sorry episode was filmed and the film was released to the media. In it she is heard threatening the officers who are in the process of photographing and booking her. She became so belligerent that she had to be restrained. Lehmberg eventually pled guilty and was sentenced to 45 days in jail, of which she served about half of the sentence before she was released. Three complaints were filed against Lehmberg by Austin Democrats seeking her removal from office but all three were dismissed by the Travis County court. Numerous public officials and private citizens called for Lehmberg’s resignation after seeing her disgraceful conduct at the time of her arrest. Texans questioned her suitability to continue as the chief law enforcement officer of Travis County having been found guilty of violating the law and being sentenced to jail time. Others, mostly Democrats, sprang to her defense. Democrats were worried that if she resigned Governor Perry would appoint a Republican as her replacement.

Perry’s concerns with Lehmberg are that as the Travis County D/A, she controlled millions of dollars in state funds that are used to fund the public integrity unit in her office. The public integrity unit is a bit of an anomaly in that although it is responsible for statewide investigations it is under the control of an official elected by the citizens of only one county. It has been funded with state funds ever since it was formed in 1982 by former Travis County D/A Ronnie Earle but no legislation seems to have given it such a role. Earle formed the unit to investigate insurance fraud, motor fuels fraud and other possible crimes and somehow managed to obtain state funding from the then-Democrat dominated legislature. The unit has gone after prominent Republicans including Senator Kay Bailey Hutchinson, Congressman Tom Delay and current candidate for Texas attorney general Ken Paxton. In each case except Paxton’s, which is still ongoing, the charges have been found to be frivolous and were thrown out. In Delay’s case, he was convicted by a Travis County jury but the conviction was overturned on appeal and the case thrown out. There have been allegations that the unit was investigating Governor Perry in regard to his involvement with the Cancer Research Prevention Institute but the lead investigator has filed an affidavit in which he has said that neither the governor or anyone on his staff was under investigation.

The charges against Perry are the result of a complaint filed by Grant McDonald and Andrew Wheat, two leftists who founded a 501C(4) organization called Public Justice Foundation of Texas in 1997. Although that’s the official name, they call themselves Texans for Public Justice. McDonald is originally from Michigan and came to Texas after spending 15 years in Washington, DC working for Ralph Nader. Wheat is a left-wing journalist who by some accounts is a New York native. They claim on their IRS filings that their purpose is “Social Welfare.” Their financial support comes primarily from left-wing organizations including some financed by left-wing Hungarian immigrant George Soros and trial lawyers. McDonald claims that they are nonpartisan but a look at their web site at www.tpj.org shows that they are anything but. Although their stated goals are to promote justice, their actual goals are to act as a shadow organization for the Democrat Party and other progressives. McDonald has stated that when he and Wheat heard that Perry had told Lehmberg that he was going to veto the legislation for the public integrity unit they “just knew” that it was illegal. They immediately rushed to – guess where – Lehmberg’s office to file a complaint. No one knows what transpired in her office although she did recuse herself from the complaint for obvious reasons and referred them to the judge, also a Democrat, who also recused herself and referred the complaint to another judge. The complaint was finally taken to a judge in San Antonio appointed by Perry who appointed a special prosecutor to look into the matter.

The special prosecutor is attorney Michael McCrum of San Antonio. Little is known about McCrum politically. Democrats have claimed that he is a Republican but his political affiliation is unknown and he has refused to discuss it. He was nominated by President Barack Obama to be a Federal prosecutor but withdrew his name after the nomination went nowhere after ten months. He claimed that he had been unable to take on clients due to the uncertainty. McCrum grew up in San Antonio and became a cop before obtaining a law degree. He was an assistant Federal prosecutor for awhile but left that position to go into practice as a defense attorney. Earlier this year he was charged with contempt of court after the Bexar County D/A learned that he had told a defense witness to turn off her cell phone and drop out of sight so she couldn't be subpoenaed to testify for the prosecution during the sentencing phase of the trial of McCrum's client, who had been convicted for drunk driving and causing a fatal accident. The contempt charge was initially thrown out because of a technicality but the court appealed. McCrum claims the charge is untrue but D/A Susan Reed has said "I don't bring frivolous charges of action." The case is currently under review by the highest criminal court in the state. McCrum is active in Riverside Community Church, a closet Methodist church in Bulverde. (The Texas Criminal Court of Appeals has ruled that the charge may go forward.)

Reading the laws under which McDonald and Wheat filed their complaint and under which McCrum is prosecuting, it is not difficult, it is impossible to see where those laws fit the accusations against Perry. He did not threaten Lehmborg in any way; he merely conveyed to her through State Senator Kirk Watson that if she did not resign, he intended to veto the funding for her public integrity unit which he has every right to do. As governor of the state, as expressed in the Texas constitution, Perry has the right to veto any appropriation made by the legislature for any reason. Furthermore, the exception to Section 36.03 as expressed in (c) seems to indicate that as governor of the state, Perry is exempt from prosecution under this statute because he is a member of a governing body of a government entity. He was acting in an official capacity when he sent word to Lehmborg that he was going to veto the funding if she didn't resign and he was acting in an official capacity when he vetoed the funding. However, it seems that members of the grand jury that indicted Perry can't read, or can't comprehend what they read. If they could, they'd have questioned the basis of the charges.

According to the Texas Handbook, grand juries in Texas are picked from a pool of 40 people by three to five jury commissioners that have been picked by the district judge to pick jurors for grand juries. Whether or not this policy was followed in the Perry case is unclear but it is clear that all of the jurors are residents of Travis County, the most Democrat county in Texas. It would be very unlikely that any jury picked in Travis County would not be made up mostly, if not entirely, of Democrats. The foreman in the Perry case is one Della M. Tyus, who works for the University of Texas in Austin in what is essentially a secretarial job. She is originally from Illinois, is black and votes in Democrat primaries. One of the other grand jurors is active in Democrat politics and was a delegate to the state Democrat convention during the time she was on the jury. At least three other jurors have been identified as having voted in Democrat primaries and one has voted in both Democrat and Republican primaries. There is also another issue – several of the jury members have violated the oath they took when they were sworn in as jurors to keep all proceedings secret and have talked to members of the media. That is grounds for prosecution under Texas law. The Texas Handbook also states that grand juries are supposed to be made up of twelve jurors but in the Perry case there were either nine or ten.

Not only did the members of the grand jury fail to comprehend the laws under which they indicted Perry, neither did special prosecutor McCrum. It was McCrum who put the matter to a grand jury in the first place and it was McCrum who "explained" the laws to the jurors. It was McCrum who interrogated witnesses. The purpose of a grand jury is only to determine if there is enough evidence to warrant an indictment; their role is not to determine guilt or innocence. However, a district attorney, or in this case a special prosecutor, also has a responsibility to

interpret the law correctly rather than to manipulate it in such a manner that he or she can apply it to the particular case. It has been said that the law is vague, but it is actually quite specific – *influences or attempts to influence a public servant in a specific exercise of his official power or a specific performance of his official duty or influences or attempts to influence a public servant to violate the public servant's known legal duty; or (2) influences or attempts to influence a voter not to vote or to vote in a particular manner.* A governor advising a district attorney who has responsibility for operating a unit funded by the state that funding will be cut if they don't resign is not influencing "a specific exercise of his official power or specific performance of his official duty." Now, if the governor had threatened to veto funding if the D/A didn't carry out some kind of action, that would be coercion but advising that he was going to cut funding if she didn't step down because of her disgraceful conduct is a promise, not a threat.

Incidentally, Perry and many other Texans weren't upset that Lehmborg got drunk; we were upset at the way she behaved as she was being booked. If she had simply accepted that she had been caught and gone through the booking process meekly, she wouldn't have attracted attention. She attracted attention because she went on a rampage and threatened the officers who were booking her. She can be heard telling them that she'd "have your badges." The whole sorry episode was filmed and is available to the public. It shows a drunken, disheveled woman threatening the female deputies who were searching and photographing her. At one point she threatens that they would lose their jobs. That is coercion and is in violation of Sec. 36.03; the same code under which Governor Perry was indicted because he told Lehmborg he was going to veto funding for the public integrity unit unless she resigned.

An irony of the situation is that Perry did not intend to appoint a Republican to replace Lehmborg; he planned to appoint another Democrat. Austin attorney Mindy Muntford has revealed that Governor Perry called her on her cell phone before the news that he planned to veto funding for the public integrity unit if Lehmborg failed to resign became public to ask her if she would accept an appointment as her replacement. Muntford told the press that she did not accept at the time because Lehmborg hadn't resigned yet and they had no further conversation after it became apparent that she wasn't going to. Democrats are claiming that Perry wanted to defund the unit because he feared an investigation of himself but a former member of the unit says that there were no plans to investigate the governor. The unit had investigated an incident involving the way a grant was issued by the Cancer Prevention Research Institute of Texas, a state agency that Perry created, but he was not an object of the investigation according to the investigator who led the investigation. Actually, even if he was fearful that he might be investigated for something, it would have no bearing on this case which is about what he did, not what he feared.

The outcome of the Perry case is not in doubt. At some point, the case is going to be thrown out of court. The question is when and how much of Texas' taxpayer's money McCrum will spend before it is. The Perry defense team has already filed a motion that it be thrown out on constitutional grounds. The Texas constitution gives a governor the right to veto any legislation. Any decision the judge makes is going to be seen a political, however. If he/she decides to let it go forward to avoid political repercussions, the next step will be to ask for dismissal on the grounds that the laws don't apply to the complaint. It may very well go to trial and if it is tried in Travis County where juries are sure to be made up of Democrats, he may be convicted just as DeLay was. However, any conviction will be appealed and it will be thrown out. Texas taxpayers will have paid out tens or even hundreds of millions to support this political farce. As for McDonald and Wheat, let's hope they're tarred and feathered and run out of the state on a rail.