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February 21, 2013

Joe Paterno, Grand Jury Presentments, and the Rule Against Hearsay

Last week, [Brian Gallini](#) presented the paper, *Bringing Down a Legend: How an 'Independent' Grand Jury Ended Joe Paterno's Career*, at the [University of South Carolina School of Law](#). The paper deals with Pennsylvania's grand jury presentment, a grand jury communication to the public concerning the grand jury's investigation. While [Federal Rule of Criminal Procedure 6\(e\) \(2\)](#) and many state counterparts ensure the secrecy of grand jury proceedings, the presentments issued in Pennsylvania and other states allow grand juries to serve as the mouthpiece of prosecutors, who can prove their cases in the court of public opinion. Sometimes, however, a grand jury presentment isn't just about proving a case. Professor [Gallini](#) uses the Jerry Sandusky/Joe Paterno imbroglio as an avenue through which to discuss the conceptual problem of grand jury presentments and third parties who are not the subjects of grand jury investigations. This was certainly the case in Pennsylvania when a grand jury was convened to investigate allegations of child molestation against Jerry Sandusky and ended up issuing a presentment that ensnared the legendary coach in its net. The result of the presentment for Sandusky was that his case could proceed to trial. The result for Paterno was that he could be fired from his job. We might think that both of these were the correct results, and they might indeed both have been proper outcomes.

But that's not really that question. The question, according to [Gallini](#), is the process (not) afforded to Paterno and other third parties mentioned in grand jury presentments. Most grand juries proceed with a prosecutor presenting his case to grand jurors with no role for defense counsel to present any evidence or cross-examine any witnesses. Prosecutors generally have no obligation to present exculpatory evidence to grand jurors, and they can present evidence that was unconstitutionally obtained and inadmissible under the rules of evidence. To what extent should the press report, and the public believe, findings in a grand jury



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presentment? What about employers? And to what extent does the analysis change when those findings relate to third parties rather than the target of the grand jury investigation? These are fascinating questions, and they have already led my colleague [Derek Black](#) to write an interesting post on the subject at [The Faculty Lounge](#).

In this post, I will focus on *Evans v. Com., Unemployment Compensation Bd. of Review*, 484 A.2d 822 (Pa.Cmwlth 1984), which deals with some of these issues and the question of whether a grand jury presentment is hearsay when admitted to prove the reason why a third party mentioned in it was fired.

In *Evans*,

Thomas J. Evans, Gilbert J. Falvo, Ralph Mazzocchi and Manuel G. Ganopules, former employees of the Pennsylvania Department of Auditor General, appeal[ed] decisions of the Unemployment Compensation Board of Review, which affirmed a referee's denial of benefits to each claimant pursuant to section 3 of the Unemployment Compensation Law—that persons unemployed through fault of their own are ineligible for benefits.

These firings came after a grand jury was convened to investigate allegations that numerous governmental workers had paid money to **obtain employment**. The grand jury eventually issued a presentment, which listed Evans, Falvo, Mazzocchi and Ganopules as employees who had paid money to obtain governmental employment, but these men were not the targets of the grand jury investigation and they were not indicted by the **grand jury**. Instead, the individuals being investigated and the individuals who were indicted were the governmental employees who took the money as part of a **job-selling scheme**.

Nonetheless, after the presentment was issued, the Department of Auditor General terminated the employments of Evans, Falvo, Mazzocchi and Ganopules. These men then moved for unemployment compensation, but that motion was denied by a referee who used the grand jury presentment to determine that the men were ineligible for **such benefits**.

The men thereafter appealed, claiming that the presentment was inadmissible hearsay, but the Commonwealth Court of Pennsylvania disagreed, finding that

The referee allowed the document, not to prove the truth of its contents—that the claimants had purchased their jobs-

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but to show that it had named the claimants, for the purpose of showing the negative impact on their effectiveness as employees. The law is well-established that a hearsay objection is only appropriate where a party offers a statement to prove the truth of its contents...; therefore, we must reject claimants' hearsay objection **as inapposite**.

Evans seems to be a good illustration of the problem that **Gallini** identified. Looking at the court's opinion, it seems that the men in **Evans** did pay money in exchange for employment just as Joe Paterno likely knew enough that he should have done more. But again, that's not the question. In **Evans**, we have four men both being fired and denied unemployment compensation, seemingly solely based upon being named in a grand jury presentment that resulted from a one-sided grand jury investigation...of other people. Is there anyone who thinks that what these men received was anything resembling due process of law?

-CM

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