March 12, 2014

PENNSYLVANIA NewsMedia ASSOCIATION

TESTIMONY BEFORE HOUSE STATE GOVERNMENT COMMITTEE

Good morning. Thank you for the opportunity to appear and offer testimony before the House State Government Committee on House Bill 1671, and it is particularly appropriate to be discussing these issues in light of the fact that National Sunshine Week is next week. My name is Melissa Melewsky, and I am Media Law Counsel with the Pennsylvania NewsMedia Association (PNA). PNA is the statewide trade association for newspapers and online publications and counts more than 300 print, digital and related media organizations as members.

One of the functions of the PNA is to offer a legal hotline to its members. It is my primary job responsibility to answer questions received on the Hotline, and as a result, I have the opportunity to talk to reporters and editors on a daily basis about their difficulties in obtaining access to records and meetings in Pennsylvania. PNA's legal hotline receives approximately 2,000 calls each year, and at least half of those calls relate to access issues. Specifically, regarding the Sunshine Act, I answer hundreds of calls every year about reporters' attempts to access meetings and instances when it appears executive sessions have been improperly invoked. In the seven and half years I've been with the PNA, the number of Sunshine Act calls I receive has not decreased, but has remained steady or increased each year, which illustrates the ongoing struggle for basic public access to meetings in the Commonwealth.

Given this background, PNA is pleased with Rep. Saccone's proposal to reform the Sunshine Act, and we welcome this opportunity to address the specific proposals in more detail.

Section 708(b)(2)

The PNA supports the proposal to amend section 708(b) to require verbatim recording of executive sessions, but suggests additional language is needed to clarify the intent of the law.

The Act must require all agencies to keep a verbatim record of closed meetings in the form of an audio or video recording. The Act currently does not require any record to be made during an executive session and when challenged, the only evidence is testimony, often given long after the closed meeting took place. It is exceptionally difficult to prove an intentional violation occurred without independently verifiable evidence, and this hampers and deters enforcement in many circumstances. For

example, a Lancaster County Grand Jury investigating Sunshine Act violations found the lack of executive session records hampered its investigation and recommended the county implement policies that require minutes to be taken during executive sessions and be kept in a secure location for a period of five (5) years.

The best - and irrefutable - evidence of what transpired during an executive session is a verbatim recording. If challenged, a court could review an agency's actions and discussions behind closed doors and if a violation did occur, public access could be granted.

This type of record is already expressly exempt from public disclosure under the Right to Know Law, and would remain so unless a court ordered public access or if the agency decided to release the record.

Alternative language:

(2) An agency holding an executive session under this subsection shall make a verbatim audio or video recording of the complete executive session and retain the recording for a period of two years. Such recordings are not subject to public inspection and copying under the Right to Know Law, 65 P.S. § 101, et seq., except by court order or as authorized by the agency.

Section 708(a)(1)

The PNA supports the proposed amendment to section 708(a)(1), which we believe is intended to narrow the personnel executive session.

Section 708(b)(3)

The PNA does not object to the proposed addition of section 708(b)(3).

Section 714(c)

The PNA supports the proposed addition of section 714(c) offering immunity to elected officials who timely report a suspected violation of the law.

Section 708(a)(7)

The PNA does not support the proposed addition of section 708(a)(7) dealing with security. While we recognize the need for private discussions related to safety and preparedness in some circumstances, the language in the proposal is overbroad and could encompass discussions that are and should remain public. For example, school districts routinely communicate evacuation and preparedness plans with students and parents, but the proposal would allow discussions about the policies to be held in private. As another example, a school board recently discussed and voted to authorize staff members to carry handguns on school grounds and did so during an executive session. The decision was subsequently announced and many parents were surprised to learn there would be guns in their children's everyday environment. Residents and taxpayers in the district should have been included in the discussions leading up to board's decision, and the vote was required by law to occur at a public meeting after an opportunity for public comment. We take no position on the action taken in that case, but the public is entitled to witness and participate in the discussion process leading up to the decision.

These examples also highlight a significant problem with the Sunshine Act: it can be ignored with impunity. The biggest problem with the Sunshine Act is not the text of the law or the executive session exemptions. The biggest issue is way the law has been interpreted to make enforcement nearly impossible.

We discuss the issue of enforcement and penalties in more depth below, but we urge this committee not to add an additional executive session. Information that is communicated with the public or that deals with security features that are readily apparent can not be the subject of private discussions. Information that would reveal nonpublic, highly sensitive security information is already adequately protected in the law.

In addition to the specific amendments suggested above, the public would also benefit if the Sunshine Act were amended to address the following public access issues.

Pennsylvania Sunshine Act: Improvements Needed

Remedies

Despite recent legislative action to increase the criminal penalties for violating the Act (which the PNA supported), calls to the PNA Legal Hotline suggest violations are no less rare and enforcement has not increased. We are aware of only two instances of the

criminal penalties being imposed in the past 7 years and only a handful of civil suits in the same time.

Enforcement is problematic because the courts have interpreted the Act to allow agencies to "cure" violations. Court decisions allow public agencies to simply re-do a suspected violation at anytime and without penalty, and if they do so, the courts have consistently held a violation is not actionable. This court-created "cure" remedy makes it nearly impossible to win a Sunshine Act challenge, and it is a huge deterrent for any citizen seeking to enforce the law. Moreover, the law allows for the imposition of criminal remedies only for "intentional" violations, and civil sanctions when the violation was "willful" or "with wanton disregard." These standards impede enforcement and allow agencies to exclude the public based on unreasonable interpretations of the law or ignorance of its requirements.

The Act must clearly set forth available remedies, including that:

- a court may declare a violation (and order any appropriate penalty) even where a violation was subsequently "cured" or where violations were not intentional;
- the court has the power to grant declaratory or injunctive relief to require that a meeting be open to the public;
- any action taken in violation of the Act is voidable by the court;
- any person may seek declaratory and/or injunctive relief to prevent a future breach of the Act; and
- The current penalty section should be reconsidered to include higher fines and/or misdemeanor level charges.

The Sunshine Act must explicitly apply whenever a quorum discusses agency business

Too often, agencies claim that they are engaging in "preliminary discussions," using terms such as "informational" or "work sessions" when denying public access, and a recent Pennsylvania Supreme Court decision allows agency quorums to participate in private "fact finding" sessions involving agency business. This practice conflicts with the plain letter and intent of the law. Moreover, agencies also frequently argue that committee meetings are not subject to the Act despite language to the contrary in the law. These practices effectively remove the public from some of the most meaningful discussions on a particular topic.

Public access is not and should not be limited to the end result of agency discussions. A truly informed citizenry can only be accomplished when citizens have access to the same information as their elected officials, and private "fact finding" and similar meetings are counterintuitive to that goal. Likewise, some discussions never lead to a

final policy or a formal vote, but the public is entitled to witness and participate in the process, even when the process ends without formal resolution. The Act is intended to guarantee public participation at all states of policy creation, including its genesis. As discussed above, there are already a sufficient number of exceptions in the law that protect certain agency discussions -- but not final action -- from the public.

The Act must apply whenever a quorum, or any committee thereof, is discussing agency business, and any exceptions to this general rule must be narrowly construed. The Act should be amended to expressly prohibit any overbroad interpretation of the executive session exceptions and to expressly include agency discussions regardless of whether a vote or decision was reached at any given meeting, or will occur in the future.

Burden of Proof/Presumption of openness

The Sunshine Act must be amended, consistent with the Right to Know Law, to establish the presumption of openness and put the burden of proof on an agency seeking to exclude the public.

The text of the law is silent on this issue, but courts have interpreted the law to place the burden of proof on citizens filing a Sunshine Act challenge. This is not appropriate for many reasons. Citizens who have been excluded from a meeting have no knowledge about what happened and very little information upon which to make a showing a proof. The party with all the information must bear the burden of proof.

Similar to the presumption of access and burden of proof in the Right to Know Law, the Sunshine Act should be amended so that the government, which has all the information about a closed meeting, bears the burden of proof to show the reason for excluding the public was appropriate.

Technology

The Act must be updated to account for today's technology, expressly stating that teleconferences, e-mail and other technology-facilitated discussions by a quorum are subject to the Act.

All discussions by a quorum must occur at an open, advertised meeting, including in-person discussions and those occurring through technological devices.

Public Comment

The PNA supports HB 376, sponsored by Representative Krieger, which would amend

the Sunshine Act to prohibit governing bodies of political subdivisions and authorities from requiring residents to register prior to their meetings in order to comment at a meeting.

Current law allows agencies to implement "reasonable" rules and regulations governing the conduct of meetings, and many agencies have created rules requiring residents to register in advance of public meetings in order to offer public comment. Some examples we have seen include policies that prohibit public comment from individuals who have not registered, policies that require residents to visit the agency's main office during very limited time frames in order to register, policies that limit public comment to agenda items, and policies that require residents to submit their comments in writing and provide copies prior to commenting at a public meeting. We believe these policies are not "reasonable" in light of the Act's plain language and intent.

Advance registration requirements can cause a significant barrier to access and discourage public participation, which is in direct conflict with the clear intent of the law. The Sunshine Act should be amended to encourage public participation at meetings.

Agenda

Currently, there is no statewide law that requires agencies to produce a meeting agenda, and many do not. An agenda is an important public access tool that enables citizens to decide when to attend public meetings and to keep those who cannot attend informed.

The Act must be amended to require all agencies to prepare an agenda prior to all public meetings and make it publicly available at the agency's office and on its Web site, if one exists, at least 48 hours prior to a meeting. Agencies must also make agenda copies available at the meeting. The agenda must include, at a minimum, any item scheduled for official action and must describe, with sufficient specificity, any previously identified executive session to be held by the agency.

Thank you on behalf of the PNA and we look forward to working with you as you work to improve public access in the Commonwealth.

Sincerely,

Melissa Bevan Melewsky
Media Law Counsel

IN THE COURT OF COMMON PLEAS OF LANCASTER COUNTY, PENNSYLVANIA
CRIMINAL DIVISION

IN RE:	:	
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LANCASTER COUNTY INVESTIGATING GRAND JURY II, 2005	:	**Investigation No:**
	:	
	:	

TO THE HONORABLE LOUIS J. FARINA, PRESIDENT JUDGE:

REPORT NO. 1

We, the third Lancaster County Investigating Grand Jury, duly charged to inquire into offenses against the criminal laws of the Commonwealth, have obtained knowledge of such matters from witnesses sworn by the Court who have testified before us. We make the following findings of fact upon proof by a preponderance of the evidence and issue these recommendations for legislative, executive or administrative action in the public interest. By an affirmative majority vote of the full investigating grand jury, so finding with not fewer than twelve concurring, we do hereby make this Report to the Court.

/s *
Foreperson—Lancaster County
Investigating Grand Jury II, 2005

DATED: December 14, 2006

* Pursuant to the secrecy provisions of the Investigating Grand Jury Act, 42 Pa.C.S. § 4541 *et seq.*, the name of the person who signed as the foreperson of this grand jury has been redacted from the published version of this Report. The signed original of this page of the Report, which was reviewed by Supervising Judge Louis J. Farina, has been retained by the Lancaster County District Attorney's Office.

I. INTRODUCTION

We, the members of the Lancaster County Investigating Grand Jury II, 2005, having received evidence pertaining to matters of Lancaster County, Pennsylvania, pursuant to a Notice of Submission dated November 10, 2005, and an Amended Notice of Submission of Investigation dated May 12, 2006, do hereby make the following findings of fact and recommendations.

The investigation submitted to us on November 10, 2005, which was approved by the Honorable Louis J. Farina, Grand Jury Supervising Judge on that same date, concerned the hiring of Gary Heinke as Lancaster County Human Services Administrator and whether any crimes, including but not limited to Unsworn falsification to authorities (18 Pa.C.S. §4904), may have been committed. During the course of that phase of the investigation, the grand jury both obtained and heard evidence, including information from Gary Heinke himself, which led to the Amended Notice of Submission on May 12, 2006. The amended scope of the investigation, which was approved by Supervising Judge Farina on May 12, 2006, concerned the circumstances surrounding the actions taken by Gary Heinke, the Lancaster County Commissioners, as well as other persons both known and unknown, regarding the sale of Conestoga View Nursing Home and whether any crimes, including but not limited to Criminal conspiracy (18 Pa.C.S. § 903), Penalty for neglect or refusal to perform duties (16 P.S. § 411), Meetings open to public (16 P.S. § 460), Assistant County Solicitors (16 P.S. § 904), Contract procedures; terms and bonds; advertising for bids (16 P.S. § 1802), Authority to sell or lease real property (16 P.S. § 2306), and Open meetings (65 Pa.C.S. §701 et seq.) may have been committed during that process.

Throughout this investigation, as detailed later in this report, we were hampered by inconsistent testimony (both among witnesses and within a witness's own testimony) and a consistent lack of any documentation to support or refute certain claims. As noted by a grand juror early in this investigation,

> "I'm still trying to figure out, do these people write out a report so that people know what they've done, and what was accomplished or not accomplished? ... In other words, if I were in one of those positions, I'd fill out a weekly report, a summary report, what was accomplished, what wasn't. Otherwise, how the devil, do you know what they're doing?"

For example, although some witnesses testified about the content of certain meetings with some specificity, memories (and testimony) faltered on who attended such meetings or even the dates on which such meetings took place. In such an investigation, we, the grand jurors, were forced to rely almost solely on credibility determinations as to which claims (and which witnesses) to believe and which claims (and which witnesses) to find incredible and not worthy of belief. Our factual findings and recommendations are detailed in the remainder of this report.

FINDINGS OF FACT

A. Lancaster County Governmental Structure during the circumstances under investigation.

Consistent with Pennsylvania law, the Lancaster County Board of Commissioners ("the Board") consists of three members: two from the majority party and one from the minority party. Since January of 2004, the board has included Richard Shellenberger and Howard "Pete" Shaub as the majority (in this case, Republican) commissioners, while Molly Henderson is the minority (in this case, Democratic) commissioner. When their terms of office began in 2004, both Commissioner Shellenberger and Commissioner Henderson were newly elected to the board while Commissioner Shaub was beginning his second term as a county commissioner. Commissioner Shaub was elected chairperson when the new board took office in January of 2004.

Prior to the inauguration of the new board, there was one county administrator who answered to the board and was charged with ensuring that "the will of the board" (according to the testimony, at least two commissioners) was implemented by the department heads of various county agencies and departments. The county administrator at the time of the inauguration of the new board was Timothea Kirchner, who had been the county administrator since 1996.

After the primary election in May of 2003 but prior to taking office in 2004[1], sitting Commissioner Shaub (who would become chair of the new board in January 2004) met with commissioner candidate Richard Shellenberger to discuss potential changes to the structure of county government. One potential change Commissioner Shaub advocated was splitting the job

[1] Although both Commissioner Shaub and Commissioner Shellenberger testified that they were unable to recall the exact timing of the meeting, such a meeting must have occurred before May 27, 2003, which is the date on the cover letter which Mr. Heinke sent along with his first (albeit second discovered) resume.

functions of the current county administrator position into two co-equal positions: one position that dealt with the human services departments (ultimately called the Chief Services Officer (CSO) position) and the other position that would deal with administrative aspects of county government (ultimately called the Chief Administrative Officer (CAO) position).

As soon as Commissioner Shaub broached this idea, Commissioner Shellenberger testified, he immediately thought of Gary Heinke as an ideal candidate for the human services position, in part because Mr. Shellenberger was aware that Mr. Heinke's background was consistent with Mr. Shellenberger's focus on introducing more faith-based initiatives and increasing local church involvement in county government, particularly in the area of human services. Mr. Shellenberger had initially met Gary Heinke in the mid-1990's when Mr. Shellenberger was the general manager of Kreider Farms restaurant and Mr. Heinke was employed by MMI[2] and was doing work on behalf of MMI at Kreider Farms. Their relationship progressed from a work relationship to meeting for breakfast on a regular basis, including discussing books that they were both reading and sometimes praying together. After Mr. Shellenberger left Kreider Farms to start his own business in 1999, the two continued to have breakfast together on a bi-weekly basis until Mr. Heinke moved to Minnesota. While Mr. Heinke was in Minnesota, the two continued to keep in touch with regular telephone calls.

Mr. Heinke was still in Minnesota in May of 2003 when Mr. Shellenberger decided that Mr. Heinke would be a good match for the new Chief Services Officer position[3]. Mr. Shellenberger discussed the position with Mr. Heinke by telephone in May of 2003 and also

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[2] MMI is short for Marketplace Ministries Incorporated, which is an employee assistance program that had a contract to work with the employees of Kreider Farms.

[3] For clarity purposes, the position will be referred to as the Chief Services Officer throughout the body of this report, even though the name went through several permutations throughout the relevant time period.

asked Mr. Heinke for a copy of his resume. Mr. Heinke provided a resume and cover letter, dated May 27, 2003, which stated that the resume was "for consideration for the potential position of County Administrator and/or Director of Human Services for Lancaster County."

The discussions between Mr. Shellenberger and Mr. Heinke about the CSO/CAO positions began to bear fruit with a September 5, 2003 breakfast meeting at The Eatery, a restaurant then owned by Mr. Shellenberger. In addition to Mr. Shellenberger and Mr. Heinke, Commissioner Shaub and then-county-solicitor John Espenshade, Esquire, attended the meeting. Prior to that meeting, on September 2, 2003 Commissioner Shaub sent a five-page facsimile transmission, from a facsimile machine in the county commissioners' office, to Mr. Heinke in Minnesota that included job descriptions for both the Chief Administrative Officer and the Chief Services Officer positions. The September 2, 2003 fax was not revealed to Commissioner Henderson prior to her vote to hire Mr. Heinke. Although Commissioner Shaub told Thomas Myers, the county's human resources director who conducted the county's internal investigation of Mr. Heinke's hiring, that he only "believes that he faxed" Mr. Heinke information in advance of that meeting, Commissioner Shaub provided a copy of the fax itself to the grand jury[4].

According to the grand jury testimony, the meeting occurred around breakfast and the purpose of the meeting was for Commissioner Shaub and Mr. Espenshade to meet Mr. Heinke in order to determine if he would be a fit for the Chief Services Officer position. However, since Commissioner Shaub arrived late to the meeting, the majority of the meeting included discussion of Mr. Heinke's days in the military, Mr. Heinke's background, and discussion about county government and its structure. Unsolicited, Mr. Heinke provided Mr.

[4]On the cover page of the fax that Commissioner Shaub sent to Mr. Heinke was a handwritten message that stated: "Look forward to seeing you on Friday. Sorry to hear about your daughter."

Espenshade with a copy of his May 27, 2003 resume at the meeting. Mr. Espenshade agreed to provide Mr. Heinke with various documents relating to the County Code and the operation of county government. Mr. Espenshade also suggested to Mr. Heinke that he should not include in the resume the specific size of the budgets for which Mr. Heinke was responsible because the county's budget was much larger than the budgets with which Mr. Heinke had experience. At the conclusion of the September 5, 2003 meeting, both Commissioner Shaub and Mr. Espenshade agreed with Mr. Shellenberger's assessment that Mr. Heinke was a viable candidate for either the CSO or CAO position.

After that meeting, Mr. Shellenberger and Mr. Heinke stayed in fairly constant contact. Mr. Heinke also had contact with Mr. Espenshade during this time period—through email and postal mail. Mr. Espenshade, as he had promised, provided Mr. Heinke with books, pamphlets and other information about county government structure. Mr. Heinke also stayed in contact with Commissioner Shaub via email up through at least the 2003 holiday season.

Once the new board of commissioners took office in January, 2004, Commissioners Shaub and Shellenberger decided officially to split the county administrator position into the co-equal positions of Chief Services Officer (CSO) and Chief Administrative Officer (CAO); Commissioner Henderson, according to her testimony before the grand jury, opposed that change. Bonnie Ashworth from the Human Resources Department was charged with creating the job description and obtaining board approval of the description. The new Chief Services Officer job description was posted on Lancaster County's website on January 13, 2004. The job description did not include oversight of the Conestoga View Nursing Home.

Mr. Heinke's application (which was accompanied by a resume substantially different from the one provided to Commissioner Shellenberger on or about May 27, 2003 and later to Mr. Espenshade on or about September 5, 2003)[5] was dated January 13, 2004. Commissioner Shellenberger told the grand jurors that he contacted Mr. Heinke in advance of the posting and said "we are about ready, and if you're interested, watch the web and sent [sic] it [your application package] in."

B. The CSO hiring process

Once the CSO job description became public on January 13, 2004, Lancaster County's Human Resources department collected all of the applications until the February 23, 2004 deadline. Once the deadline had passed, Ms. Ashworth divided the 107 applications into "A", "B" and "C" lists, in accordance with the applicant's suitability for the position (the "A" list being reserved for the strongest applicants)[6]. Mr. Heinke's application and resume were originally placed on the "C" list by Ms. Ashworth because Mr. Heinke's most recent work experience was in the form of an internship. In Ms. Ashworth's opinion, and based on her 13½ years of Human Resources experience: "Based on his experience, I can't even give him a caseworker job. He couldn't even have been a caseworker." Ms. Ashworth was directed to move Mr. Heinke's application to the "B" list by Lancaster County's Human Resource Director Tom Myers, who believed that Mr. Heinke's educational background was sufficient for the job.

[5] The first resume was also provided to Commissioner Shaub by someone, most likely Commissioner Shellenberger. Every grand jury witness who had access to both resumes claimed that they did not compare the May 27, 2003 resume to the January 13, 2004 resume.

[6] Including Mr. Heinke's application in the "A" list after Commissioner Shellenberger's intervention, there were 21 applications on the "A" list, 16 on the "B" list, and 70 on the "C" list.

In accordance with county hiring custom, Ms. Ashworth only sent copies of the "A" candidates' applications to the three commissioners.

Shortly after receiving the "A" list candidate information, Commissioner Shellenberger personally telephoned Ms. Ashworth and asked that Mr. Heinke's application be added to the "A" list. Ms. Ashworth complied with his directive and provided copies of the Mr. Heinke application to all three commissioners, with notes attached to Commissioner Shaub's and Commissioner Henderson's copies which stated that Commissioner Shellenberger requested that Mr. Heinke's application be moved to the "A" list. Ms. Ashworth also notified all three commissioners in writing that Mr. Heinke's previous job was only an internship, which she had learned by reading his application package. The Board then met to determine who from the "A" list would be interviewed as a candidate for the CSO position. Four candidates were selected for interviews by the commissioners, including Mr. Heinke. Commissioner Henderson did not vote to interview Mr. Heinke; Commissioners Shaub and Shellenberger did. No one from the county's Human Resources department recommended that Mr. Heinke be interviewed. At no point during these discussions did Commissioners Shellenberger or Shaub reveal to Commissioner Henderson or anyone else involved in the hiring process that both of them had previous contact with Mr. Heinke.

At some point during this time (no one who appeared before the grand jury could provide a more definite time frame), Mr. Heinke asked Commissioner Shellenberger whether he (Mr. Heinke) could telephone some of the department heads (who would end up reporting to him if he was hired for the CSO position) and speak with them. Commissioner Shellenberger

testified that he did not think that such telephone calls would be inappropriate and so he copied the county's internal telephone list (which included the direct telephone numbers of various department heads) and provided a copy of that list to Mr. Heinke. Commissioner Shellenberger did not assist any other CSO candidate in this manner. Commissioner Shellenberger also informed several of the department heads at a staff meeting on January 9, 2004 that candidates for the CSO position may be calling them. In the words of one department head, "I felt compelled to do it [take Mr. Heinke's call] because it was such that it seemed to me that this man [Gary Heinke] was going to be my boss. And as I said, I felt it was probably in my best interest, indeed, to be speaking to the man at the request of the commissioner." Although Commissioner Shellenberger initially denied this conversation when he testified before the grand jury,[7] the grand jury finds that Commissioner Shellenberger was not truthful and credits the testimony of other witnesses who spoke in detail about the meeting.

After the Board had selected the four CSO position candidates to be interviewed, Ms. Ashworth created a set of standard questions which would be asked of all of the candidates.[8] This set of questions was then given to the board to edit and supplement as they wished, so long as the questions did not stray into areas prohibited by state or federal law. The grand jury finds Commissioner Shellenberger was truthful when he testified that he told Mr. Heinke in advance of the interview the topic of his "personal question" (as opposed to a question posed by Bonnie Ashworth). The grand jury also finds that Commissioner Shellenberger, although he flatly

[7] Commissioner Shellenberger first flatly claimed "I did not set anything up," then later in his testimony in the same proceeding claimed that he did not remember. Because the commissioner clarified his previous answer in a timely manner (albeit after a timely break requested by his counsel), the grand jury declines to issue a presentment for 18 Pa.C.S. § 4902 (Perjury) or 18 Pa.C.S. § 4903 (False swearing).

[8] Of the four candidates that were selected to be interviewed, only three were actually interviewed because the other candidate withdrew.

denied it during his grand jury testimony, informed Mr. Heinke of the topics of all of the questions prior to Mr. Heinke's interview. The grand jury specifically finds Commissioner Shellenberger's testimony that he did not provide Mr. Heinke with the topics of the questions but only talked about "general subjects" incredible and unworthy of belief.[9] However, since the only other witness to this conversation is Mr. Heinke and there is no corroboration of this conversation, the grand jury declines to issue a presentment for 18 Pa.C.S. § 4902 (Perjury) or 18 Pa.C.S. § 4903 (False swearing). See also footnote 15.

Even before Mr. Heinke was hired, Commissioner Shellenberger was telling staff in the Commissioner's office that "there was somebody that was going to be coming who would save the day. ... He will save the day because this man has his PhD in organizational skills." That person, according to the grand jury testimony, was Gary Heinke. Commissioner Shellenberger made "many, many" such statements according to a grand jury witness.[10]

Mr. Heinke was the first candidate to be interviewed for the CSO position. Neither Commissioner Shellenberger nor Commissioner Shaub informed anyone before the interview began that they had had prior dealings with Mr. Heinke. Immediately before Mr. Heinke's interview, Ms. Ashworth specifically informed the commissioners that Mr. Heinke's previous job

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[9] The grand jurors also heard testimony about a 32 minute telephone call made on February 27, 2004 (the same day that the Board decided on the final list of interviewees) to Mr. Heinke's home telephone number in Minnesota from an empty office in the Commissioners' suite. However, "the call could have been made from any one of the phones within the Commissioners' Office, had somebody pushed the right button." Every commissioner and staff person questioned by the grand jury denied participating in that telephone call. However, Mr. Heinke testified to receiving a telephone call from Commissioner Shellenberger that lasted "probably between maybe 20 and 30 minutes" in late February, 2004. It was in that telephone conversation that Commissioner Shellenberger told Mr. Heinke the topic areas of the interview questions.

[10] After the grand jury investigation commenced, Commissioner Shellenberger offered unsolicited advice to at least one grand jury witness to keep in mind that "if you don't know the answer, you just tell them [the grand jurors] you don't know." While the grand jurors find this advice very troubling, we do not find that it rises to the level required for a presentment for a violation of 18 Pa.C.S. § 4952 (Intimidation of witnesses or victims).

was as an intern with the Pillager School District. According to the testimony before the grand jury, the commissioners had no reaction to this information and some of them did not even recall Ms. Ashworth alerting them to it. "There was no reaction. In fact, I think Molly Henderson kind of looked over at me and said, well, it is at a different level, meaning it's postgraduate doctorate as opposed to like a Bachelor's Degree internship, I guess."

When Ms. Ashworth introduced Mr. Heinke to the board at the beginning of the interview, there were no signs that any of the commissioners recognized him or had had an ongoing relationship with him prior to that interview. Mr. Heinke interviewed flawlessly—he never had to stop to think of a response to a question or to keep himself from answering incorrectly. As one grand jury witness noted, "These answers were just rolling off his tongue, and he'd throw up these examples and he had examples for everything, and writing down things and taking notes. And by the time he was finished, I couldn't even speak. I had never seen such a perfect, flawless interview."[11]

Once all three candidates had been interviewed, the board sat down with Ms. Ashworth

to make their hiring decision. The vote behind closed doors[12] was again two votes for Mr. Heinke (Commissioners Shellenberger and Shaub) and one against (Commissioner Henderson). However, the public vote to hire Mr. Heinke on March 24, 2004 was unanimous.[13] Commissioner

[11] Mr. Heinke was not the only applicant to be given preferential treatment during the current board's hiring process. Mr. Elliott, before he was interviewed for the CAO position, received the topics of the interview questions from Commissioner Shaub.

[12] In this case the non-public vote was lawful because it involved the appointment of a prospective employee. *See* 65 P.S. § 708(a)(1).

[13] Before the county Salary Board on March 8, 2004, the Commissioners recommended that Mr. Heinke be hired at a salary of $80,000 per year. The Commissioners also recommended that Mr. Heinke accrue four weeks of vacation per year (an accrual rate which normally occurs only after 10 years of service to the county) and $3,000 for moving expenses from Minnesota. The Salary Board approved all three of the Commissioners' requests. The Salary Board also approved the Commissioners' request to give Mr. Heinke

Henderson explained her shifting vote to the grand jurors as both an acknowledgment that her "no" vote would not have changed the outcome and as a desire to present a united front of support, in order to make things easier for Mr. Heinke once he began his employment with the county. Mr. Heinke began his employment with the County of Lancaster on March 29, 2004.

Once the board voted to hire Mr. Heinke and prior to him beginning his employment with the County, Ms. Ashworth performed a standard background check and confirmed his employment history, his criminal background and his credit history. Ms. Ashworth recalled speaking to a Phil Johnson in Minnesota regarding Mr. Heinke's internship at Pillager School District.

At the time of Mr. Heinke's hiring, oversight of the Conestoga View Nursing Home was not in the CSO job description. However, shortly after Mr. Heinke was hired the Commissioners moved Conestoga View and five other departments under his supervision. This shifting of departments resulted in a 200% increase in staffing oversight and a 58% increase in funding responsibility from the CSO job description posted on January 13, 2004. The county's Human Resources Department opposed that change. As testified to before the grand jury, "it certainly would give the appearance that those positions were moved, perhaps, to advantage somebody in the hiring process. ... Quite frankly, there were candidates who applied for that job [the CSO position] who were hospital administrators who weren't considered for the position. And had Conestoga View been in that mix or under the directions of the Chief Services Officer

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a $10,000 pay increase (an increase of 11½ %) in 2005.

from day one, I don't know how we would not have interviewed that person." The Commissioners dismissed that concern.

Mr. Heinke then supervised the operation of Conestoga View until its sale in July, 2005.[14]

After the July 6, 2005 unanimous vote by the Board of Commissioners to sell Conestoga View, opponents of the sale raised questions about Mr. Heinke's hiring process, including various items on his resume. At the start of the internal county investigation involving Mr. Heinke that began on October 24, 2005, Mr. Heinke assured the commissioners that the allegations were unfounded. Mr. Heinke, after initially cooperating, then refused to continue cooperating with the investigation after the May 27, 2003 resume became known to the public after being found in Commissioner Shaub's files.[15] As the grand jury observed during his testimony, Mr. Heinke seemed engaged and interested in telling the grand jury his view of how these perceived discrepancies were in fact not discrepancies at all. As Mr. Heinke was asked more specific questions about who can confirm this statement or who did you work with on this project, he became more evasive and less forthcoming. Mr. Heinke's lack of cooperation included refusing to sign releases so that county personnel could contact various people who may be able to confirm or deny the veracity of various items on his resume. Mr. Heinke then resigned from the CSO position on October 28, 2005, less than one workweek after his assurances to the county commissioners.

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[14] Mr. Heinke was also involved (the extent of his involvement is disputed) in the process leading up to the sale of Conestoga View. The process leading to the private sale of Conestoga View to Complete Healthcare Resources (CHR) is discussed later in this report.

[15] The copy of the May 27, 2003 resume and cover letter provided to the grand jury is printed on the back of Commissioner Shellenberger's campaign letterhead. The May 27, 2003 resume and cover letter were sent to Commissioner Shellenberger at what was then his home address.

C. Resume Discrepancies and their effect on the hiring process

The internal investigation performed for the county Commissioners by J. Thomas Myers, then-Director of Human Resources and Joseph Hofmann, Esquire of the law firm Stevens & Lee discussed discrepancies between the first resume (dated May 27, 2003) and the second resume (submitted with the January 13, 2004 application package) in the report which they released in November of 2005. The discrepancies ranged from minor grammatical changes to changes in the number of employees supervised (150 employees on first resume, 550 employees on the second resume) to outright, boldfaced lies (President of Arden Hills City Council, involvement with Tri-County Humane Society[16]). Mr. Heinke explained that some of the discrepancies existed "because I was trying to make the resume more readable." Mr. Heinke also told the grand jury that it's his job as an applicant to "tailor a resume to what they're looking for" and it is the Human Resources Department's job to check to make sure everything is accurate. "It's kind of both ends; incumbent upon me, as well as the HR department. Q: So it's not entirely you, it's not entirely them, the truth lies somewhere in between? A: And the truth will be known

[16] Mr. Heinke's testimony regarding the Tri-County Humane Society is representative of his attitude regarding all of the questionable portions of his resume:

> Q. If I were to get a phonebook for the relevant area of Minnesota and I tried to look up Tri-County Humane Society, would I find the number for Heartland Area Rescue Team?
> A. It would be listed under Heartland Animal Rescue Team.
> Q. If I didn't know that it was called Heartland Animal Rescue Team, would I find a number for Tri-County Humane Society?
> A. Somewhere in the state of Minnesota you might.
> Q. All right. Let's become a little more precise. Let's say that I found a number for Tri-County Humane Society somewhere in the state of Minnesota. Would it be the one that you had a three-month contract with?
> A. No.
>
> ...
>
> Q. Let's get down to brass [tacks] here, Mr. Heinke. Isn't the only truthful way to characterize putting Tri-County Humane Society there [on the resume] a lie? There's no truth in that name, is there?
> A. Not as the title of the organization that I worked for.

one way or the other." The grand jury specifically disbelieves Mr. Heinke's testimony in this regard and finds it incredible and not worthy of belief.

However, while there are marked differences between the two resumes, the only discrepancy on the actual two-page "County of Lancaster Application for Employment"[17] (which is the only document which must be sworn to subject to possible prosecution for unsworn falsification to authorities) centers on the description of Mr. Heinke's position with the Pillager School District. On the two-page application itself, Mr. Heinke listed the position's job title as "Assistant Superintendent". In the resume submitted contemporaneously with that application, Mr. Heinke listed the position's full job description as "Assistant Superintendent [with] Pillager School District 116. Post Graduate Administrative Internship", which acknowledged that the position was an internship. Both the county's Human Resources Department and all three county commissioners were aware of the discrepancy before Mr. Heinke's interview and found it to be of no weight during the hiring process. Moreover, Mr. Heinke passed a polygraph examination in which he was asked whether he intentionally falsified his application.[18]

Moreover, although the county commissioners in this case chose to follow the county's

[17] The investigation determined that the "County of Lancaster Application for Employment" is the only document which had to be sworn to subject to possible prosecution for unsworn falsification to authorities. The terms of the two-page application relate only to the document itself ("I understand that any false answers, statements or representations made by me in this application [emphasis supplied] shall constitute sufficient cause for dismissal and/or penalties under 18 PA Cons.Stat. Section 4904 related to the unsworn falsification to authorities.") and thus under the law does not encompass the resume or any of the other documentation apart from the two-page application for any possible presentment relating to 18 Pa.C.S. Chapter 49, Subchapter A (Perjury and falsification in official matters).

[18] To issue a presentment for 18 Pa.C.S. § 4904 (Unsworn falsification to authorities) related to this discrepancy, the grand jury would have had to find that the discrepancy was intentional. There is no direct evidence which would allow the grand jurors to find intentional conduct related to this discrepancy. Moreover, the weight of the circumstantial evidence (the more detailed description on the resume, the awareness of the more detailed description by the county's Human Resources Department during the hiring process, and Mr. Heinke's passing a polygraph relating to his lack of intent on this issue) militate against such a finding.

internal hiring procedures, they were not obligated by Pennsylvania law to follow any of the procedures. According to grand jury testimony, "Q: If the Commissioners want to, for lack of a better term, play hide the ball, they're legally allowed to do that? A: That's my understanding, yes. Q: Ethically may be a different issue? A: Correct." Similarly, Commissioners Shellenberger and Shaub were not obligated by Pennsylvania law to disclose their prior contacts with Mr. Heinke.

Having reviewed the facts as presented to the grand jury through witness testimony and

evidence, and having been instructed on and followed the applicable law, and having taken into account Mr. Heinke's cooperation with the grand jury investigation as well as other ongoing investigations, the grand jury has concluded that Mr. Heinke's actions do not rise to a level where a presentment for a violation of 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities) is warranted.

D. Secret meetings

According to the grand jury testimony of Mr. Heinke and other witnesses, only a few weeks after Mr. Heinke's employment began in late March 2004, at the behest of Commissioners Shaub and Shellenberger he was drawn into secret meetings at the law firm Stevens & Lee (a prominent local law firm located less than a block from the county courthouse) regarding the sale of Conestoga View, which at the time was Lancaster County's nursing home facility.[19] In fact, Commissioner Shaub told Mr. Heinke that one of his fundamental responsibilities was the sale of

[19] In early 2004, Conestoga View had been in existence in some form for more than 200 years and was located on forty acres of land that also housed the Youth Intervention Center along with other County owned buildings. Conestoga View employed approximately twenty-five percent of all employees paid for by the taxpayers of Lancaster County.

Conestoga View.[20] Commissioner Shellenberger was the project's commissioner liaison. When Mr. Heinke protested to Commissioner Shellenberger, the commissioner's response was "hey, well, this is going to be, like, a team effort." Right after taking office in 2004 Commissioner Shellenberger began telling staff to keep meetings "off book". The majority of those meetings were at Stevens & Lee; other meetings were with Howard Kelin, Esquire.

The first secret meeting which the grand jury finds as a fact, took place on March 23, 2004 and included Commissioner Shaub, Commissioner Shellenberger, Mr. Espenshade, David Vind, Esq. from Stevens & Lee and Matthew Kirk, the county's financial adviser. At this meeting, Commissioner Shaub again asked Mr. Espenshade if Stevens & Lee could handle the "Core Service Review" and the potential sale of Conestoga View.[21] Mr. Espenshade agreed that Stevens & Lee would handle the project on an "at risk" basis.

Although Commissioner Shaub testified before the grand jury that selling Conestoga View was not predetermined[22], according to everyone else on the Core Services Review Team (hereinafter, the team), Commissioner Shaub was adamant that Conestoga View was to be sold and it was to be sold quickly—by October, 2004. According to grand jury testimony,

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[20] The grand jury finds as a fact that Commissioner Shaub had begun discussing the possible sale of Conestoga View prior to being re-elected for his second term as a county commissioner. Commissioner Shaub discussed this plan with candidate Shellenberger as early as September of 2003, which was before the general election in which Mr. Shellenberger was elected as a county commissioner. Commissioner Shaub coined the term "Core Services Review."

[21] During the transition meetings in summer and fall of 2003, Commissioner Shaub had broached this topic with Mr. Espenshade. At that time Mr. Espenshade had given Commissioner Shaub and candidate Shellenberger a list of names of several local attorneys that he thought had the requisite expertise to handle a transaction as large as the sale of a county owned nursing home. Included on this list was Joanne Judge, Esquire from Stevens & Lee. On March 23, 2004 Commissioner Shaub had telephoned Mr. Espenshade and told him that he (Commissioner Shaub) wanted Ms. Judge to be special counsel for the Conestoga View project. Ms. Judge quoted a flat fee figure of $200,000 for her services in that regard. Commissioner Shaub agreed to that fee. According to the grand jury testimony, Commissioner Shaub alone agreed to that fee.

[22] In fact, Commissioner Shaub testified before the grand jury that it was not he who wanted the nursing home sold and that it was actually Commissioner Shellenberger who pushed for the sale.

Commissioner Shaub stated "Conestoga View is going to be sold, it's going to be gone. I don't care how we get there, we're going to get there." Stevens & Lee, with Joanne M. Judge, Esquire as lead counsel, began working immediately on "the project", with the understanding that if the deal did not go through, the firm would not collect a penny of that $200,000 fee. In addition to the testimony heard before the grand jury establishing this violation of the Sunshine Act, the grand jury notes that Commissioners Shaub and Shellenberger admitted their conduct violated the law by pleading guilty to this offense.

The next secret meeting when both Commissioners were present occurred on April 29, 2004 at Stevens & Lee. Commissioner Shellenberger was present from the start of the meeting; Commissioner Shaub showed up at the meeting approximately 90 minutes after it had begun. According to testimony before the grand jury, Mr. Espenshade discussed the ramifications of the Sunshine Act with the Commissioners and told them that they should not both be at a meeting at the same time. Shortly thereafter, Commissioner Shellenberger left with Mr. Heinke. Although this was a secret meeting, this meeting was not a violation of the Sunshine Act because the Act requires the presence of a quorum of commissioners who are deliberating toward "official action." The grand jury finds that there is insufficient evidence to establish a quorum involving deliberations at this meeting. Furthermore, because there was no testimony regarding the commissioners' deliberating at this meeting, which is a requirement under the law, the grand jury declines to issue a presentment for 16 P.S. § 460 (Open meetings) or 65 P.S. § 701 et seq. (Open meetings).

Despite this admonishment, Commissioners Shaub and Shellenberger again appeared at

another off-site meeting on September 2, 2004 at Stevens & Lee. Participants at this meeting included Mr. Espenshade, Mr. Elliot, Mr. Heinke, Theresa Zechman (a Stevens & Lee attorney), Susie Friedman (another Stevens & Lee attorney), Commissioner Shaub and Commissioner Shellenberger. At this meeting, Commissioner Shellenberger arrived by himself and the meeting began. Commissioner Shaub showed up later and was told that he could not be there because of Sunshine Act concerns. Mr. Espenshade then escorted Commissioner Shaub out of the meeting. As with the April 29, 2004 meeting, because there was no testimony regarding the commissioners' deliberating at this meeting and there was insufficient evidence to establish a quorum of commissioners at this meeting, both of which are requirements under the law, the grand jury declines to issue a presentment for 16 P.S. § 460 (Open meetings) or 65 P.S. § 701 et seq. (Open meetings).

In addition to off-site secret meetings where Commissioners Shellenberger and Shaub

were physically present, there were a number (the exact number could not be determined with certainty by the grand jurors) of meetings that occurred where the two commissioners participated in the meetings by sending Mr. Heinke and Mr. Elliot in their stead. The two commissioners then would question Mr. Heinke and Mr. Elliott in detail about what occurred at the meetings when they returned to the courthouse. Mr. Heinke referred to these interrogations as "back briefs", where he would be asked to brief the secret meetings in detail, usually to Commissioner Shaub.

A constant theme of the off-site meetings was that no one outside of "the team" should know about the plan to, or even the possibility of, selling Conestoga View. Commissioner Shaub specifically told the team members that Commissioner Henderson should

be kept in the dark[23]. Each of the team members was told not to put the off-site meetings onto their calendars. Some team members referred to the sale of Conestoga View as "the project" or as "Charlie Victor", so as to further hide the purpose of their meetings. According to one grand jury witness, "[s]o it was supposed to be a team approach and was referred to as the project. You know, you didn't refer to it as Conestoga View or selling or anything. That was very specifically stated by Commissioner Shaub. You know, it's referred to as the project. This will be kept in secret. You don't tell the ladies up front[24]. You don't put it on your schedule."

The reason for the secrecy was to keep the sale out of the public realm. Both Commissioners Shaub and Shellenberger, the moving forces behind the sale, were concerned about potential outcry from the residents and the employees at Conestoga View as well as the possibility of criticism from the general public. The secrecy of the project ran so deep that even core County personnel that normally would have been involved in the process (the county engineer's office, the county controller's office, Conestoga View, and various other county department heads) were specifically excluded.

E. The work of "the team"

Despite Commissioner Shaub's directive to sell Conestoga View by October 1, 2004, the Core Services Review team discussed several options to divest the county of Conestoga View. The first option, which was discussed early in the process, was the idea of selling Conestoga View to a municipal authority. The authority concept, which would be financed by the issuance of bonds, would allow the county to maintain a modicum of control over Conestoga

[23] Commissioner Shaub denied this accusation during his grand jury testimony and attempted to place the blame for keeping Commissioner Henderson in the dark on Mr. Espenshade. The grand jury found his testimony to be incredible and not worthy of belief, in that the rest of the witnesses stated that it was Commissioner Shaub's directive.

[24] "The ladies up front" refers to the administrative staff in the Commissioners' suite.

View (by means of the people appointed to the board which would operate the authority) while insulating the county from some of the risks involved with directly owning and operating the nursing home. Matthew Kirk, appointed by the current Board of Commissioners as financial advisor[25], was formally brought into the project by Commissioners Shaub and Shellenberger to investigate the authority option. When Mr. Kirk determined that, in order to fund the authority, the County would have to guarantee the bonds used for financing (as opposed to severing all financial ties with the county by means of an authority), he relayed this information to "the team". The fact that the County would have to guarantee the bonds basically terminated any interest in the authority option because the County would remain financially and legally tied to the nursing home.

After the authority concept was discarded, the two remaining options were to solicit Requests for Proposals (RFP) (which would make the potential sale public), or to explore a private sale to a single entity.[26] "The team," which recommended pursuing a RFP to Commissioners Shaub and Shellenberger on several occasions, favored soliciting a RFP because allowing for public input was an essential part of selling the County's nursing home and would open the process to potential multiple bidders. Commissioner Shellenberger adamantly was in favor of a private sale to Complete Healthcare Resources (CHR), which he claimed would

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[25] Mr. Kirk had been involved with informal conversations about Conestoga View during the Shaub/Shellenberger transition meetings in summer and fall of 2003.

[26] A public bidding process for the sale of Conestoga View was not required by the County Code. Section 2306.1 of the County Code, entitled "Authority to sell certain real property and personal property as a single unit", specifically exempts the sale of an "institution for the care of dependents", which includes a county-owned nursing home, from "any other provision of law" except that such a sale must "only comply with the provisions of [the County Code] relating to the sale of real property." Moreover, that same section includes the sale of personal property when that personal property is sold in conjunction with the sale of real property. In light of the applicability of 16 P.S. § 2306.1 to the sale of Conestoga View, the grand jury declines to issue a presentment for a violation of 16 P.S. § 1802 (Contract procedures; terms and bonds; advertising for bids).

provide a "seamless transition" and cause the least upset to staff and residents at Conestoga View.[27] Commissioner Shellenberger used this phrase over and over again as justification for a private sale to CHR.[28]

One reason given during testimony before the grand jury for the delay in choosing between the RFP and a private sale was due to the chaos and disarray in the Commissioners' suite. When the new board took office in January 2004, Commissioner Shaub, a Republican, was the chairperson. Due to a variety of disputes among the "dysfunctional" board, Commissioner Shellenberger, the other Republican commissioner, allied with Commissioner Henderson, the Democratic commissioner, and deposed Commissioner Shaub. With Commissioner Henderson's support, Commissioner Shellenberger became the board's chairperson in December of 2004.[29] This infighting among the board members delayed a variety of decisions, including decisions regarding Conestoga View.

In addition to disarray and distraction in the Commissioners' suite, by January of 2005,

"team" members were frustrated with Mr. Heinke's job performance regarding the Conestoga View project. Mr. Heinke was pushing more and more of his work off onto Mr. Elliot and many

[27] Commissioner Shellenberger was of this view at least as early as November 2004. According to grand jury testimony, "Commissioner Shaub and Commissioner Shellenberger had a discussion in the hallway. ... And it was right in the beginning of the hallway, and I heard them openly discussing Conestoga View. And Commissioner Shellenberger, is, like, it's costing us money, we're losing money, get rid of it, get rid of it. And I'll never forget that. And I'm like, oh, my God, just get rid of it, just like that."

[28] Commissioner Shaub testified before the grand jury that he was also in favor of an RFP; however, the testimony of other grand jury witnesses regarding his desire to keep the sale secret (and his directive to have the sale completed by October 1, 2004) flatly contradict that testimony. The grand jury believes that Commissioner Shaub was in favor of a private sale until he learned of the unpopularity of the sale after his public vote to sell Conestoga View in July of 2005; once Commissioner Shaub became aware of the unpopularity, he changed his mind and began claiming he supported an RFP.

[29] For his part, Commissioner Shaub testified that he and Commissioner Shellenberger had signed an agreement that they would rotate the chairmanship for the length of the term but that Commissioner Shellenberger then reneged on that agreement when he held a press conference, stating that he would be the chairman from that point forward.

of his tasks just were not being completed. For his part, Mr. Elliott avoided doing as much work as possible, saying that Mr. Heinke was the project manager. Mr. Espenshade scheduled a meeting with Commissioner Shellenberger on January 17, 2005 to talk about Mr. Heinke's poor attitude. After Mr. Espenshade relayed "the team's" concerns about Mr. Heinke, Commissioner Shellenberger's response was to say "I want to get rid of this thing [Conestoga View]—I'll sell it for $5 million!"[30] During this same time period, Ms. Judge was frustrated because she was spending far more time on this transaction than she had originally projected. Ms. Judge spoke to Mr. Espenshade and requested that Stevens & Lee receive $300,000 instead of the $200,000 originally agreed to. Commissioner Shellenberger privately agreed to this 50% fee increase, with the understanding that the fee would not climb any higher.

However, to assuage "the team's" concerns regarding Mr. Heinke's poor performance, in February of 2005 the team's secrecy directive was lessened slightly so that team members could contact David McCudden, the county engineer, to gather more information about Conestoga View and the surrounding county-owned property, with an eye toward possible subdivision of the land as part of the sale of Conestoga View. After speaking with Mr. McCudden, however, it became clear to "the team" that subdivision would be almost impossible because the land and the properties on it were so old that all the utilities were centralized. To

[30] Five million dollars was the price that was originally offered by CHR for Conestoga View during the presentation on September 16, 2004. CHR's interest in purchasing Conestoga View had been evident since September, 2004, when Complete Healthcare Resources requested a meeting with county officials to propose buying Conestoga View privately. CHR requested this meeting because questions being asked of CHR by "the team" seemed to CHR to be more in line with a "due diligence review" leading up to a sale rather than simply a "Core Services Review." On September 16, 2004, CHR made a presentation to Mr. Heinke and some other "team" members regarding selling Conestoga View to CHR. CHR's offer for Conestoga View at that presentation was five million dollars. Commissioner Shellenberger was not present for that presentation, yet was clearly aware of the purchase price offered. That statement lends credence to statements by other grand jury witnesses regarding staffers' "back briefs" and "walking the halls" to keep Commissioners Shellenberger and Shaub informed about the Conestoga view project.

split the utilities into the separate buildings would be expensive and would also mean having to come up to date on all the other zoning laws, which would mean adding a parking lot or even a garage. Additionally, the Conestoga View plot of land was partially in both Lancaster Township and Lancaster City, which would require talking to both of those municipalities to determine if any of the zoning requirements could be waived. Such conversations would obviously alert the public to the sale and since one of the top priorities was to maintain secrecy, any possible subdivision plans were discarded.[31]

After the directive on April 1, 2005 by the Board of Commissioners to negotiate directly with CHR, Mr. Elliot and Ms. Judge did the majority of the work. Mr. Heinke was not part of the negotiations because he did not understand, nor did he have any experience with, negotiating a sale of real estate. "The team" hired two appraisers from outside of Lancaster County to come in and appraise Conestoga View; the appraisals came back at $8.5 million and $12 million. By April 26, 2005, Mr. Elliot and Ms. Judge were at the negotiating table with CHR's representatives. Mr. Elliot had read the appraisals[32] and knew that the County needed to get $8.5 million for the property, in order to comply with the county code. He ensured that the County got the minimum amount of money possible under the law[33] for Conestoga View by

[31] Mr. McCudden was not asked for the contact information for the appraisers that the County usually employs for real estate matters, nor was he asked about any surveys that had been done previously (and therefore would not incur any additional cost) on the land. For the previous twenty years, all appraisals and surveys done on county-owned land were handled through the County Engineers office. Indeed, a survey of the land in question had been recently completed for the new Youth Intervention Center and Mr. McCudden could have provided this survey to the commissioners, had they asked.

[32] Clearly Mr. Elliott was aware of issues which may arise from the secrecy pervading the process. For example, the two appraisals for Conestoga View were sent to the Commissioner's Office. When a staff person asked Mr. Elliott what to do about the appraisals, Mr. Elliot said, according to the witness' testimony at one point "[F]or your protection, let me keep it."

[33] Section 2306 of the County Code (Authority to sell or lease real property) requires that "[t]he fair market value of real property in the case of a sale valued in excess of ten thousand dollars ($10,000) shall be determined by the county commissioners in consultation with two of the following: the county assessor, licensed real estate brokers, or licensed real estate appraisers doing business within the county." The two appraisals for Conestoga View assessed the value at $8.5 million and $12 million.

telling CHR about the county's private appraisals, much to the consternation of Ms. Judge. Mr. Elliott also secured $400,000 from CHR to be used to pay the costs associated with the sale.[34] In addition to these monetary demands, Mr. Elliot pushed to include numerous non-monetary demands, such as retaining the residents and staff at Conestoga View and maintaining the same level of care and treatment for each individual, regardless of ability to pay.

Towards the end of June, 2005, Commissioner Shaub leaked news of the impending sale of Conestoga View to the Lancaster New Era newspaper; soon thereafter, the impending sale of Conestoga View was publicized in that newspaper. The sale was officially presented to the public on July 6, 2005 at the boards' weekly commissioners' meeting; however, both the Pennsylvania Department of Public Welfare and County Commissioners Association of Pennsylvania (CCAP) already had been informed that the county would not be utilizing any intergovernmental transfer funds for the upcoming year (which only makes sense if the sale already was a foregone conclusion). At this meeting, the Commissioners voted unanimously to sell Conestoga View to Complete Healthcare Resources.[35] Immediately prior to the vote to sell Conestoga View, the Board of Commissioners voted to appoint Joanne Judge as special counsel for the commissioners in connection with the county's proposed sale of Conestoga View.[36]

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[34] Mr. Elliott was actively evasive in his grand jury testimony as to how he knew how much money to negotiate for the costs associated with the sale of Conestoga View, citing only his "business experience."

[35] One of the proposed rationales for the sale of Conestoga View was that Conestoga View was losing money. The grand jurors heard during the investigation widely divergent views on the financial health of Conestoga View: the facility provided almost $550,000 to 600,000 per year to the county's general fund or lost well over $1,000,000 per year, depending on the witness. Moreover, all of the various figures, according to the grand jury testimony, were viable depending on the accounting method used. Because all of the widely divergent numbers were viable under Generally Accepted Accounting Principles (GAAP) standard, the grand jury makes no finding in this regard.

[36] Although Ms. Judge and other Stevens & Lee attorneys began working on "the project" in March 2004, the public vote to appoint special counsel did not occur until the day the commissioners voted to sell Conestoga View: July 6, 2005. After the public vote on July 6, 2005, the three Commissioners then signed a petition requesting the Court to approve the appointment of Judge as special counsel as required by the County Code. The commissioners' signatures on that petition were notarized on July 7, 2005. Although

F. Other non-public meetings

1. Administrative meetings – Along with the various off-site meetings that took place at Stevens & Lee in 2004 and 2005, the sale of Conestoga View was also being discussed in the county courthouse at administrative and executive meetings. According to grand jury testimony from a frequent participant at the administrative meetings, "[w]ithout the expertise from our chief staff, our chief clerk was brand new, county administrator and [chief services officer], it never occurred to us that – about these administrative meetings. But in many ways they were functioning like an executive session. We're talking about Conestoga View, making decisions, having discussions, and moving on with assignments. And, again, this was not a publicly-advertised meeting."

According to Mr. Heinke's testimony and documentation reviewed by the grand jury, the topic of the sale of Conestoga View was on many administrative meeting agendas, beginning as early as on August 2, 2004. All three county commissioners, as well as Mr. Heinke, Mr. Elliot and Andrea McCue (Chief Clerk) attended the administrative meetings and would have received copies of the agenda. According to the testimony, there were also times when the topic

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the petition was not signed by the Board until July 7, 2005, the Court signed an Order dated July 6, 2005 (the day before the commissioners' signed the petition) approving the appointment of Ms. Judge. The petition and Order were then filed in the prothonotary's office on July 8, 2005. The grand jury was unable to discern the reason for these discrepancies but believes the discrepancy comes from clerical error.

The County Code provision dealing with the appointment of special counsel, 16 P.S. § 904, is silent on (1) when the appointment should occur and (2) how payment determinations are to be made. Common sense would dictate that the appointment would occur before the special counsel's work would begin; however, there is no controlling case law which sheds light on those two issues, although a lower court opinion from 1916 suggests such transactions should occur before work begins and should be subject to public scrutiny. Mr. Espenshade's explanation for Ms. Judge's appointment as special counsel approximately 16 months after beginning work on the project was that any payment was contingent on Conestoga View transaction being completed and, therefore, appointment at any point before the completion of the transaction would be legal under the County Code. Apparently being able to keep the transaction secret for well over one year and ultimately reaping approximately $288,000 by utilizing this legal interpretation is merely a side benefit. In light of the ambiguity of the law regarding the timing of the appointment of and payment of special counsel, the grand jury declines to issue a presentment for a violation of 16 P.S. § 904 (Assistant county solicitors).

may have been on the agenda but it was not discussed because there were a large number of projects going on at the same time and the meeting may have adjourned prior to the Board talking about Conestoga View.

According to grand jury testimony, the administrative meetings, which are usually held on Mondays, are not publicly advertised meetings under the Sunshine Act because the administrative meetings are not supposed to involve deliberations or voting. In point of fact, the grand jurors heard testimony that the administrative meetings were often used by Mr. Heinke and Mr. Elliott as a time to pass along information to Commissioners Shellenberger and Shaub regarding the progress of divesting the county of Conestoga View. While deliberations and voting were not lawfully allowed to occur, directives were given and plans were made and approved at these meetings. However, the grand jury also heard testimony from Ms. McCue that, although she was present for the administrative meetings, she was never able to figure out that Conestoga View was potentially going to be sold. Ms. McCue testified that Commissioners Shaub and Shellenberger would always talk in vague terms during these meetings so that those "out of the loop" were never able to pinpoint what exactly was being discussed. Ms. McCue also testified that the commissioners would on some occasions ignore her advice that their conduct was violating the Sunshine Act. On other occasions Ms. McCue would make her concerns known to Mr. Elliott, who would propose "walking the halls" to avoid the Sunshine Act concerns.

Commissioner Henderson, who was also present for "some of" the administrative meetings (she claimed to be unable to recall or determine how many meetings or which particular meetings she attended), claims that she too was unaware of the potential sale of Conestoga View until April 1, 2005 when she was present for the Core Service Review presentation that officially

brought the potential sale of Conestoga View to the board. Mr. Heinke, however, testified that after he resigned from his employment with the County, he met with Commissioner Henderson at the county library on Duke Street and that Commissioner Henderson told him that she had known about the impending sale of Conestoga View and about the off-site meetings that had taken place at Stevens & Lee since 2004. The grand jury also heard testimony that Mr. Elliott sent an e-mail to Ms. Judge "sometime around April the 1st" which said "I got the go-ahead from the Board, the BOC, the Board of Commissioners."

The grand jury's investigation in this area was hampered because no one prepared formal minutes at these meetings (because, if performed legally, they fall outside the ambit of the Sunshine Act), and the only notes taken that were recovered by the grand jury's investigation were those belonging to Mr. Heinke, who often failed to note who was present for the various discussions and what topics actually were discussed.[37] Without independent documentation, the grand jury was forced time and again to conclude what had transpired based solely on conflicting testimony. Moreover, many (if not most) of the witnesses who testified regarding the secret and non-public meetings were found by the grand jurors to be either less than forthcoming or actively deceitful. However, without independent corroborating evidence of lying by any particular witness on this issue the grand jury declines to issue any presentments for violations of 18 Pa.C.S. § 4902 (Perjury).

2. Executive meetings – Aside from the weekly administrative meetings and the off-site meetings, there were at least three "executive sessions" where the grand jury finds as a fact that the sale of Conestoga View was discussed: April 1, 2005, June 9, 2005, and July 5,

[37] In the words of one grand juror, "It seems to be they studied the art of deception real well; now she doesn't know this, or I don't remember that, or we had this meeting, well, I remember this was discussed, but nothing else. Oh, come on."

2005. "Executive sessions" are a listed exception to the Sunshine Act and may lawfully occur only to discuss three specific and distinct issues: (1) pending litigation, (2) the purchase (not sale) of real estate, and (3) personnel issues.

The April 1, 2005 session was the first "official" unveiling of the results of the "Core Service Review", for which Mr. Heinke, Mr. Elliot, and all three commissioners were present. This meeting was called as an executive session for the commissioners to discuss and deliberate upon the potential sale of Conestoga View Nursing Home. Mr. Heinke and Mr. Elliott displayed a PowerPoint presentation which detailed the findings of the secret "Core Service Review team" to the Commissioners[38]. This meeting was not publicized and was not open to the public, despite the fact that this meeting involved the sale of real estate, rather than the purchase. One witness testified before the grand jury that a recommendation was made that the county did not need to be in the nursing home business. Another witness testified before the grand jury that the board of commissioners authorized negotiations for the sale of Conestoga View Nursing Home to Complete Healthcare Resources at this meeting. In addition to the testimony heard before the grand jury establishing this violation of the Sunshine Act, the grand jury notes that Commissioners Shaub, Shellenberger and Henderson admitted their conduct violated the law by pleading guilty to this offense.

The second "executive session", which occurred on June 9, 2005, was attended by Mr. Heinke, Mr. Elliot, Ms. McCue and the three commissioners. A revised PowerPoint presentation was shown to the board of commissioners at this meeting. The final "executive

[38] Both Commissioners Shaub and Shellenberger had specific input into the development of the PowerPoint presentation, which was then shown to the board of commissioners in the public realm as the work of "the team". This secret, behind-the-scenes orchestrating echoes the actions of Commissioners Shaub and Shellenberger during the hiring of Mr. Heinke.

session" on July 5, 2005 was attended by the same group of people (Mr. Heinke, Mr. Elliot, Ms. McCue and the three commissioners) and was used as a session to gear up for the next day's Commissioners' meeting where the sale of Conestoga View would be publicly announced and then submitted to an immediate public vote. However, because there was insufficient evidence regarding the commissioners' deliberating at either of these meetings, which is a requirement under the law, the grand jury declines to issue a presentment for 16 P.S. § 460 (Open meetings) or 65 P.S. § 701 et seq. (Open meetings).

Several grand jury witnesses testified about incidents when Commissioners Shaub and/or Shellenberger would bring up the sale of Conestoga View in an executive session. When told that the sale of Conestoga View was not an appropriate topic of discussion for an executive session, Commissioner Shaub told those present that Conestoga View was a "real estate" matter. When either Mr. Espenshade or Ms. McCue reminded Commissioner Shaub that real estate issues could only deal with purchases and not sales, Commissioner Shaub immediately responded "then it's a personnel issue". The clear import of these comments was to preserve the veil of secrecy which cloaked the sale of Conestoga View.

G. The Sunshine Act[39]

Despite the obvious questions raised by such secret conduct, many of the meetings noted in this report are not violative of Pennsylvania's Sunshine Act because that Act is very limited in the conduct prohibited. For the grand jury to issue a presentment for a violation of the Sunshine Act, the grand jury must find (1) "official action" and (2) "deliberation" took place by (3) a quorum of the members of an agency (in this case, at least two of the three county

[39] According to grand jury testimony, the new board changed all of the times of already set Sunshine Act meetings upon taking office, necessitating republication of all of the meetings.

commissioners) and that (4) such a "meeting" should have been open to the public because (5) no exceptions to the general rule apply. Moreover, each of the quoted words or phrases is given a very restrictive definition by the Act.

The grand jury learned that one way that the Sunshine Act is often circumvented is by claiming that the meeting did not have to occur in "sunshine" because there were no deliberations (i.e. the commissioners received information but did not talk to each other). Such "informational" meetings, although not defined in the Sunshine Act, are a common procedure and a common defense to accusations of violations of the Sunshine Act. For example, Mr. Espenshade testified before the grand jury that although Commissioner Shaub and Commissioner Shellenberger showed up at several of the off-site Stevens & Lee meetings, Mr. Espenshade also testified that there were no deliberations or decisions made at those meetings.

Another way the Sunshine Act can be avoided is by "walking the halls." This procedure, which is discussed and promoted at County Commissioners Association of Pennsylvania (CCAP) meetings as not violating the Sunshine Act, is designed to allow the three commissioners to deliberate and casually vote on a variety of issues outside of a public meeting. Mr. Espenshade specifically okayed this procedure and indicated during his testimony that it is the preferred method of avoiding the requirements of the Sunshine Act across the state of Pennsylvania. In "walking the halls", either Mr. Heinke or Mr. Elliot would walk into a single Commissioner's office and ask for that commissioner's opinion or vote on a particular subject. After receiving the information, either Mr. Heinke or Mr. Elliott would repeat the same procedure with each of the other two commissioners individually. When either Mr. Heinke or Mr. Elliott, or some combination, had finished obtaining the input of all three commissioners, they would know

"the will of the board", and be able to proceed on a particular issue without that issue having to be discussed, deliberated, or voted on at a public meeting. This procedure is not a violation of the Sunshine Act because there was never a quorum as required by the Act. However, although this mechanism may not be a violation of the letter of the Sunshine Law, it is clearly a violation of the spirit of the law and the legislature's intent.

H. Actions after the vote to sell Conestoga View

The meetings at Stevens & Lee continued even after the public vote to sell Conestoga View on July 6, 2005, although the meetings were not as secretive. The content of these post-sale meetings focused on preparation for the sale closing in September, 2005. There was also more discussion of the sale at administrative meetings after the July 6, 2005 vote.

Mr. Elliot told all of the "team members" that there was $400,000 to be split among them as their payment for the project and that there would be no additional money from the county's general fund to add to that amount. In addition to Stevens & Lee's bill for $288,000[40], Mr. Kirk initially submitted a bill for $150,000.00 for his work to Mr. Espenshade. After discussions with Mr. Elliott, in which Mr. Elliott told Mr. Kirk that "I talked to Dick [Shellenberger], it's going to be 50[,000 dollars]", Mr. Kirk submitted a second bill for $50,000. A public relations firm's bill and the appraisers bills constituted the remainder of the $400,000.

[40] Although the firm had been promised $300,000 by Commissioner Shellenberger, ultimately the firm accepted $288,000. The other $12,000 went to pay the law firm of Kegel, Kelin, Almy & Grim for the work that firm did to amend the sales agreement.

The public outcry about the sale, although slow to start, soon became more vocal.[41] To assuage some of the public's concerns, the board of commissioners enlisted the services of the law firm Kegel, Kelin, Almy & Grimm, LLP to amend the already agreed-to sales agreement to include future ties between the county and Conestoga View.

The closing date approached and the commissioners decided to have another public vote to actually close the deal on Conestoga View, specifically to approve the closing costs. The vote occurred on September 28, 2005. Public outcry and public scrutiny were high at this meeting. Commissioner Shaub initially moved to postpone the vote, so the board took a recess. During the recess, Commissioner Shaub called Ms. Judge into his office and told her that he was going to vote against the sale but that she had better make sure that the other two voted for it. Mr. Heinke and Mr. Elliot went into Commissioner Henderson's office and talked to her about the vote—they reiterated that if the sale did not go through, it would cause problems with the inter-governmental transfer of funds. When the recess ended, the official vote was taken and it was 2-1 in favor of the sale, with Commissioner Shaub dissenting.

On November 1, 2005, Mr. Shellenberger went over to Stevens & Lee's offices to talk to John Espenshade about the Mr. Heinke investigation, and specifically to ask Mr. Espenshade whether he had yet been questioned by Mr. Myers and Mr. Hofmann. Commissioner Shellenberger specifically wanted to know what Mr. Espenshade was going to say when questioned and pleaded with Mr. Espenshade to get him out of the whole ordeal. Mr. Espenshade told Commissioner Shellenberger that he was going to tell the truth and advised Commissioner

[41] During this period the public became aware of Mr. Heinke's two resumes and the discrepancies between the two resumes. The public outcry, including questions from the media and questions posed at the weekly commissioners' meetings, caused the commissioners to commence an investigation into Mr. Heinke's hiring. As discussed in more detail earlier in this report, soon after the investigation began, Mr. Heinke decided to resign instead of cooperating with the investigation.

Shellenberger to do the same. When Mr. Espenshade told Commissioner Shellenberger that it would be impossible to get him out of the whole ordeal, Commissioner Shellenberger responded that "Myers better not push too hard... I'll deal with him later". The grand jury specifically finds Mr. Espenshade's testimony in this regard to be credible and worthy of belief.

As he was getting ready to leave Stevens & Lee, Commissioner Shellenberger turned around in the doorway and told Mr. Espenshade that he had one more question. Commissioner Shellenberger told Mr. Espenshade that he was having a fundraiser at the Hamilton Club to begin raising money "for the next time around" and that he would like Stevens & Lee to contribute $20,000. Shellenberger stated, "look, we just paid you $300,000, I think you can afford $20". Mr. Espenshade testified that he was dumbstruck by this request and that he didn't really respond.[42] Stevens & Lee did not make a donation to Mr. Shellenberger in response to this request. The grand jury also specifically finds Mr. Espenshade's testimony in this regard credible and worthy of belief.[43] However, the grand jury declines to issue a presentment against Commissioner Shellenberger for either 18 Pa.C.S. § 4902 (Perjury) or 18 Pa.C.S. § 4903 (False swearing) because Mr. Espenshade's claims could not be corroborated with independent evidence.

[42] Commissioner Shellenberger had made a similar request for upcoming campaign funds to Mr. Espenshade in January, 2005. According to Mr. Espenshade, Commissioner Shellenberger said, "I want to raise so much money for a war chest that it scares everyone off." Mr. Espenshade told Commissioner Shellenberger "this is not a good time" for such a solicitation.

I. Continuing county obligations related to Conestoga View

The grand jury also learned that Lancaster County still has continuing obligations for Conestoga View and the other properties that remain on that site.[44] Part of the sales agreement includes a clause that allows the county to lease the Children & Youth and IT buildings back from Complete Healthcare Resources for the next ten years. Mr. McCudden from the County Engineers' office testified that the county maintains responsibility for the sewer, water and electric bills for these pieces of property. He testified that the water and sewer bill is approximately $100 per month and electricity is an average of $6,000-$8,000 per month. The County is also responsible for paying all of the taxes for these buildings and the land on which they sit. Mr. Andrew Sapovchak from the county Controller's office testified that the taxes owed on the county-used buildings (and consequently paid by the county) are approximately $34,558 per year. Mr. Sapovchak further testified that the county was set to receive tax revenue for putting the buildings back on the tax logs in the amount of $33,000 per year, which results in a net loss of about $1,500 in tax revenue per year. In addition to these costs, the county agreed to pay all maintenance and upkeep costs for the buildings, which is normally assumed by the actual owner of the property. The sum of money necessary to maintain the leased buildings remains a question because one cannot predict problems that may arise. The County also maintains its own insurance policy on the leased buildings. These ongoing entanglements with Conestoga View contradicts, at least in part, the rationale promulgated by the commissioners in selling Conestoga View to Complete Healthcare Resources.

[44] In addition to these costs, the county agreed to pay all the accrued sick and vacation time of the employees at Conestoga View, which amounts to $1,073,701.18, as well as continuing to pay for all hospitalization for retired employees of Conestoga View, at an annual cost of approximately $439,599.

RECOMMENDATIONS

Based on the above findings of fact, a majority of the third Lancaster County Investigating Grand Jury makes the following recommendations for legislative, executive or administrative action in the public interest.

1. The Grand Jury recommends that applicants for all levels of county employment should be evaluated fairly and that the selection of an applicant for a position should be unbiased and based on merit. Mr. Heinke's hiring as the county's Chief Services Officer was biased by the hidden agenda of Commissioners Shellenberger and Shaub and based on factors other than merit.

2. The Grand Jury recommends that the County of Lancaster amend the language of the "County of Lancaster Application for Employment" form to include the possibility of prosecution for a violation of 18 Pa.C.S. § 4904 (Unsworn falsification to authorities) for not only false statements on the application itself but also for all documentation submitted in connection with a county job.

3. The Grand Jury recommends that the General Assembly enact legislation amending 16 P.S. § 904 (Assistant county solicitors) to require that any appointment of special counsel occur prior to the initiation of any work by the firm. The statute should also be amended to codify the non-binding precedent issued in Carpenter v. Northumberland County, 2 Northumberland Legal Journal 394 (1916) which required that a written contract be created prior to the appointment that lays out in specific terms the parameters of the attorney-client relationship and the method of payment.

4. The Grand Jury recommends that the General Assembly review, update and amend the County Code.

5. The Grand Jury recommends a specific definition of the responsibilities of the County Administrator(s) under the County Code.

6. The Grand Jury recommends that the General Assembly amend 65 Pa.C.S. § 714 to allow for a minimum penalty of $1000 fine per offense. Currently, the act only allows for a summary offense and a $100 fine for violations. The Sunshine Act also should be amended to prohibit "avoidance techniques" currently used to avoid the Sunshine Act, including "information meetings", "walking the halls", and "back briefs."

7. The Grand Jury recommends that the General Assembly amend 16 P.S. § 411 to allow for a minimum penalty of $5000 fine per offense. Currently, the act only allows for a misdemeanor offense and a $500 fine for violations.

8. The Grand Jury recommends that the language of the Sunshine Act and the County Code mirror one another.

9. The Grand Jury recommends that the Commissioners' office implement stronger guidelines for determining what subject matter is appropriate to discuss outside of Sunshine and what is not. It is clear that up until the current time, various staff members would alert the board to sensitive topics and they would choose to either ignore or listen based on their own agendas.

10. The Grand Jury recommends a mandatory training session on the Sunshine Act for all county commissioners and administrative assistants with documentation that they attended. The Grand Jury further recommends that a refresher class should be mandatory every year.

11. The Grand Jury recommends that the County of Lancaster implement policies that

require that minutes be taken at all meetings where at least one county commissioner is present. For those meetings where confidential information is discussed such that the meeting is an exception to the Sunshine Act, the minutes shall be kept in a secure location for a period of five (5) years.