District Court, Boulder County, State of Colorado 1777 Sixth Street, Boulder, Colorado 80302 (303) 441-1866	DATE FILED: October 17, 2013 12:25 PM
CHARLIE BRENNAN, et. al., **Plaintiff** vs. **STANLEY GARNETT,** **Defendant**	▲ **COURT USE ONLY** ▲
Attorney for Plaintiffs: Thomas Kelley, Marianne Wesson, Steven Zansberg *Attorney for Defendant: Sean Finn, Nicole Moore*	Case Number: **2013 CV 31393** Courtroom: **E**
RULING AND ORDER TO SHOW CAUSE	

This matter came on for hearing on the Plaintiffs' Complaint and Application for Order to Show Cause on October 11, 2013. The Plaintiffs were represented by Thomas Kelley, Steven Zansberg and Marianne Wesson and the Defendant was represented by Sean Finn and Nicole Moore of the District Attorney's Office of the Twentieth Judicial District.

I. BACKGROUND[1]

On December 26, 1996, JonBenét Ramsey, age 6, was found dead in the basement of her family's home in Boulder, Colorado. An autopsy and initial investigation indicated her death was caused by violent means. Since that occurrence, and continuing until this day, the case has been the subject of massive publicity, including television appearances by the girl's parents, John and Patsy Ramsey, and two published books concerning the events of the investigation written by John Ramsey. To date, no one has been brought to court for criminal responsibility for JonBenét's death.

On August 12, 1998, then-Governor Roy Romer and then-District Attorney for the Twentieth Judicial District Alex Hunter ("Hunter") announced that the Ramsey murder case would be investigated by a Grand Jury to be empaneled by the Court of the Twentieth Judicial District. Shortly thereafter, that Grand Jury was empaneled, sworn, and charged, and thereafter supervised by the Court.

The Plaintiffs assert that on a date shortly prior to October 13, 1999, the Grand Jury voted in favor of an indictment of JonBenét Ramsey's parents, John Ramsey and Patsy Ramsey, for the crime of child abuse resulting in death, a Class 2 felony pursuant to § 18-6-401(7)(a)(I), C.R.S. The Plaintiffs also assert that a written indictment (the "Indictment") was prepared for and signed by the Grand

[1] This summary is undisputed and is in large part taken from the Plaintiff's Complaint

Jury foreperson but that Hunter elected not to sign the Indictment, and not to present it to the District Court, but to keep the Indictment secret from the general public. Since members of the Grand Jury and others surrounding the investigation were sworn to secrecy, it appears that this information, if accurate must have been provided in violation of that oath.

On October 13, 1999, the Grand Jury investigating the death of JonBenét Ramsey was discharged, and Hunter announced we "believe we do not have sufficient evidence to warrant a filing of charges against anyone who has been investigated at this time." The Plaintiffs assert that this announcement left the public with the clear impression that the Grand Jury had determined not to indict anyone in connection with the death of JonBenét Ramsey.

On or about March 13, 2013, Brennan sent an e-mail addressed to Garnett requesting, pursuant to the Colorado Open Records Law, § 24-72-201, *et seq.*, C.R.S., and the CCJRA, § 24-72-301, *et seq.*, C.R.S., the opportunity to inspect and copy records described as: A true bill, or indictment, returned by the Boulder County Grand Jury in October 1999, pursuant to that body's investigations and deliberations into the December1996 death of JonBen[é]t Ramsey. Brennan further requested that in the event his request for inspection was denied, he be provided with a written statement of all grounds for the denial.

On March 18, 2013, Karen Lorenz ("Lorenz"), Chief Deputy District Attorney for the Twentieth Judicial District, wrote to Brennan denying his request to inspect the Indictment. The grounds cited were that public disclosure of records such as that described in Brennan's request would be contrary to Colorado Rule of Criminal Procedure 6.2, providing that grand jury proceedings are secret, and that accordingly the disclosure of the documents would be contrary to law and therefore the public interest.

On June 27, 2013, Thomas B. Kelley ("Kelley"), as attorney for Plaintiffs Brennan and Reporter's Committee for Freedom of the Press, wrote Garnett requesting that he reconsider the position taken by Lorenz in her March 18, 2013 letter. On July 1, 2013, Sean P. Finn, Chief Trial Deputy/Custodian of Records for the Office of the District Attorney for the Twentieth Judicial District ("Finn"), responded to Kelley's letter, ultimately reiterating the denial of the request to inspect and copy the requested documents because of their concern regarding the legality of such a disclosure. To be clear, the Plaintiffs are requesting only the "indictment" and are not requesting the record of any proceedings before the Grand Jury.

With this background, this action is brought by the Plaintiffs to compel disclosure pursuant to §24-72-305(7). The Plaintiffs seek an order directing the Defendant to show cause why they should not permit the inspection and copying of the "Indictment."

II. DISCUSSION

There is no precedent in Colorado regarding the question of whether a purported "indictment" signed by the foreman of a Grand Jury but unsigned by the District Attorney is subject to disclosure to the general public, either through presentment before the court pursuant to C.R.Crim.P. 7(a)(1), or through a release as an "official action" pursuant to §24-72-301 *et seq.* However, in *Dresner v. County Court,* 540 P.2d 1085 (Colo. 1975), a divided Colorado Supreme Court held that an

indictment issued by a grand jury is ineffective to commence a criminal proceeding unless it is signed by the prosecutor. This case involved a district attorney disregarding the Grand Jury's indictment for a lesser offense and charging a more serious offense by the filing of an information.

The Court, in this very short opinion, did not address the issue of whether the action by a Grand Jury constitutes an "indictment" but rather focused on the issue of whether an order requiring a district attorney to prosecute an action would interfere with the district attorney's discretion and would violate the doctrine of separation of powers. *Id.* at 1087. Likewise, the Court did not address the issue of whether the "indictment", unsigned by the district attorney, should be "presented in open court", as stated in C.R.Crim.P. 7(a)(1).

The *Dresner* court cited a federal case, *United States v. Cox,* 342 F.2d 167 (5th Cir. 1965) as authority for its narrow conclusion. Although not cited for more than the narrow issue of whether the district attorney should be required to prosecute the Grand Jury's "indictment", the *Cox* case stands for a broader proposition that this court finds persuasive. In that case, five of the seven member court held that the prosecutor is required to assist the grand jury in preparing an indictment, and that an indictment in which the prosecutor does not join should be prepared *and made public* in open court along with the prosecutor's decision. Although some of the *Cox* judges took the position that the government attorney should sign the indictment and could then refuse to go forward, all five of these judges expressed their belief that transparency was important in order to expose the difference in view between the prosecutor and grand jurors.

This court agrees that transparency of a prosecutor's decision not to proceed with an indictment from the Grand Jury is in the public interest. Under the rationale of the prevailing opinions in *Cox*, the term "record of official action" in the form of an "indictment" should include the completed work of the grand jury, even if the district attorney has declined to sign it. This court agrees that the fact of this official action should not happen in secret in circumstances that give the public an impression that the grand jury has declined to act. Recognizing that the Grand Jury's "indictment" is not required to be supported by evidence beyond a reasonable doubt, but that the district attorney cannot proceed with a prosecution unless he has a reasonable belief that he can obtain a conviction, the process followed in this case offered citizens no opportunity to consider the conflict between the decisions of the prosecutor and the grand jury.

Although a contrary view was express by Judge Finesilver in *In re Grand Jury Proceedings, Special Grand Jury 89-2,* 813 F. Supp. 1451 (D. Colo. 1993), in which he concluded that an indictment is not an indictment for any purpose, including public disclosure, unless and until it is signed by the prosecuting attorney, this court concludes that the better view is that expressed in *Cox, supra.* This view is also supported by C.R.Crim.P. 6.6 (a), which states that "presentation of an indictment in open court by a grand jury may be accomplished by the foreman of the grand jury, the full grand jury, or by the prosecutor *acting under instructions of the grand jury.*" [Emphasis added] It appears clear from this provision that the power of the presentment lies with the grand jury.

Finally, the court concludes that the secrecy required in the Grand Jury process set forth in C.R.Crim.P. 7 is not compromised through a process that requires the presentment of the indictment in open court. Under this procedure there is no breach of the secrecy and confidentiality expected in Grand Jury proceedings.

The Colorado Supreme Court has declared that the reasons for grand jury secrecy that it sought to protect in promulgating Colo. R. Crim. P. 6.2 are: (1) to prevent the escape of those whose indictment may be contemplated; (2) to prevent disclosure of derogatory information presented to the grand jury against someone who has not been indicted; (3) to encourage witnesses to come before the grand jury and speak freely with respect to commission of crimes; (4) to encourage grand jurors in uninhibited investigation of and deliberation of suspected criminal activity. *In re P.R. v. Dist. Ct.*, 637 P.2d 346, 350 n.6 (Colo. 1981). In this case, the only factor that may be implicated is the prevention of derogatory information being released against someone who has not been indicted. This factor is important where a Grand Jury concludes its investigation with suspicions but without sufficient evidence to cause them to vote to indict. In this case, assuming as asserted by the Plaintiffs that the Grand Jury voted to indict Mr. and Mrs. Ramsey, the evidence rose to a level in the minds of the grand jurors justifying an indictment.

III. ORDER

IT IS THEREFORE ORDERED that the Defendant show cause why he should not be required disclose the requested documents.

Dated: October 18, 2013

J. Robert Lowenbach
Senior District Court Judge