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October 1, 2005

Honorable Ronald Earle, District Attorney
Travis County District Attorney's Office
509 W. 11th St.
Austin, Texas 78701

Re: State v. DeLay, Case No. DIDC-05-900725 (Re-indictment)

Dear Mr. Earle:

This letter is intended as a courtesy to give you fair notice that I have requested subpoenas for you, Rosemary Lehmborg and Rick Reed seeking testimony concerning the events that occurred during the five day period from September 29 to October 3, 2005. The subpoenas seek all documents, notes, telephone records, and other relevant materials that you or your staff may have in your possession relating to the events that transpired during that period.

I am determined to put of record the steps taken by you and your staff to obtain a replacement indictment against my client, Tom DeLay during the five day period mentioned above. The first indictment for "conspiracy to violate the Texas Election Code," charged a crime that did not exist in Texas law. I have filed a motion to dismiss the later indictment on the grounds of prosecutorial misconduct and with those subpoenas seek evidence in support of that motion. I will soon file additional motions.

In the meantime, however, it would expedite our inquiry if you would agree to an immediate deposition to answer the questions set out below, and, given the highly public nature of this matter, I believe it would be in the interest of justice. Since it appears you have already violated the grand jury secrecy laws (by discussing pending grand jury matters with citizens who were no longer serving as grand jurors and by encouraging former Grand Jury Foreman William Gibson to speak to the press) your answers to questions about those conversations are not protected. Foreman William Gibson's extensive public discussion of the case,

which he says you approved, has already revealed information about Grand Jury deliberations. The media has reported several conversations with grand jurors on these matters; thus you should not hide behind the grand jury secrecy law.

These are the questions I believe you (you means yourself or any member of your staff) should answer:

Question 1: Did you, upon learning that the 390th grand jury had decided on Friday, September 30th, to issue a No Bill become visibly angry and attempt to persuade them to change their decision? Did you encourage them to issue, instead of the No Bill, a report stating that they had only decided to Pass the matter? If so, why did you do that?

Question 2: Over the last year you have immediately, and publicly, disclosed True Bills of Indictment in the TRMPAC case and related matters. Why did you not publicly disclose the No Bill that was formalized by the 390th grand jury on Friday, September 30th?

Question 3: On Monday, October 3, 2005, a newly empanelled grand jury, the 403rd, issued a True Bill at your behest before they had even completed their orientation as new grand jurors. You immediately released that indictment to the public. Why did you not, at that time, tell the public about the No Bill that had been decided by the by the 390th grand jury three days before?

Question 4: The 167th grand jury is the one that issued the first indictment against Tom DeLay. Did you talk to former grand jury foreman, William Gibson, after his term on the 167th grand jury had ended? If so, was that conversation after you learned that the 390th grand jury had decided to issue a No Bill? Was it before you asked the 403rd grand jury to issue indictments?

Question 5: If you did talk to William Gibson, why did you engage in such conversation?

Question 6: What exactly did you say to William Gibson and what did he say to you?

Question 7: Did you talk to other members of the discharged 167th grand jury? If so, who were they, when did those conversations occur, and why did you engage in such conversations? What exactly did you say to them and what did they say to you?

Question 8: Did you tell the foregoing persons that the 390th grand jury had issued a No Bill?

Question 9: At any time during the five-day period, did you discuss with any members of the discharged 167th grand jury any arguments, evidence, decisions or other matters that had been or would be discussed with the 390th or 403rd grand juries? If so, what did you discuss with them?

Question 10: Did you disclose any part of your conversations with former members of the 167th grand jury to the 403rd grand jury? If so, what did you say and why and when did you say it?

Question 11: Was the 403rd grand jury aware of the No Bill voted by the 390th grand jury? Did you tell the 403rd grand jury about it before they made their decision to indict?

Question 12: On Tuesday, October 4, you issued a press release telling the public about the No Bill and purporting to explain things. Who participated in writing the press release? Why did you issue it? Did the "additional information" referred to in the press release include information resulting from your contacts with former 167th grand jurors?

If you did nothing improper you should not be concerned about answering these questions. I urge you and your staff to cooperate in my effort to quickly and fairly reconstruct the events of the five day period. Eventually, all the information will come out. It always does. In such cases it is always better for public officials to voluntarily disclose, and do it quickly, rather than to be forced to do so by a court of law.

I trust you are aware of the provisions of TEX. CRIM. PROC. CODE ANN. art. 20.02(d) that permit release of grand jury information upon the showing of a particularized need. This letter is attached as an exhibit to our Motion for Disclosure of Grand Jury Information pursuant to Art. 20.02 of the Code of

Criminal Procedure. *See also McManus v. State*, 591 S.W.2d 505, 523 (Tex. Crim. App. 1979); *Euresti v. Rogelio*, 769 S.W.2d 575, 578-79 (Tex. App.—Corpus Christi 1989, no writ).

I also remind you and your staff to preserve all documents and avoid any conversations among yourselves or with the other potential witnesses that might interfere with our quest for the truth. Needless to say, our allegation of prosecutorial misconduct concerns due process and fairness for the accused. I can think of no particularized need that is of more importance in our system of criminal justice.

Sincerely,



Dick DeGuerin

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