This document has been redacted to use

"Billy" and "James" - pseudonyms employed in

the 2011 Presentment and Grand Jury Report.

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
TRIAL DIVISION - CRIMINAL SECTION

COMMONWEALTH OF PENNSYLVANIA	:	
v.	:	**CP-51-CR-0003525-2011**
CHARLES ENGELHARDT	:	
COMMONWEALTH OF PENNSYLVANIA	:	
v.	:	**CP-51-CR-0003527-2011**
EDWARD V. AVERY	:	
COMMONWEALTH OF PENNSYLVANIA	:	
v.	:	**CP-51-CR-0003528-2011**
JAMES BRENNAN	:	
COMMONWEALTH OF PENNSYLVANIA	:	
v.	:	**CP-51-CR-0003529-2011**
BERNARD SHERO	:	
COMMONWEALTH OF PENNSYLVANIA	:	
v.	:	**CP-51-CR-0003530-2011**
WILLIAM J. LYNN	:	

COMMONWEALTH'S ANSWER TO DEFENDANTS' OMNIBUS PRETRIAL MOTIONS

The Commonwealth of Pennsylvania, by R. Seth Williams, District Attorney, through his undersigned assistants, Mariana Sorensen, Assistant District Attorney, and Hugh Burns, Chief of the Appeals Unit, respectfully answers defendants' omnibus pretrial motions, and thus states:

1. A seriatim response is dispensed with for the sake of clarity.

PROCEDURAL HISTORY

The above-captioned case arose from a year-long grand jury investigation into the rape and molestation of two boys by priests and a teacher at their respective parishes within the Archdiocese of Philadelphia. In addition to hearing evidence relating to the abuse of the two boys, Philadelphia Investigating Grand Jury XXIII reviewed evidence gathered by two previous grand juries, Investigating Grand Juries XVIII and XIX, and the report that was the culmination of their three-year-plus investigation. The Grand Jury that investigated the current case issued a report and a presentment.

The Grand Jury recommended rape and related charges against former priest Edward Avery, Fr. Charles Engelhardt, and sixth grade teacher Bernard Shero for their serial sexual assaults on altar boy [redacted] between 1998 and 2000, when the child was in the fifth and sixth grades at St. Jerome School in Philadelphia. The Grand Jury recommended charging Fr. James Brennan with the rape of 14-year-old Mark Bukowski in 1996. Brennan had befriended Mark and his family when he was their parish priest at St. Andrew's in Newtown.

The Grand Jurors also recommended child endangerment charges against William Lynn. They found that, as the Archdiocese's Secretary for Clergy from 1992 through 2004, Lynn abetted the perpetrators' crimes by systematically assisting sexually abusive priests to remain in ministry where they had easy access to hundreds of children. Lynn knew these men were dangerous because he had personally received reports of their improper and criminal behavior with minors. It was his job to handle allegations of sexual abuse by Archdiocese priests, to recommend their removal or future assignments,

and to supervise the offenders – supposedly so they would not present a danger to parish children. Instead, the jurors found, he assisted the sexual predators by ignoring their behavior, by deceiving parishioners and others, and by moving priests to new assignments where no one would know of their previous acts.

Documents presented to the Grand Jury show that Lynn recommended that Avery be assigned to St. Jerome Parish after he was removed from another parish because he had molested another boy. At St. Jerome, Lynn allowed Avery to conduct Masses with altar boys and hear the confessions of schoolchildren. Avery acted as a disc jockey at school dances. A few months after Lynn assured Avery's former victim – who had been molested after helping Avery on a disc jockeying job – that the Archdiocese was taking "appropriate action" to protect children from his attacker, Avery forced 10-year-old [redacted] to perform oral sex on the priest in the sacristy after Mass. Similarly, after hearing complaints of Brennan's improper behavior with students at Cardinal O'Hara High School in 1996, Lynn recommended that the priest be permitted to take a leave of absence, followed by a reassignment to St. Jerome Parish and, eventually, to Assumption B.V.M. parish in Feasterville. Lynn recommended these assignments despite the priest's own admission that he had serious problems stemming from his own sexual abuse as a child. A few months after that admission, Brennan raped Mark Bukowski.

Based on the Grand Jury's findings and recommendations, which are laid out in its presentment, the Commonwealth filed charges against the five defendants. Because of the complexity of the case, and because a grand jury and its Supervising Judge had already heard and reviewed the extensive record, the Commonwealth filed a petition to bypass the preliminary hearing. Before the March 14, 2011, listing for the preliminary

hearing bypass, the Commonwealth petitioned to add charges of conspiracy against all of the defendants that it had not asked the Grand Jury to consider. Defendants Lynn, Engelhardt, Shero, and Brennan objected to the conspiracy charges.

The Honorable Renee Cardwell Hughes afforded defendants an opportunity to respond in writing to the Commonwealth's request to add the conspiracy charges. Except for Avery, who did not challenge the addition of the conspiracy charges against him (N.T. 3/25/11, 16-17), defendants argued that the conspiracy charges were improper because they were not among the charges recommended by the Grand Jury, and because Pa. R. Crim. P. 564 sets out procedures for adding charges after a preliminary hearing, but not before. The defendants also asserted that the conspiracy charges were not supported by the evidence. All defendants objected to bypassing the preliminary hearing (N.T. 3/14/11, 28-29). In addition, defendant Brennan challenged the venue and the jurisdiction of the Philadelphia Court of Common Pleas.

On March 25, 2011, Judge Hughes first addressed Brennan's venue and jurisdiction issues, finding that the Philadelphia Court of Common Pleas had both jurisdiction and venue (N.T. 3/25/11, 10, 15). Next, the Court allowed the Commonwealth to amend the complaint to add conspiracy charges against all of the defendants. After considering the briefs and arguments of counsel, Judge Hughes ruled that the Grand Jury record, as reflected in the presentment, contained sufficient evidence of conspiracy to support the charges and proceed to trial (N.T. 3/25/11, 18, 22, 25); that the amendment – made before a preliminary hearing – provided the defense with ample notice so their defense at trial could not be prejudiced (N.T. at 22, 28, 37); and that, following a grand jury investigation, the Commonwealth can always exercise its

prosecutorial discretion to charge any crimes supported by the evidence – even if the grand jury does not specifically recommend them (N.T. at 27).

DEFENDANTS' OMNIBUS PRETRIAL MOTIONS

Defendants all filed omnibus motions. Only some of the issues raised in them are properly before this Court. Others were decided by Judge Hughes and cannot be re-litigated in the Court of Common Pleas. And this Court has indicated that some are more appropriately handled by the trial court (N.T. 6/6/11, 26). Requests for bills of particulars and discovery have already been complied with or responded to in other filings. Below is a list of the issues raised by individual defendants in their Omnibus motions. The Commonwealth's responses and legal arguments follow.

Edward Avery

I. Motion for Bill of Particulars
(Commonwealth complied with this Court's order on June 13, 2011.

II. Motion to Quash Conspiracy Charges
(Commonwealth's response in section I below.)

Charles Engelhardt

I. Motion to Modify Conditions of Bail
(Ruled on by this Court on June 6, 2011.)

II. Motion for Severance
(Commonwealth's response in section II below.)

III. Motion for Bill of Particulars
(Commonwealth complied with this Court's order June 13, 2011.)

IV. Motion for Discovery
(Commonwealth responded June 3, 2011)

V. Motion to Quash Conspiracy Charge
(Commonwealth's response in section I below.)

Bernard Shero

I. Motion for Discovery
(Commonwealth responded June 3, 2011)

II. Motion for Bill of Particulars
(Commonwealth complied with this Court's order June 13, 2011.)

III. Motion in Limine
(Reserved for decision by trial judge.)

IV. Motion for Severance
(Commonwealth's response in section II below.)

V. Motion to Quash Conspiracy Charge (raised in Supplemental filing)
(Commonwealth's response in section I below.)

James Brennan

I. Motion to Quash Conspiracy Charge because the Grand Jury did not recommend a conspiracy charge.
(Commonwealth's response in section I below.)

II. Motion to Quash Conspiracy Charge because defendant James Brennan did not receive a preliminary hearing.
(Commonwealth's response in section I below.)

III. Motion in Opposition to Prosecution's Oral Motion for Joinder.
(Commonwealth's response in section II below.)

IV. Motion for Discovery
(Commonwealth responded June 3, 2011)

V. Motion for Bill of Particulars
(Commonwealth complied with this Court's order June 13, 2011.)

VI. Motion to Dismiss Due to Lack of Jurisdictional Venue
(Commonwealth's response in section III below.)

VII. Motion to Join Motions of Co-defendants

William Lynn

I. Motion to Dismiss Charges of Endangering the Welfare of Children
(Commonwealth's response in section IV below.)

II. Motion for Severance
(Commonwealth's response in section II below.)

III. Motion for Bill of Particulars
(Commonwealth complied with this Court's order June 13, 2011.)

IV. Motion to Quash Conspiracy Charges
(Commonwealth's response in section I below.)

I. JUDGE HUGHES'S RULING THAT THE EVIDENCE OF CONSPIRACY IS SUFFICIENT TO PROCEED TO TRIAL IS THE LAW OF THE CASE AND CANNOT BE REVISITED IN THE COURT OF COMMON PLEAS.

At the March 25 hearing, Judge Hughes ruled – twice – on the sufficiency of the evidence to proceed to trial on the conspiracy charges filed against the defendants. As the Supervising Judge of the Grand Jury, Judge Hughes had already reviewed the evidence presented to the Grand Jury and found that it supported the Grand Jury's presentment and the charges that the jurors recommended.

On March 25, after reviewing the parties' legal memoranda and hearing argument, Judge Hughes found that the facts detailed in the presentment were also sufficient to make out conspiracy charges against the defendants. Judge Hughes ruled on the sufficiency of the conspiracy evidence twice – once before allowing the Commonwealth to amend the complaint (N.T. 3/25/11, 18, 22-23, 25, 35-36), and again when she ruled that the Commonwealth could bypass the preliminary hearing (N.T. 3/25/11, 106). She not only found the evidence sufficient to proceed to trial, but opined that the evidence of conspiracy was so clear that the Commonwealth had made an

obvious mistake in not asking the Grand Jury to consider the charges in the first place (N.T. 3/25/11, 22). Moreover, she made it clear that her rulings were binding for this case in the Philadelphia Court of Common Pleas[1]:

> Counsel for Brennan: . . . I could envision a situation where we file a motion to quash, let's say two months from now. And the Commonwealth says, "well, you can't file a motion to quash on conspiracy because that conspiracy issue has already been ruled on by another judge. It's my position that what is being ruled on today –
>
> The Court: . . . Let me be abundantly clear. When I rule on jurisdiction, jurisdiction will be binding on the Court of Common Pleas. Any issue I rule on today is binding on the First Judicial District Of Common Pleas. It will be binding statewide. It would only be subject to change via appellate court.
>
> So any issue I rule on today stands as the law of the case from this proceeding. So does that clarify it for you?
>
> Counsel for Brennan: It does. Thank you.

(N.T. 3/25/11, 5-6).

Nevertheless, defendants seek to re-litigate the conspiracy issue, raising many of the same arguments that Judge Hughes rejected on March 25, 2011.[2] They are asking this Court of coordinate jurisdiction to overturn Judge Hughes's rulings and to nullify a Common Pleas Court's order granting the Commonwealth's bypass motion with respect to conspiracy. As this Court correctly indicated at the beginning of the June 6 hearing

---

[1] Judge Hughes stated that because Avery did not challenge the addition of conspiracy charges, he could do so before the Calendar Judge. However, allowing defendant Avery to *file* a motion to quash does not make the motion meritorious. Judge Hughes ruled that the record supported two conspiracy charges against Avery. That ruling is, therefore, the law of the case and is not subject to further litigation in the Court of Common Pleas.

[2] Defendants all nevertheless either concede, or do not contest, that judges can normally allow the Commonwealth to amend a complaint to add charges before a preliminary hearing. (N.T. 3/14/11, 31 [Avery concedes]; N.T. 3/25/11, 20 [Lynn concedes]; Brennan's Response in Opposition to Commonwealth's Motion to Amend to Add Conspiracy, 1. No defendants contest this common practice in their Omnibus Motions.)

(N.T. 6/6/11, 16, 19-20), it would be an error of law to do so. *Commonwealth v. Starr*, 541 Pa. 564, 574, 664 A.2d 1326, 1330 (Pa. 1995) ("Among the related but distinct rules which make up the law of the case doctrine are that: . . . (3) upon transfer of a matter between trial judges of coordinate jurisdiction, ***the transferee trial court may not alter the resolution of a legal question previously decided by the transferor trial court.***")(emphasis added).

The Supreme Court in *Starr* explained the importance of the law of the case doctrine to the proper functioning of our judicial system:

> The various rules which make up the law of the case doctrine serve not only to promote the goal of judicial economy (as does the coordinate jurisdiction rule) but also operate (1) to protect the settled expectations of the parties; (2) to insure uniformity of decisions; (3) to maintain consistency during the course of a single case; (4) to effectuate the proper and streamlined administration of justice; and (5) to bring litigation to an end. 21 C.J.S. Courts § 149a; Judicial Puzzle at 604-605. In our view, these considerations should have weighed heavily on the second trial court's reconsideration of the first trial court's order which granted appellant's right to represent himself. The various policies which motivated the development of these rules and which continue to motivate the enduring existence of both the coordinate jurisdiction rule and the law of the case doctrine are of paramount importance in the context of a criminal proceeding. . . . In this regard, these rules seek to ensure fundamental fairness in the justice system by preventing a party aggrieved by one judge's interlocutory order to attack that decision by seeking and securing relief from a different judge of the same court, thereby forcing one's opponent to shift the focus of his trial strategy in the matter. See *Commonwealth v. Washington*, 428 Pa. 131, 133 n.2, 236 A.2d 772, 773 n.2 (1968) (citation omitted) (a trial judge cannot reverse on the same record at trial the decision made after the pretrial suppression hearing that defendant's statement need not be suppressed). See also *Golden*, supra, 410 Pa. Super. at 511, 600 A.2d at 570 (once an interlocutory pretrial decision has been rendered, the party in whose favor that decision was

> rendered must be allowed to rely on it and proceed in accordance with it).

Starr at 1331.

There are exceptions to the collateral order rule, but none of them applies here. Departure is allowed "only in exceptional circumstances such as where there has been an intervening change in the controlling law, a substantial change in the facts or evidence giving rise to the dispute in the matter, or where the prior holding was clearly erroneous and would create a manifest injustice if followed." *Commonwealth v. Starr* at 1332. Defendants have alleged no new facts or changes in controlling law since March 25. In fact, they have not even alleged error on the part of Judge Hughes, let alone manifest injustice. They are simply ignoring the law of the case and hoping that this Court will as well.

Defendants argue that because the Grand Jury did not recommend conspiracy charges (which at the time were not being sought) in its presentment, and because the preliminary hearing was bypassed, there has never been a determination of the sufficiency of the evidence to proceed to trial. This argument ignores the March 25 ruling. Judge Hughes repeatedly stated and found that the evidence in the presentment was more than sufficient to make out a prima facie case on all of the conspiracy charges. Though defendants continue to argue otherwise (N.T. 3/25/11, 26), their doing so does not overrule the law of the case.

Amendment of criminal complaints before a preliminary hearing is permissible.

Although they should not be reached, defendants' arguments are without merit. It is permissible and common practice for courts to allow the Commonwealth to add

charges to a criminal complaint anytime before trial, including before the preliminary hearing. Defendants do not dispute this. As long as the charges are supported by the facts alleged, and defendants are afforded adequate notice so that their defense at trial is not prejudiced, the Court can permit the addition of charges.

That a grand jury did not recommend in a presentment certain charges that had not been sought makes no difference. On nearly identical facts, the Superior Court in *Commonwealth v. Slick*, 432 Pa. Super. 563, 639 A.2d 482 (1994), reversed the quash of an information filed by the Commonwealth on charges not recommended by an investigating grand jury. In that case, a grand jury investigating a murder recommended charging Slick with conspiracy to commit murder. Although the grand jurors recommended murder charges against Slick's co-conspirators, they did not recommend them against him. Unlike the situation in this case, where Judge Hughes concluded that the Commonwealth should have asked the Grand Jury to consider conspiracy charges, the supervising judge of the grand jury in *Slick* directed the Commonwealth to charge only the crimes recommended by the grand jury. The Commonwealth instead filed the charges the prosecutor thought appropriate.

Using the grand jury's presentment as an affidavit of probable cause, the prosecutor in *Slick* charged appellant with both murder and conspiracy to commit murder. At the close of the Commonwealth's evidence at the preliminary hearing, a district justice dismissed the murder charges. The Commonwealth then sought to amend its complaint to add charges of accomplice to first and third degrees murder. Before the close of the hearing, the district justice allowed the Commonwealth to amend the complaint to add the new charges and then held Slick for court on both the conspiracy and the added charges.

The Commonwealth subsequently filed informations on conspiracy and accomplice to murder.

Slick filed a motion in the Court of Common Pleas to quash the information on the amended charges. That motion was granted. Applying a standard of review requiring a finding of "manifest and flagrant abuse of discretion," the Superior Court in *Slick* reversed "the lower court's refusal to allow the issuance of a criminal information not on all fours with the investigating grand jury's presentment." *Supra* at 483, 490.

The Superior Court relied on the facts detailed in the presentment to find that the evidence presented to the grand jury supported the added charges – even though the grand jury that found those facts had not recommended the charges. The Court wrote:

> The facts underlying the "affidavit of probable cause" section of the complaint referred to the grand jury's presentment as establishing probable cause to arrest the appellee for the charges listed. These same set of facts were the predicate for the requested amendment seeking to charge the appellee as an accomplice to murder in the first and third degree.

Supra at 489.

The *Slick* Court explained that presentments are merely recommendations to the prosecutor, based on the facts presented to the grand jury. They are in no way binding on the Commonwealth or any court:

> . . . "the presentment of an investigating grand jury does not formally charge a named person with the commission of a specific criminal act; it is a written formal *recommendation* by an investigating grand jury that specific persons be charged with specific crimes." P.L.E. Indictment and Information, § 23 at 203 (Footnote omitted; emphasis added). The ultimate determination of whom to charge and what to charge, however, is reserved specifically to the Commonwealth (via the District Attorney).

Supra at 486 (emphasis in original).

The Superior Court found that Slick was not prejudiced by the addition of charges not recommended by the grand jury because the factual basis for the charges was included in the presentment, and because the charges were added at the end of the preliminary hearing listing, before informations were filed.

> Therefore, we find that the crimes charged in the amended complaint evolved out of the same factual situation as the one specified in the original complaint, and, albeit the change was substantive, it took place at a point in the criminal justice continuum to afford the appellee notice of his criminal conduct and time to prepare his case for trial. Id. As such, we discern no prejudice to the appellee in allowing the amendment to the criminal complaint.

Supra at 489.

There is no meaningful difference between the procedural posture of *Slick* and this case.[3] The Superior Court's opinion is controlling authority supporting Judge Hughes's decision, which is in any event binding on the defendants as the law of the case.

---

[3] At the time *Slick* was decided, former Pa.R.Crim.P. 150 stated that defendants could be discharged for defects in the form or content of a complaint only if the defendant was prejudiced. That this rule no longer exists is immaterial. The practice under the current rules is the same: complaints can be amended to add charges at any time as long as the defendant is not prejudiced. The law pertaining to amendments and the addition of charges to *informations* – after the preliminary hearing – is also instructive. Even after informations are filed, a court can allow the Commonwealth to add charges, unless doing so will prejudice the defense at trial. *Commonwealth v. Grekis*, 601 A.2d 1284 (Pa. Super. 1992); *see* Pa. R. Crim. Pro. 564. It is immaterial that Slick had a preliminary hearing on some charges. The amended charges were added *after* the Commonwealth had presented its evidence on the other charges. The district justice held Slick for court on the additional charges without taking more evidence. The reasons for denying the motion to quash in this case are even stronger than in *Slick*. In *Slick*, the grand jurors had not recommended the murder charges – even though the prosecutor asked them to. And the supervising judge in *Slick* agreed with the grand jury that only conspiracy should be charged. In this case, the jurors did not reject the conspiracy charges – the Commonwealth did not ask them to consider conspiracy. More significantly, the Supervising Judge reviewed the evidence presented to the Grand Jury and found it more than sufficient to charge conspiracy and to hold it for court.

Defendants seek to nullify the Supervising Judge's order granting a bypass of the preliminary hearing on the conspiracy charges.

Once the conspiracy charges were added to the complaint by order of the Court of Common Pleas, they became just like all of the other charges. So when Judge Hughes ruled that there was good cause for bypassing the preliminary hearing and sufficient evidence in the grand jury record to proceed to trial on all charges, the conspiracy charges were included. Contrary to the arguments of defendants, there *has been* a review of the evidence for a prima facie case on the conspiracy charges – *by a judge of the Court of Common Pleas*. Defendants are not entitled to another.

To entertain defendants' arguments that the evidence is insufficient to support the conspiracy charges would, in effect, nullify the bypass. This is especially true if this Court accedes to defendants' request that the Commonwealth produce *before this Court* all of the grand jury evidence supporting the conspiracy charges – the notes of testimony and the documents themselves – so that this Court can second-guess Judge Hughes's determination that the evidence was sufficient. This would constitute not just an unnecessary and improper review of settled rulings, but also a waste of prosecutorial and judicial resources.

Most criminal agreements are not explicit. Proving a common understanding and criminal objective, even in the simplest of cases, can require extensive evidence about the relationships and circumstances among parties so that inferences can be drawn about their intentions. In the present case, when the crimes often involve agreeing to do nothing when action is called for to protect children – and when the co-conspirators worked for an organization that was systematically covering up evidence and producing documents using obscure language so that their true meaning could not be ascertained – the task is

especially complex. The Commonwealth cannot point to merely a few pages in notes of testimony, or a handful of documents, to prove that the actions of Lynn and the priests in this case were part of a decades-long conspiracy that endangered children.

To understand Lynn's interactions with Avery and Brennan, a fact finder needs to look at the files of dozens of other priests whom Lynn supervised. What might look like an innocuous transfer, an accidental omission, or a mistake in judgment in a single case can only be understood as intentional when it is repeated over and over in the handling of other abusers in the priesthood.

The fact finder cannot fully comprehend the deliberate deception that Lynn and others employed to help sexual predators remain in assignments with access to children without reading the entire testimony of Archdiocese officials – including Lynn, Cardinal Anthony Bevilacqua, Bishop Edward Cullen, and Bishop Joseph Cistone, – as they tried to explain their handling of known and admitted rapists and serial molesters. (Notes of their testimony before Grand Juries XVIII and XIX are included in this response as Appendices G,H,I, and J, and have been made available to defendants.)[4] These are not witnesses who told the grand juries openly and honestly what they did and what they knew. There are no discreet passages in which they describe their common understanding that, rather than expose pedophiles or report them to police, they would instead choose to put parish children at risk. Their methods are revealed only in thousands of pages of documentary evidence – and in the church officials' dissembling, inconsistent, blame-shifting, and evasive answers over numerous days of testimony.

[4] Notes of testimony cited in this response are included in Appendix F. They have been made available to defendants.

Three grand juries spent over four years amassing the evidence that establishes the conspiracy between Lynn and the abusive priests he supervised. Judge Hughes reasonably found that repeating the evidence heard by the Grand Jury at a preliminary hearing, and then again at trial, would entail an enormous and unnecessary drain on judicial resources. Given that Judge Hughes's rulings have already established the law of the case, there is no reason for this Court to review all of the evidence of conspiracy. If it chooses to do so, however, the 2005 Grand Jury report and the presentment for this case detail the evidence that the Commonwealth relies on to support the charges.[5] *See Commonwealth v. Slick, supra* (The appellate court relied on the facts in the presentment in order to find sufficient evidence to overrule the quash.); *Commonwealth v. Cassidy*, 423 Pa. Super. 1, 4, 620 A.2d 9, 11 (Pa. Super. 1993) ("In the present case, the trial court found that the Commonwealth had demonstrated good cause in its explanation of the complexity of the case and the expenses that would be incurred for a hearing that would merely reiterate the prima facie case which had been made more than adequately in the presentment. We agree.")

If this Court refuses to follow the rule of law doctrine and fails to abide by the legal standards for bypass, it would necessitate a lengthy and complex hearing – in essence the same as a preliminary hearing. A decision by this Court not to accept the factual findings of the grand juries would compel the Commonwealth to supplement the record with testimony from Archdiocese officials, victims who have reported abuse to

[5] Attached to this memorandum are some of the documents from the Archdiocese's files on Avery and Brennan, which have been turned over to defense counsel (Appendix E). The 2005 Grand Jury report describes hundreds of similar documents for over a dozen priests who had similar interactions with Lynn.

Lynn over the years, and documents relating to other priests with whom Lynn conspired to hide their crimes so they could stay in ministry.

Following are the arguments the Commonwealth presented in its legal memorandum in support of its motion to add the conspiracy charges.

The facts alleged establish that Lynn and others in the Philadelphia Archdiocese conspired with Avery and Brennan to endanger children.[6]

Criminal conspiracy does not require direct evidence of a criminal agreement; the agreement may be proved inferentially by circumstances, including knowledge of and participation in the crime, as well as the "relation, conduct or circumstances of the parties." *Commonwealth v. Davolos*, 779 A.2d 1190, 1193 (Pa. Super.), allocatur denied, 790 A.2d 1013 (Pa. 2001); *Commonwealth v. Rogers*, 615 A.2d 55, 63 (Pa. Super. 1992). "Indeed, direct proof of an explicit or formal agreement to commit a crime can seldom, if ever, be supplied and it need not be for 'it is established law in this Commonwealth that a conspiracy may be proved by circumstantial evidence as well as by direct evidence.'" *Commonwealth v. Roux*, 465 Pa. 482, 488, 350 A.2d 867, 870 (1976). The nature of the crime usually makes it susceptible of no other proof than by circumstantial evidence. *Commonwealth v. Gibson*, 668 A.2d 552, 555 (Pa. Super 1995); *Commonwealth v. Evans*, 190 Pa.Super. 179, 154 A.2d 57 (1959), aff'd 399 Pa. 387, 160 A.2d 407 (1960), cert. denied, 364 U.S. 899, 81 S.Ct. 233, 5 L.Ed.2d 194, reh. denied, 364 U.S. 939, 81 S.Ct. 377, 5 L.Ed.2d 371. In addition to the relationship and conduct of the parties, "the

[6] Although the facts clearly do establish conspiracy, the standard of review at this stage of the proceedings is merely a *prima facie* case. *Commomwealth v, Rick*, 366 A.2d 302, 303-304 (Pa. Super. 1976)("The question at a preliminary hearing is not whether there is sufficient evidence to prove the defendant guilty beyond a reasonable doubt; rather, the question is whether the prosecution must be dismissed because there is nothing to indicate that the defendant is connected with a crime.")

circumstances surrounding their activities can be examined to deduce, inferentially, if a conspiracy exists." *Commonwealth v. Robinson*, 505 A.2d 997, 1000 (Pa. Super. 1986), quoting *Commonwealth v. Tumminello*, 292 Pa. Super. 381, 386 (Pa. Super. Ct. 1981).

"The essence of criminal conspiracy is a common understanding, no matter how it came into being, that a particular criminal objective be accomplished." *Commonwealth v. Volk*, 444 A.2d 1182, 1185 (Pa. Super. 1982), quoting *Commonwealth v. Carter*, 416 A.2d 523, 524 (Pa. Super. 1979).

The criminal objective shared by Lynn, the Archdiocese officials he worked with and reported to, and the priests he supervised was not necessarily to harm children – just to knowingly put them in harm's way. The shared understanding alleged is simply that Lynn and his accomplices knowingly placed minors at risk of harm in violation of their duty to protect and care for the children in the schools and churches of the Archdiocese.

The risk was created by agreeing to permit men with histories of improper and criminal conduct with minors to retain their status as priests, thereby giving them not only access to children, but also extraordinary power and influence over them and their families. The danger was exacerbated by collusion between Archdiocese managers and the priests to deceive parishioners concerning the continued ministry of errant priests and the reasons for their leaves, retirements, and transfers.

The Grand Jury's presentment details abundant evidence that Lynn conspired with others to endanger the welfare of children in parishes of the Archdiocese of Philadelphia. As Secretary for Clergy from 1992 to 2004, he worked with accused priests and with his superiors within the Archdiocese to place known sexual predators in positions where they would have continued access to children and then to make sure that parishioners were

kept ignorant of the peril (Presentment, 8-19; 2011 Grand Jury Report, 43-54; 2005 Grand Jury Report, 29-58, 79-177, 197-233, 243-405). Lynn acceded to abusers' requests to be transferred to assignments with friendly supervisors where their behavior would likely go unreported. He colluded with accused priests and Archdiocese managers to deceive parishioners so that known child abusers could continue as active and revered priests without complaint from parents or others who remained unaware of the priests' predatory behavior. He repeatedly thwarted victims' efforts to have their attackers removed from positions where they could harm other children.

The evidence that Lynn coached, counseled, and colluded with suspected, known, and even confessed abusers is overwhelming. Avery and Brennan were just two of many such priests whom Lynn and his Archdiocese superiors actively abetted. [The Grand Jury's presentment (Appendix A), which served as the factual basis for the affidavit of probable cause for the arrest warrants, references the 2005 report of the Philadelphia Investigating Grand Jury of September 17, 2003 (Appendices C and D). That report was reviewed by the Grand Jury and has been incorporated into the record of this case. The 2011 Grand Jury Report is included as Appendix B.]

Lynn's objective in the instant cases – to help Avery and Brennan cover up their inappropriate and criminal behaviors so that the priests could remain in active ministry and escape exposure – was understood and shared by the priests and others in the Archdiocese. Lynn often reported to the priests or asked them to participate in deceptions designed to keep their secrets and to mislead others. In numerous ways, he acted as their accomplice in knowingly placing children in harm's way.

After hearing from a man in 1992 that Avery had sexually abused him as a teenager, Lynn assured the victim that the Archdiocese would take appropriate action so that Avery would not be in a position to harm another child. It was Lynn's duty to investigate the victim's allegation against Avery, to recommend appropriate action, and to supervise the priest. Lynn did none of these things. Instead, by offering false assurances, he persuaded the victim that it was unnecessary to take other actions that would have resulted in the predatory priest's removal from his position and put parishioners on guard to protect their children. Lynn reported his conversations with the victim to Avery. (Presentment, 9-10, 17-18; Documents, 0551-00307, 0551-00147, 0551-00306, 0551-00215 through 0551-00217, 0551-00219 through 0551-00229, 0551-00235, 0551-00213 through 0551-00214, 0551-00249, 0551-00250, 0551-00253 through 0551-00255, 0551-00198 through 0551-00207, 0551-00191, 0551-00193 through 0551-00194.)

Lynn permitted Avery to remain in his assignment as pastor for months after learning of the priest's crimes. When Avery was finally removed from his assignment to enter a treatment facility, Lynn and his supervisors had Regional Vicar Charles Devlin, and Avery himself, lie to parishioners, telling them that Avery was resigning because of his health. (Presentment, 12-14; Documents 0551-00280, 0551-00277, 0551-00278, 0551-00647; N.T. 12/18/03, 23-24.)

Lynn went even further to deceive parishioners, telling those who were suspicious that the Archdiocese had never received "anything but compliments" regarding Avery, and that anything different that parishioners might had heard was just "rumors" (Presentment, 14; Documents 0551-00577 through 0551-00578, 0551-00402 through 0551-00404). The falsehood that an accused priest was resigning for health reasons is one

that Lynn and other Archdiocese officials used often to cover up priests' crimes so that the perpetrators could later be returned to ministry after a stint in an Archdiocese facility for "treatment."

After Avery was released from the treatment facility, with strict instructions from the clinic staff that he should not minister to adolescents or vulnerable minorities, Lynn, who was in charge of supervising the priest, did what he did in the cases of other priests (Documents, 0551-00196, 0551-00247, 0551-00285, 0551-00297). He allowed Avery to completely ignore the therapists' cautionary directions, and he covered for the priest (Presentment, 14-18; N.T. 12/18/03, 24-26, 90).

Lynn pretended that Avery was participating in an aftercare program with an "aftercare team" of supervisors that supposedly included the Secretary for Clergy. In fact, no one was supervising Avery (Presentment 15-18; Documents, 0551-00301, 0551-00303; N.T. 5/13/10, 59-61, 66, 77, 103, 106, 108, 115, 124, 130; N.T. 4/30/10, 25-26; N.T. 6/24/10, 13-15). At one point, one of Avery's fellow priests reported to Lynn that Avery was not complying with his supposed program (the priest believed Avery was being treated for "workaholism"), and that he was constantly out disc jockeying (the setting in which, Lynn well knew, Avery had abused the teenaged victim). Lynn ignored the priest's warnings (Presentment, 15-17; Documents, 0551-00300, 0551-00298, 0551-00299, 0551-00609, 0551-00610, 0551-00406, 0551-00618 through 0551-00619, 0551-00617; N.T. 6/24/10, 19, 29, 40).

Instead of disciplining Avery, suggesting that he be removed from his assignment, or even simply taking steps to limit his access to minors, Lynn coached the priest "to be more low-keyed than he has been recently" (Presentment, 18; Documents, 0551-00193).

One year before Avery sexually abused [redacted] Billy at St. Jerome Parish, the Secretary for Clergy wrote that he had told Avery that his earlier victim had been back in touch with Lynn. The victim had asked about Avery. He wanted to know that his attacker was not in a position to harm any other children. Lynn reported to Avery that he had concealed the priest's whereabouts and assignment. Lynn said that he had told the victim "that the Archdiocese had taken proper steps in the matter, without stating where Father Avery was stationed" (Presentment, 17; Documents, 0551-00193 through 0551-00194).

As the Grand Jury concluded: "Monsignor Lynn's obscure language, the pride he seemed to take in relating to Father Avery that he had not told [the victim] that the priest was living in the rectory of a parish with a school, and the warning to the sexual predator to be 'low-keyed' all seem like the product of someone trying to aid and abet an abuser in escaping detection" (2011 Grand Jury Report, 28).

The facts alleged in the presentment establish that the Secretary for Clergy was also Brennan's accomplice in endangering children. When Lynn was told in 1995 that Brennan was hosting parties for Cardinal O'Hara High School students at his residence and was serving them liquor, the Secretary for Clergy did not act as one charged with supervising priests in order to protect children. He did not call Brennan in, discipline him, or report him to law enforcement. He did nothing to address the problem of Brennan's inappropriate behavior with adolescent students – not even when a nun at Brennan's residence reported that the priest was living with one of the students under the false pretense that the boy was his nephew. (Presentment, 20-23; Documents, 0551-01093 through 0551-01096.)

Instead, Lynn acted to help a predator stay in a position that gave him access to and power over potential victims while avoiding scrutiny or exposure. Responding to complaints about the priest's behavior with minors at his residence, Lynn moved Brennan to a new residence – in a rectory of a parish with an attached school. In doing so, he acceded to Brennan's request that he be stationed under the supervision of a priest with whom he was friendly. (Presentment, 21-22; Documents, 0551-01097 through 0551-01099.)

Less than a year later, Brennan requested a leave of absence. In meetings with both Lynn and Cardinal Bevilacqua, the priest said he needed to deal with psychological ramifications stemming from his own childhood sexual abuse. He told Lynn that he was "in a sense giving scandal to others" and was not performing up to expectations. His explanation was so strange that Cardinal Bevilacqua noted that he questioned Brennan's honesty. The Cardinal wrote that Brennan seemed especially anxious to talk about being sexually abused, and speculated that Brennan was not telling the real reason for his leave. (Presentment, 22; Documents, 0551-01230 through 0551-01231, 0551-01234, 0551-01239.)

A few months after his meetings with Lynn and Bevilacqua, in June 1996, Brennan called Lynn. He was upset because he had heard that a rumor about him was circulating among priests in the cafeteria of the Archdiocese headquarters. The rumor was that Brennan had requested a leave in order to "shack up" with a former student. He wanted to know from Lynn who was spreading the story. He told Lynn that very few people "knew about his previous situation." (Presentment, 22-23; Documents, 0551-01105)

Lynn wrote in a memo that he "told [Brennan] not to be concerned about these rumors; that we only take facts as we find them. Rumors are not put in personnel files. Father Brennan seemed relieved to hear that." (Presentment, 23; Documents, 0551-01105.)

By covering up for Brennan, Lynn assured that the priest retained the position and status that made the parents of Mark Bukowski, Brennan's victim, feel comfortable about their son spending the night with him. It was this unwarranted status, protected by Lynn and other Archdiocese officials, that afforded Brennan the opportunity to rape Mark in the summer of 1996. It is immaterial that Brennan was on leave during the summer he assaulted Mark. He was still a priest, with all of the attendant goodwill, authority, and trust granted to clergy. And he was still subject to the supervision of his bishop and, therefore, Lynn.

The evidence presented to the Grand Jury demonstrated that Brennan had confessed to Lynn that he suffered from debilitating psychological problems caused by his own sexual abuse as a child. He told Lynn he feared he was "giving scandal to others." Lynn knew of Brennan's parties, at which he served alcohol to minors, and of his inappropriate relationship with at least one of those students. The Secretary for Clergy knew that Brennan was lying when he told nuns that the boy living with him was his nephew. Nevertheless, Lynn aided Brennan in covering up the improper relationship so the priest could return to a parish assignment if he so desired. In the meantime, while on leave, Brennan retained his full faculties as a priest and could exercise his ministry whenever he wanted to.

Lynn's memo to the file indicated that it was a common understanding among the Archdiocese officials responsible for assigning priests (the Cardinal, the Vicar General, and the Secretary for Clergy) that reports of sexual abuse by a priest would not hinder future assignments unless a victim made a formal allegation. Accordingly, when Brennan announced in 1998 that he was ready to return from his leave, Cardinal Bevilacqua and Lynn welcomed him back and assigned him to St. Jerome Parish. They placed him in a parish with a school even though they were fully aware of his troubling relationships with minors and his confessed psychological problems. (Presentment, 27; Documents, 0551-00930 through 0551-00932, 0551-01129 through 0551-01131.)

In 2000, Brennan informed Lynn and Bevilacqua that he felt he needed to isolate himself at an abbey. When asked why, he described "a primordial struggle being lived out in a tormented state of unbridled passion." He wrote to his supervisors of "the filth and stench of my wanton failures of yesterday." They agreed to allow him to go to an abbey in South Carolina. When he became unhappy there too, Lynn and Bevilacqua accepted him back to the Archdiocese, and they gave him another assignment in a parish with a school. (Presentment, 28; Documents, 0551-01148, 0551-01151 through 0551-01157, 0551-01159 through 0551-01164, 0551-01166.)

Lynn clearly was working, in concert with other Archdiocese officials and the perpetrator-priests, toward a common purpose: Their actions were designed to keep the offending priests in ministry and their parishioners ignorant and unequipped to protect their children. The effect was to endanger children, including the victims of the crimes charged in this case. Under these facts, it is difficult not to infer a criminal agreement among the defendants.

Lynn's record as Secretary for Clergy demonstrates a pattern of collusion with accused priests and other Archdiocese managers to endanger children.

There is substantial evidence that the collaborative nature of Lynn's relationship with Avery and Brennan was not unusual or unintended. The Grand Jury's presentment details numerous examples that demonstrate a longstanding pattern of conspiring to endanger the welfare of children (Presentment, 30-39).

The Grand Jury reviewed documents relating to Philadelphia Archdiocese officials' interactions with numerous priests. Lynn's handling of allegations against these priests is summarized in the 2005 Grand Jury Report. The evidence in those files shows how Lynn regularly colluded with priests – even with admitted child rapists and molesters – in order to prevent public disclosure of their crimes, avoid involvement by law enforcement, and help the priests remain in ministry.

For example, when Father Stanley Gana was sent for evaluation in 1996 after two boys accused him of raping them, Lynn coached the priest about the need to avoid a diagnosis of pedophilia so that he could return to ministry (2005 Grand Jury Report, 95). And when Lynn and Bevilacqua did return Gana to ministry (supposedly limited to a convent), Lynn secretly allowed Gana to minister at parishes all over the diocese. The Secretary for Clergy directed the priest only to stay away from parishes in the Northeast where his victims might see him (2005 Grand Jury Report, 98). Lynn said: "We tell him to keep a low profile because there are people out to get him."

When a victim in 1994 reported abuse by Father Joseph Gausch, the priest already had a long history of sexually assaulting young boys. Nevertheless, Lynn told the serial

molester that the Archdiocese "supported him" and that Lynn would investigate the background of the victim (2005 Grand Jury Report, 122).

Lynn in 1997 provided Father Nicholas Cudemo with a certificate of "good standing" so that he could minister in Orlando, Florida. Lynn gave Cudemo this stamp of approval after the priest had been credibly accused of sexually abusing at least nine girls – including one whom he raped when she was 11 years old – in the Philadelphia Archdiocese (2005 Grand Jury Report, 149).

Lynn protected Father David Sicoli, allowing him to remain in ministry despite a decades-long, documented history of abusive relationships with boys in his parishes. As Secretary for Clergy, he ignored reports from multiple priests who worked and lived with Sicoli. Even when Lynn found Sicoli living with two boys in his rectory in 2002 – and lying about it – he only lectured the priest about his "imprudence" and "put him on notice" that Bevilacqua would "take strong action against him" if he continued his relationship with the boys. Yet, when Lynn later learned that Sicoli continued the relationship, he did nothing to stop the priest (2005 Grand Jury Report, 221).

Lynn in 1992 acted together with Cardinal Bevilacqua, Vicar General Edward Cullen, his assistant Monsignor James Molloy, and an established predator, Father Michael McCarthy, to assign the known abuser where his most vocal victim would not notice. Lynn later coached McCarthy on how he might return to ministry, despite a diagnosis of ephebophilia (a sexual attraction to post-pubescent adolescents), by obtaining a second opinion (2005 Grand Jury Report, 246, 252).

After Cardinal Bevilacqua pretended to prohibit convicted child-pornographer Father Edward DePaoli from saying Mass publicly, Lynn in 1994 secretly gave the priest

permission to minister freely, explaining that the supposed restrictions were only to avoid scandal (2005 Grand Jury Report, 266-267). Lynn also agreed to let DePaoli live in a rectory where his friend, Father James Gormley, was less than vigilant. And when a nun at the parish objected to DePaoli's continued ministry with children, Lynn worked with then-Monsignor Joseph Cistone to silence the sister. They eventually succeeded in having the nun fired – all so DePaoli could continue in ministry and avoid exposure, thereby continuing to imperil children (2005 Grand Jury Report, 269-271).

Lynn assisted another admitted sexual abuser to stay in ministry by counseling the priest not to apologize to his victims. Lynn in 2000 explained to Father John Gillespie that the Archdiocese would take no action against a priest – even if he self-reported and confessed to crimes, as Gillespie had – unless the victim came forward and formally complained. Later, when another victim did come forward, Lynn had to accept Gillespie's resignation. Parishioners were told that Gillespie resigned "for health reasons."

When Father Thomas Wisniewski in 1992 admitted to Lynn that he had abused a boy, and was sent for evaluation and treatment, Lynn hid his crimes from parishioners by asking Wisniewski to have his pastor announce that the priest was "on vacation." Lynn further assured Wisniewski that the priest personnel board, the group that reviews priests' files before they are reassigned, would not be informed that he had confessed to a sexual crime against a minor. When Wisniewski was released from the hospital, Lynn was supposed to closely monitor his activities. The Secretary for Clergy was supposed to set up an aftercare supervision team and meet with its members and Wisniewski regularly.

Hospital staff warned that these things were crucial to keeping Wisniewski from reoffending. Lynn did none of them (2005 Grand Jury Report, 365-372).

Father Francis Gallagher's criminal activities became known to the Archdiocese when he was arrested in 1989 for soliciting sex from young adult males in Sea Isle City, New Jersey. The priest subsequently admitted abusing two young brothers, both of whom were minors. Lynn nonetheless helped Gallagher remain in ministry and avoid detection by consulting with the priest about areas of the Archdiocese where he should not be assigned because his crimes against children were known (2005 Grand Jury Report, 383-384).

By the time Lynn fielded a complaint against Father Robert Brennan in 1992, the priest had been accused of improper touching and behavior with more than a dozen boys. He had twice been sent for evaluation and treatment by Archdiocese therapists. Rather than immediately remove the serial abuser from his parish, Lynn counseled him to "keep a low profile in the parish" until "further direction on the matter." Fr. Robert Brennan was encouraged to resign his pastorate "for reasons of health" in order to conceal a 10-month stint at St. John Vianney Hospital. And, just as in Avery's case, when Fr. Robert Brennan was released from the hospital with strict instructions that he be carefully supervised by a "ministry supervision team," Lynn ignored the therapists and assigned the priest to a parish without restrictions on his activities with youth. The Secretary for Clergy did consult, however, with legal counsel to answer a question posed by Cardinal Bevilacqua: In the event of a "public relations crisis in this case, can we say that Fr. Brennan had been sent away and can we have a statement that he is not a pedophile." Such advance planning to minimize liability for the priest's anticipated future misconduct

is strong evidence that the Cardinal and Lynn were well aware of the risks to which they willingly and knowingly subjected parish children (2005 Grand Jury Report, 405-418).

In all of these examples, Lynn demonstrated a pattern of behavior: He colluded directly with priests to help them remain in ministry with their reputations untarnished and their parishioners unaware of the danger these men posed to children. This pattern was apparent in the present cases as well.

The alleged facts make out a prima facie case that Shero, Avery, and Engelhardt conspired to sexually assault and endanger [redacted].

The facts alleged in this case can only be explained by a conspiracy among the three men who sexually assaulted the same altar boy, one after the other, over a two-year period. According to the evidence detailed in the presentment, Engelhardt, an assistant pastor at St. Jerome's Church in Philadelphia, was the first to molest and orally sodomize [redacted], after Mass in the sacristy. Engelhardt referred to the times he molested [redacted] and showed him pornography as "sessions." [redacted] was in fifth grade at the time.(N.T. 3/19/10, 6-18.)

Later that same school year, Avery, who lived across the hall from Engelhardt in St. Jerome's rectory (N.T. 12/3/10, 24), approached [redacted] as he was putting bells away after bell choir. Avery was not formally assigned to St. Jerome Parish because he had been accused earlier of sexually abusing another boy. But his supervisors, Secretary for Clergy Lynn and Cardinal Bevilacqua, allowed the priest to live at the rectory, to say Mass on weekends, and to hear children's confessions.

When Avery approached [redacted] after bell choir, he told the boy he had heard about his "sessions" with Engelhardt. He told [redacted] that their own sessions would start

soon (N.T. 3/19/10, 20). Not long after the warning, Avery molested, orally sodomized, and forced the boy to perform sex acts on the priest in the sacristy after Mass, just as Engelhardt had done. Avery had two such sessions with Billy. (N.T. 3/19/10, 19-36.)

After summer vacation, Billy returned to school and was assigned to Bernard Shero's sixth-grade classroom at St. Jerome School, where Engelhardt testified he often visited (N.T. 12/3/10, 70). During the spring of the 1999-2000 school year, Shero offered Billy a ride home. On the way, the teacher stopped his car in a park and raped Billy (N.T. 3/19/10, 41-43). Shortly after Shero's assault on Billy, both Shero and Engelhardt left St. Jerome (N.T. 12/3/10, 32; N.T. 4/30/10, 27).

Even if there were no evidence that Engelhardt informed Avery about his sessions with Billy, the only reasonable inference from these facts is that the three men talked to each other and identified Billy as a target for sexual exploitation. That Shero raped the boy shortly after the priests had can hardly have been a coincidence. The direct evidence that Engelhardt told Avery about his "sessions" only confirms the obvious inference.

Accepting the alleged facts as true, as the Court must at this stage, common sense leads to only one conclusion: This string of sexual assaults was the result of conspiracy, not coincidence.

WHEREFORE, the Commonwealth respectfully requests this Court to deny the defendants motions to quash.

II. DEFENDANTS ARE PROPERLY JOINED IN ONE TRIAL.

Defendants Engelhardt, Shero, and Brennan are all requesting separate trials. Lynn is seeking not only to be severed from his co-defendants and co-conspirators, but

also to have two separate trials of his own – one for each of the two conspiracy charges against him.[7] Although Avery has not filed a motion to sever, the granting of his co-defendants' motions would result in a separate trial for him as well. That is six trials – all lengthy – at which the same evidence would be produced, including thousands of pages of documents and repeated testimony from sexual assault victims and high church officials and bishops from outside of Philadelphia. The law in Pennsylvania discourages such duplication and waste of judicial resources – particularly in cases where defendants have conspired with one other.[8]

The law favors trying co-conspirators together.

In *Commonwealth v. Colon*, 846 A.2d 747, 753-754 (Pa. Super. 2004), the Court wrote:

> A joint trial of co-defendants in an alleged conspiracy is preferred not only in this Commonwealth, but throughout the United States. *Commonwealth v. Travers,* 564 Pa. 362, 768 A.2d 845, 847 (Pa. 2001). It would impair both the efficiency and the fairness of the criminal justice system to require . . . that prosecutors bring separate proceedings, presenting the same evidence again and again, requiring victims and witnesses to repeat the inconvenience (and sometimes trauma) of testifying, and randomly favoring the last tried defendants who have the advantage [***14] of knowing the prosecution's case beforehand. Joint trials

---

[7] At times, Lynn refers in his motion to conspiracies between himself and Brennan and himself and Engelhardt (Lynn's Omnibus Motion at pp. 9, 11). Presumably he means Avery instead of Engelhardt.

[8] Because these defendants have been treated as co-defendants since they were arrested, three of the defendants have filed motions to sever. One, Brennan, has framed his request for a separate trial as a "Motion in Opposition to Prosecution's Oral Motion for Joinder." It is clear from their motions and from the notes of the June 6, 2011, hearing that all defendants are on notice that the Commonwealth intends to try them together in one trial. Nevertheless, with this response, the Commonwealth moves to consolidate the trials if they are not already considered joined. *See* Pa. Rule of Crim. Pro. 582(B).

> generally serve the interests of justice by avoiding inconsistent verdicts and enabling more accurate assessment of relative culpability. [**754] Id. quoting *Richardson v. Marsh*, 481 U.S. at 209. A defendant requesting a separate trial "must show real potential for prejudice rather than mere speculation." *Commonwealth v. Rivera*, 565 Pa. 289, 773 A.2d 131, 137 (Pa. 2001). The defendant bears the burden of proof, and we will only reverse a decision not to sever if we find a manifest abuse of discretion by the trial court. Id.

It isn't necessary that all defendants conspire with each other.

The preference for joint trials of co-conspirators is consistent with 18 Pa.C.S. 903(d), which expressly states that co-conspirators may be tried jointly, even when the parties do not all conspire with each other:

> (d) JOINDER AND VENUE IN CONSPIRACY PROSECUTIONS.
>
> (1) Subject to the provisions of paragraph (2)[[9]] of this subsection, two or more persons charged with criminal conspiracy may be prosecuted jointly if:
>
> > (i) they are charged with conspiring with one another; or

---

[9] Subsection (2) states:

In any joint prosecution under paragraph (1) of this subsection:

(i) no defendant shall be charged with a conspiracy in any county other than one in which he entered into such conspiracy or in which an overt act pursuant to such conspiracy was done by him or by a person with whom he conspired;

(ii) neither the liability of any defendant nor the admissibility against him of evidence of acts or declarations of another shall be enlarged by such joinder; and

(iii) the court shall order a severance or take a special verdict as to any defendant who so requests, if it deems it necessary or appropriate to promote the fair determination of his guilt or innocence, and shall take any other proper measures to protect the fairness of the trial.

> **(ii) the conspiracies alleged, whether they have the same or different parties, are so related that they constitute different aspects of a scheme of organized criminal conduct.**

(Emphasis added.)

The present case involves multiple conspiracies but a common criminal scheme.

The Commonwealth has charged the defendants with three related conspiracies, consisting of different – but overlapping – parties. Lynn and Brennan are charged with conspiring together to endanger children. Lynn and Avery are charged with conspiring to endanger children. And Avery, Engelhardt, and Shero are charged with conspiring to sexually assault one of the children Lynn endangered. Contrary to the arguments of defendants, the rule of joinder in conspiracy cases expressly permits the joint trial of multiple conspiracies consisting of different parties if they are part of a common scheme.

In this case, Lynn's pattern of colluding with priests to cover up their improper and criminal behavior with minors so that they could continue to serve as priests in the Archdiocese of Philadelphia constitutes the common "scheme of organized criminal conduct" referred to in 18 Pa.C.S. 903(d). His efforts to assist particular priests – Avery and Brennan, in this case – are the "different aspects" of the scheme envisioned by the rule.

The crimes committed by priests Lynn protected are evidence of endangerment.

The sexual assaults perpetrated by these priests, either alone or with cohorts, were part of the crime of endangering in which all of the defendants engaged. The evidence that Lynn's co-defendants raped and molested parish boys is proof that the Secretary for Clergy's actions on behalf of the priests did not just endanger children in some

hypothetical way. They resulted in actual, grave harm to at least two real children – Billy and Mark Bukowski.

What the defendants are asking this Court to do is to separate the "endangering" from the ultimate harm that is its natural consequence. And the actual perpetrators of the sexual assaults are seeking separation from an accomplice and co-conspirator who made their crimes possible.

The serial abuse of Billy by Avery and his co-conspirators, Engelhardt and Shero, is simply the ultimate consequence of Lynn's design to keep a known sexual predator ministering in a parish, where he would have easy access to altar boys and other children. The rapes and molestations are persuasive evidence that Lynn did, in fact, endanger Billy by placing Avery in his parish. That Avery colluded with other similarly disposed parish employees just multiplied the harm that Lynn abetted. It is all part of the story of what happened because Lynn worked with known predators to help them stay in ministry.

Similarly, Brennan's rape of Mark Bukowski provides concrete proof that Lynn endangered children by failing to take appropriate action after he was alerted that Brennan had acted inappropriately with students at Cardinal O'Hara High School. Without proof of a subsequent sexual assault, the evidence of endangering is less compelling and the crime might seem less serious.

Even without a conspiracy charge, Pennsylvania Rule of Criminal Procedure 582 states that defendants "may be tried together if they are alleged to have participated in the same act or transaction or in the same series of acts or transactions constituting an offense or offenses." Pa. R. Crim. P. 582(A)(2).

Whether viewed as "different aspects of a scheme of organized criminal conduct," pursuant to 18 Pa.C.S. 903(d), or a "series of acts or transactions constituting an offense or offenses," under Pa. R. Crim. P. 582(A)(2), the conspiracies between Lynn and Brennan, Lynn and Avery, and Avery, Engelhardt, and Shero are all part of a common scheme of child endangerment. The acts that constituted endangering assisted the predators and made their sexual assaults possible. The law of Pennsylvania states that participants in such a common scheme should be tried together, unless they would be unduly prejudiced.

A consolidated trial is appropriate where separate lengthy trials would require duplication of evidence and repeated testimony from victims.

In *Commonwealth v. Patterson*, 546 A.2d 596 (Pa. 1988), the Supreme Court held that the trial court properly denied a severance request where two separate trials would be lengthy (five days), involve much of the same evidence, and require a young victim to repeat her testimony about a sexual assault. The Court ruled that joinder was appropriate even though one co-defendant was charged with an additional offense that would not have been admissible at the other's separate trial.

The Supreme Court in *Patterson* reversed the Superior Court to uphold the joint trial of two co-conspirators charged with rape, robbery, burglary and conspiracy, even though one of them was charged with an additional, individual crime – intimidation of a witness. Quoting *Commonwealth v. Morales*, 494 A.2d 367, 372 (Pa. 1985), the Court wrote: "This rule [Pa. R. Crim. P. 582(A)(2)] of joinder parallels the case law which recognizes that joint trials of co-defendants is [sic] advisable when the crimes charged grew out of the same acts and much of the same evidence is necessary or applicable to

both defendants." *Commonwealth v. Patterson*, *supra* at 599 (Pa. 1988). In the present case the Commonwealth would have to call numerous witnesses, including victims and high church officials from out of state, and admit thousands of documents that would be replicated across the trials if they were conducted separately.

The Court in *Patterson* stated that the "general policy of the law is to encourage joinder of offenses and consolidation of indictments when judicial economy can thereby be effected, especially when the result will be to avoid the expensive and time-consuming duplication of evidence." 546 A.2d at 600. Even though evidence of the co-defendant's additional crime would not have been admissible in a separate trial of appellee, the Supreme Court found that the trial court had not abused its discretion. The Court explained its holding:

> In denying the motion to sever, the trial judge properly considered that the trial was likely to be lengthy (it took five days). He also properly considered the burden on the young victim in having to testify in two separate lengthy trials if he granted the motion. He also determined that curative, cautionary instructions could adequately dispel any prejudicial effect on the Appellee from the introduction of evidence on intimidation relating to his co-defendant. [The trial judge] also noted that the evidence pertaining to the intimidation charge unmistakably and unequivocally pointed to the co-defendant only.

Supra at 600-601.

The "burden" on the victims having to testify is magnified in a sexual-abuse case. In this case, the victims have already had to testify before the Grand Jury (and Mark Bukowski had to testify before a canonical trial as well). Forcing them to relive their abuse and repeat their testimony in multiple, prolonged trials would be unfairly traumatic.

Defendants have the burden of demonstrating undue prejudice.

The decision to sever offenses is within the sound discretion of the trial court and will be reversed only for a manifest abuse of that discretion. *Commonwealth v. Collins*, 703 A.2d 418, 422 (Pa. 1997), cert. denied 525 U.S. 1015 (1998). The appellant bears the burden of proving that he was prejudiced by the trial court's decision not to sever. Commonwealth v. Dozzo, 991 A.2d 898, 901 (Pa. Super. 2010); *Commonwealth v. Melendez-Rodriguez*, 856 A.2d 1278, 1282 (Pa.Super. 2004) (en banc). And the prejudice must be greater than the general prejudice any defendant faces when the Commonwealth's evidence links him to a crime. *Commonwealth v. Dozzo*, *supra* at 902.

In upholding the consolidation of charges of similar sexual assaults on two young victims during overlapping periods of time at the same general locale, the Court in *Commonwealth v. Judd*, 897 A.2d 1224, (Pa. Super 2006), stated:

> In this context, when severance is the issue, prejudice is not simply prejudice in the sense that appellant will be linked to the crimes for which he is being prosecuted, for that sort of prejudice is ostensibly the purpose of all Commonwealth evidence. The prejudice of which . . . [consolidation] speaks is rather that which would occur if the evidence tended to convict appellant only by showing his propensity to commit crimes, or because the jury was incapable of separating the evidence or could not avoid cumulating the evidence.
> *Commonwealth v. Lark*, 518 Pa. 290, 307-308, 543 A.2d 491, 499 (1988).

Citing *Commonwealth v. Brookins*, 10 A.3d 1251(Pa. Super. 2010), Lynn argues that he should be severed from the others because they are "charged with more serious crimes." (Lynn's Omnibus Motion at 9) He suggests that it would be prejudicial to try him along with defendants who are accused of brutal rapes and sexual molestation. It is understandable that he would not want a jury to see the exact nature of the danger to

which he subjected parish children, or the consequences of his actions. But this is not the type of prejudice that warrants severance. Moreover, the crimes Lynn enabled would clearly be admissible even if he were tried separately.

Brookins, on which Lynn and Shero rely, is clearly distinguishable from their case. The appellant in *Brookins* was involved with her co-defendants in the buying and selling of drugs. Brookins was charged with and convicted of possessing drugs with intent to deliver, conspiracy, and corrupt organization. Her co-conspirators in the drug business, on the other hand, were also charged with a kidnapping and robbery. In concluding that her trial should have been severed from her co-defendants', the Court found that Brookins had nothing to do with their violent crimes and that evidence relating to them would not have been admissible at a separate trial. Rather than being part of a common scheme, as we have in this case, the kidnapping and robbery were found to be "a discreet criminal transaction" with no relationship to the appellant's criminal behavior.

Lynn's relationship to his co-defendants' crimes is entirely different. He enabled their sexual assaults. A consolidated trial in this case would involve a single criminal scheme involving basically two, related crimes – endangering in the form of exposing children to predatory priests, and the resulting sexual assaults. The Court in *Brookins* feared that the jury might have unfairly held the violent propensities of appellant's co-defendants against her. While the introduction of the co-defendants' unknown dangerous proclivities might have been prejudicial in *Brookins*, the proclivities of the priests whom Lynn protected are directly relevant to his crime. It is those proclivities and his knowledge of them that made Lynn's actions and inactions criminal.

Shero's reliance on *Brookins* is likewise misplaced. His alleged crimes are the most violent and depraved of all of the co-defendants'. There is not the same danger that was present in *Brookins*, where the Court was concerned that a nonviolent drug dealer would be prejudiced by her fellow drug dealers' violent crimes. Also, unlike *Brookins*, evidence of each defendant's offense is admissible against all of the defendants. To the extent that the trial court determines that any piece of evidence is inadmissible against a particular defendant, it can so instruct the jury. The trial court in *Brookins*, apparently, did not give such limiting instructions.

Other defendants argue that they should not be tried together because they do not even know all of the others. However, Avery, Engelhardt, Brennan, and Shero were all working together at St. Jerome at one point. And Lynn was the Secretary for Clergy, responsible for overseeing all priest assignments. More importantly, they do not have to know each other. As the conspiracy statute makes clear, all joined defendants do not have to conspire together. 18 Pa.C.S. 903(d). They simply need to be part of the same common scheme of criminal conduct.

In any event, to the extent that Shero, Engelhardt, and Avery's crimes are distinct from Brennan's, it becomes less likely they would be prejudiced by evidence against Brennan – and vice versa. There is no risk that jurors would be more likely to find Brennan guilty if they heard the evidence against the other three. In such cases, where the evidence of separate offenses and defendants is easily separable, the appellate courts have found no prejudice. *Commonwealth v. Dozza*, supra at 903, quoting *Commonwealth v. Collins*, supra at 423 ("Where a trial concerns distinct criminal offenses that are distinguishable in time, space, and the characters involved, a jury is capable of separating

the evidences."); *Commonwealth v. Janda*, 14 A.3d 147, 157 (Pa. Super. 2011)(Defendant was not prejudiced by joinder of nine burglaries where each burglary was of a different residence, had a different victim, and had distinct property stolen because these circumstances render jury confusion unlikely.)

All of the defendants' offenses would be admissible in separate trials of the others.

Defendants in this case are properly joined pursuant to 18 Pa.C.S. 903(d) and Pa. R. Crim. P. 582(A)(2) (relating to joinder of defendants). Accordingly, they do not have to meet the alternative joinder standard set forth in subsection (A)(1)(a) of Rule 582 (relating to joinder of offenses based on a finding that "the evidence of each of the offenses would be admissible in a separate trial for the other and is capable of separation by the jury so that there is no danger of confusion."). Nevertheless, in assessing potential prejudice to defendants, it is worth noting that the offenses of each defendant in this case would be admissible at separate trials of the others.

Pennsylvania Rule of Evidence 404(b)(2) allows the introduction of other crimes, wrongs, and acts for purposes other than to show a defendant's bad character. The rule spells out many permissible uses of evidence of other crimes:

> Evidence of other crimes, wrongs, or acts may be admitted for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity or absence of mistake or accident.

Other crimes are also admissible to show a common plan, scheme, or design embracing commission of multiple crimes. *Commonwealth v. Judd*, 897 A.2d 1224, 1232 (Pa. Super. 2006) (In upholding the consolidation of ongoing similar sexual abuse of two different victims during overlapping periods of time at the same general locale, the Court

stated: "It is difficult to conceive of any situation where the propriety of joinder could be clearer."); *Commonwealth v. Andrulewicz*, 911 A.2d 162 (Pa. Super. 2006) (upholding consolidation of three cases brought against defendant for sexual assault of three minors because cases demonstrated defendant's common scheme, and the jury could separate evidence in each case.). Additionally, evidence of other crimes may be admitted where such evidence is part of the history of the case and forms part of the natural development of the facts. *Commonwealth v. Dozza*, 991 A.2d at 902.

At Lynn's trial, any of the offenses he enabled would be admissible as part of proving his crimes of endangering. This includes not only the sexual assaults committed by Brennan and Avery, with whom he conspired, but also those committed by Avery's co-conspirators. That Avery was part of a trio of pedophiles who passed around a 10-year-old boy for sexual abuse is clearly part of the story and the natural development of the facts of Lynn's own crimes. Lynn abetted and was an accomplice to Avery, who then conspired with the others to sexually assault [redacted] Billy [redacted]. All of this happened while Lynn was supposedly supervising the known abuser – who doctors warned should not be permitted to minister to children.

Lynn's offenses would be admissible at separate trials of Avery and Brennan because he was their accomplice and co-conspirator. He colluded with both priests to hide their prior improper relations with minors, thus enabling them to continue as priests with access to trusting children and parents. Had Lynn not covered for these priests, had he reported them to police, taken steps to remove them from ministry, or even just warned parents and parishioners, they almost certainly could not have continued to prey on parish children.

As demonstrated in the 2005 Grand Jury Report, Lynn had a long history of protecting the Archdiocese's sexually abusive priests. In order to understand his intent, motivation, absence of mistake, and his plan in his dealings with Avery and Brennan, it is necessary to look at his handling of other priests accused of sexual molestations. Evidence in their files reveals the same inaction by Lynn in the face of reports that priests were raping, molesting, and acting immorally with children; the repeated transfers when trouble arose; and the invariable decision to let abusing priests continue in ministry while keeping parents ignorant of the peril.

The shear magnitude of the abuse problem in the Archdiocese, Lynn's familiarity with abusers' habits, and his obvious understanding that abusers almost always have multiple victims all prove that Lynn understood the risk to which he was subjecting children when he failed to report priests' crimes and returned abusers to parishes. The Commonwealth intends to present evidence of Lynn's handling of other abusive priests as other acts evidence pursuant to P.R.E.404(b)(2).

As one such example of Lynn's handling of abuse allegations, Lynn's enabling of the offenses committed by Avery and his co-conspirators, Engelhardt and Shero, would be admissible in a separate trial of Brennan as other acts evidence to show Lynn's common scheme of covering for abusive priests. Likewise, at Avery's trial, Lynn's enabling of Brennan's crimes – including the crimes themselves – would be admissible.

Lynn's actions, and inactions, in handling abuse allegations are also admissible to show how the abusers had the opportunity to abuse again despite supposed supervision. Evidence that Lynn protected and covered for Brennan and Avery so that they could continue in their exalted positions as priests with power and access to vulnerable children

became part of the natural development of the facts – he was their accomplice and their enabler. *See Commonwealth v. Briggs*, 12 A.3d 291 (Pa. 2011)(evidence that defendant purchased a gun unrelated to the charged murders was admissible to show his ability to acquire guns and because conversations that accompanied the purchase were part of the sequence of events that formed the history of the case.)

Shero and Engelhardt should clearly be tried with Avery, their co-conspirator, in the sexual assaults on Billy. (The alternative would be to force the victim to testify to the same facts at three – possibly four – different trials.) At their joint trial, evidence that Lynn was an accomplice and co-conspirator to Avery and that he abetted and enabled Avery's crimes would clearly be admissible. It would be admissible even if the defendants had separate trials. It would be admissible because Lynn was an accomplice to their co-conspirator. Whether they knew it or not, Lynn's enabling of Avery was part of the history of their crimes.

Evidence that Lynn was a co-conspirator with Avery and others would also be admissible because Lynn's deliberate protection of abusers created an environment that provided the opportunity for the priests and teacher to feel safe and emboldened enough to talk to each other about their perverted activities. Lynn and others in the Archdiocese hierarchy created a safe environment for pedophiles. Understanding that is crucial to the story of how these unimaginable crimes could actually take place at a parish school, under the nose of other priests.

Lynn's enabling of Brennan's crimes would be admissible at separate trials of Shero and Engelhardt as just one of many examples of his pattern of protecting abusers, a pattern that created opportunity – that is, the environment in which Shero and Engelhardt

felt free to abuse minors. Lynn's assignment of abusers to St. Jerome in particular made that parish conducive for predators. One of the other priests assigned to the parish in the late 1990s, when Avery, Shero, and Engelhart were working there, was none other than James Brennan. Brennan – who the year before had been accused of improper sexual behavior by Mark Bukowski and his parents, and whose inappropriate and immoral behavior with minors and a former student of his at Cardinal O'Hara had been reported to Lynn – was unlikely to report any suspicious behavior he witnessed.

These defendants – the perpetrators of the sexual assaults and their protectors – are so interconnected that their separate trials would necessarily involve repetition of huge amounts of testimony. Lynn's common scheme, his lack of mistake, his intent, his motive, and his collusion with individual priests and with other Archdiocese officials are key to understanding the assaults on both [redacted] and Mark Bukowski. Proof of the common scheme requires extensive evidence – thousands of pages of documents and testimony from numerous victims, bishops, and other Archdiocese officials. Each trial would be months long. Severance in any fashion would be exceedingly wasteful of judicial resources and unnecessarily traumatic for victims.

WHEREFORE, the Commonwealth respectfully requests this Court to deny the motions to sever.[10]

[10] If the Court determines that the cases of the above-captioned co-defendants are not already joined, the Commonwealth respectfully requests this Court to grant its motions to consolidate them. *See* footnote 7, *supra.*

III. BRENNAN'S MOTION TO DISMISS DUE TO LACK OF JURISDICTIONAL VENUE IS WITHOUT MERIT.

Defendant Brennan filed a Motion to Dismiss on Grounds of Jurisdictional Venue before the March 25, 2011, hearing. Judge Hughes heard argument on the motion, denied it, and announced that her ruling was binding on the Court of Common Pleas. Nevertheless, defendant has raised the exact same claim before this Court. Following are the arguments the Commonwealth presented in response to Brennan's original motion.

Introduction

Defendant Brennan is charged with, among other things, endangering the welfare of children (EWOC) and with criminal conspiracy. These charges are based in part on the principle of vicarious liability. See 18 Pa.C.S. § 306. As one of several actors participating in a common criminal design, defendant committed offenses in Philadelphia by cooperating with accomplices and co-conspirators within the city. As a matter of law, defendant is liable for the criminal acts of his accomplices and co-conspirators just as they are liable for his.[11] The majority of the relevant acts were committed in Philadelphia, the majority of the witnesses are in Philadelphia, and the majority of defendant's

---

[11] This is well established law:

> If one aids and abets in the commission of a crime, he is guilty as a principal. One is an aider and abettor in the commission of any crime, i.e., he has "joined in its commission," if he was an active partner in the intent which was the crime's basic element. Chief Justice GIBSON in Rogers v. Hall, 4 Watts 359, said: "The least degree of concert or collusion between parties to an illegal transaction makes the act of one the act of all." No principle of law is more firmly established than that when two or more persons conspire or combine with one another to commit any unlawful act, each is criminally responsible for the acts of his associate or confederate committed in furtherance of the common design. In contemplation of law the act of one is the act of all.

Commonwealth v. Strantz, 195 A. 75, 79 (Pa. 1937).

accomplices and co-conspirators are in Philadelphia. Venue, therefore, is properly in Philadelphia.

Defendant's motion to dismiss, based on what he refers to as "jurisdictional venue," is out of order. In modern day jurisprudence there no longer is such a thing as "jurisdictional venue." Jurisdiction is not even arguably in question, defendant has not requested a change of venue, venue is not a basis for a motion to dismiss, and venue is properly in this Court. Defendant's motion to dismiss should be denied.

Jurisdiction

At one time it was commonly believed that each judicial district had subject matter jurisdiction only within its territorial boundaries. It is now well understood that this is not the law. Defendant's notion of "jurisdictional venue" hails from decisional law (he has provided the Court with a 1975 decision of the Superior Court) that was long ago overruled. In *Commonwealth v. McPhail*, 547 Pa. 519, 524 (Pa. 1997) (plurality), the Supreme Court explained that, under the state constitution, "the court of common pleas has unlimited original jurisdiction in all cases, actions, and proceedings, and is thus empowered, subject to a few statutory exceptions, to decide any matter arising under the laws of this commonwealth" (footnote omitted). The plurality ruling in *McPhail* was reiterated by a clear and binding majority of the Supreme Court in *Commonwealth v. Bethea*, 828 A.2d 1066, 1074 (Pa. 2003) ("**all** courts of common pleas have **statewide** subject matter jurisdiction in cases arising under the Crimes Code") (emphasis added). The jurisdiction of this Court, as a duly constituted Court of Common Pleas, is

unquestionable and perfectly secure. *See also* 42 Pa.C.S. § 931 (original jurisdiction and venue).[12]

Venue

Defendant's challenge to venue is not, actually, a challenge to venue. Rather than move for a change of venue, he has filed a motion to dismiss. Dismissal obviously is not a proper remedy for allegedly improper venue, nor is a motion to dismiss a proper vehicle for challenging venue. A party who disputes the propriety of the venue is required to move for a change of venue. In such a motion the burden of demonstrating a necessity for the Court to exercise its discretion to change the venue would be on him. *Bethea*, 828 A.2d at 1075 ("The moving party bears the burden of demonstrating the necessity of a change of venue. . . . A petition requesting a change of venue is addressed to the

---

[12] **42 Pa.C.S. § 931. Original jurisdiction and venue**

(a) GENERAL RULE. – Except where exclusive original jurisdiction of an action or proceeding is by statute or by general rule adopted pursuant to section 503 (relating to reassignment of matters) vested in another court of this Commonwealth, the courts of common pleas shall have unlimited original jurisdiction of all actions and proceedings, including all actions and proceedings heretofore cognizable by law or usage in the courts of common pleas.

(b) CONCURRENT AND EXCLUSIVE JURISDICTION. – The jurisdiction of the courts of common pleas under this section shall be exclusive except with respect to actions and proceedings concurrent jurisdiction of which is by statute or by general rule adopted pursuant to section 503 vested in another court of this Commonwealth or in the magisterial district judges.

(c) VENUE AND PROCESS. – Except as provided by section 5101.1 (relating to venue in medical professional liability actions) and Subchapter B of Chapter 85 (relating to actions against Commonwealth parties), the venue of a court of common pleas concerning matters over which jurisdiction is conferred by this section shall be as prescribed by general rule. The process of the court shall extend beyond the territorial limits of the judicial district to the extent prescribed by general rule. Except as otherwise prescribed by general rule, in a proceeding to enforce an order of a government agency the process of the court shall extend throughout this Commonwealth.

discretion of the trial court") (citations omitted). *See* Pa.R.Crim.P. 584 (motion for change of venue).[13]

To the extent that defendant has been successful in even attempting to challenge venue, venue is properly in this Court. Pa.R.Crim.P. 130(a)(3) states (emphasis added):

> When charges arising from the same criminal episode occur in more than one judicial district, the criminal proceeding on all the charges may be brought before one issuing authority in a magisterial district **within any of the judicial districts in which the charges arising from the same criminal episode occurred**.

In this case the Commonwealth has alleged, as substantiated by the evidence presented to the Grand Jury and the report of the Grand Jury, that defendant's criminal activities were closely connected with the conduct of his accomplices within the Philadelphia headquarters of the Archdiocese. Among other things, the evidence establishes that defendant was actually reporting his sexual misconduct to a supervisor or supervisors in Philadelphia, who had an ongoing duty to interrupt and prevent such conduct on his part, and instead actively facilitated it.

While defendant personally carried out criminal acts pursuant to this common design in places other than Philadelphia, this conduct was itself made possible by the active cooperation of his accomplices and co-conspirators. In this sense defendant could be analogized to a projectile which, although it inflicted damage elsewhere, was fired or

---

[13] **Rule 584. Motion for Change of Venue or Change of Venire** (in pertinent part):

(A) All motions for change of venue or for change of venire shall be made to the court in which the case is currently pending. Venue or venire may be changed by that court when it is determined after hearing that a fair and impartial trial cannot otherwise be had in the county where the case is currently pending.

controlled by others in Philadelphia (See Grand Jury report, 39-41).[14] These facts establish a more than sufficient "geographic connection to the underlying crime," *Bethea*, 828 A.2d at 1075, to establish venue in Philadelphia. "[W]here multiple offenses committed across several counties are to be prosecuted in one county, it is not necessary that the county so chosen be the situs of each and every crime charged. It is enough that one of the offenses being tried occurred in that county." *Commonwealth v. Brookins*, 10 A.3d 1251, 1259 (Pa. Super. 2010) (internal quotation marks omitted), *quoting Commonwealth v. Baney*, 860 A.2d 127, 130-131 (Pa. Super. 2004); *Commonwealth v. Bradfield*, 508 A.2d 568, 572 (Pa. Super. 1986).

As the Supreme Court explained in *Bethea*, the concept of venue "recognizes the necessity of bringing a party to answer for his actions in the place where the crime itself occurred because that is where the evidence and the witnesses will most likely be located. It would be nonsensical to transport defendants, evidence and witnesses from Philadelphia to Erie to resolve criminal charges arising in the former location before a judge and/or jury sitting in the latter location. A change of venue from the situs of the action to a different locale is permitted only upon good cause shown." In deciding a motion for change of venue (although here there is none), "[I]t is important to keep in mind the primary concern in change of venue cases; does the location of the trial impact on the ability of the parties to have their case decided before a fair and impartial tribunal." 828 A.2d at 1075.

---

[14] The evidence described in the report establishes (inter alia) that before and after defendant's leave of absence – during which the most serious of his own criminal conduct occurred – Archdiocesan officials were well informed of reports of his continuing misconduct. Some of these reports were made by defendant himself, in which he openly admitted his guilt. Yet the unvarying policy of defendant's accomplices was to continue to transfer him to various assignments, one of which actually led to his further molestation of the same child he had abused during his leave.

Here, the locus of the criminal design was Philadelphia, and the majority of the evidence and related parties are in Philadelphia. In the above words of *Bethea* it would be "nonsensical to transport defendants, evidence and witnesses from Philadelphia to" Chester County to resolve charges that, properly viewed in the light of their conspiratorial nature, clearly arose here. That defendant personally committed criminal acts elsewhere, when those acts are alleged to be connected with an ongoing Philadelphia-based scheme, is no impediment to venue in this district. *See Commonwealth v. Kirkland*, 700 A.2d 482, 484 (Pa. Super. 1997) (although attempted delivery and possession of drugs occurred in Philadelphia, venue was proper in Montgomery County because that was where the conspiratorial planning and communications occurred). There is no credible concern (nor has defendant raised any) that this location will have any adverse impact on the ability of the parties to proceed to a fair resolution of the charges. Instead he relies on misstatements that "All of the allegations in this case occurred in Chester County" (Omnibus Motion, ¶31) and that "There is no evidence that Defendant, James Brennan, had any contact or communications with any of the codefendants in Philadelphia in or to promote, facilitate, or cover up any of the crimes with which Mr. Brennan is charged" (Omnibus Motion, ¶32). As defendant still has not attempted to challenge venue in any procedurally cognizable or substantially valid fashion, his motion to dismiss should be denied.

WHEREFORE, the Commonwealth respectfully requests this Court to deny the motion to dismiss.

IV. JUDGE HUGHES'S RULING THAT THE FACTS IN THE PRESENTMENT SUPPORT THE EWOC CHARGES AGAINST LYNN IS THE LAW OF THE CASE.

Defendant Lynn contends that, since he did not personally and directly supervise the children in question, but rather endangered them only by supervising others who in turn directly supervised them, the crime of endangering the welfare of children (EWOC) is strictly inapplicable to him as a matter of law. Defendant's theory is not only unsupported by any case law on point, but is contrary to the ordinary meaning of the plain language of the statute. Contrary to his theory, that language plainly includes anyone who has a duty to supervise "the welfare of" children. It is not limited only to persons who supervise children. Defendant is clearly chargeable as a principal under the EWOC statute, and in any event is chargeable as an accomplice. Judge Hughes held him for court, finding that the presentment made out a prima facie case. That ruling is the law of the case and the EWOC charge should stand.

As the Secretary for Clergy under Cardinal Bevilacqua in the Archdiocese of Philadelphia, it was defendant's duty to review all reports of sexual abuse of minors by priests, to recommend action, and to monitor the abusers' future conduct. He was to investigate any allegations of sexual abuse by priests, and to review the Archdiocese's records of complaints in order to make certain that no priest with a history of sexual abuse of minors was recommended for assignments, much less assignments that involved access to children. Instead, defendant did the opposite. He repeatedly, knowingly, and deliberately placed sexual predators in positions where they would have easy access to minors. When complaints arose, he arranged for abusers to be transferred to new assignments where their reputations would be unknown and they would have access to

new unsuspecting victims.

The EWOC statute is not limited to persons who directly control children, but includes anyone whose duty of "supervising the welfare of children" consists of supervising others in their exercise of such control.

Defendant Lynn argues that § 4304 does not apply to him because he was not personally "involved" as a caretaker with the hundreds of children whom he endangered by secretly placing known predators in their parishes. That his argument is incorrect is clear from the plain language of the statute.

The starting point of any exercise in statutory construction is the words of the statute itself. *Commonwealth v. Fedorek*, 946 A.2d 93, 98 (Pa. 2008) ("To determine the meaning of a statute, a court must first determine whether the issue may be resolved by reference to the express language of the statute, which is to be read according to the plain meaning of the words") (citation omitted). The provision in question here is the pre-2006 version of 18 Pa.C.S. § 4304, which states:

> A parent, guardian or other person supervising the welfare of a child under 18 years of age commits a misdemeanor of the second degree if he knowingly endangers the welfare of the child by violating a duty of care, protection or support.

The above language is not limited to a parent or guardian, but includes "other person[s]" who are "supervising the welfare of a child." Moreover, it does not say "supervising a child," but instead more broadly refers to supervising "the welfare" of a child. It therefore is not limited to *direct* supervision *of a child*, but includes supervision of the child's *welfare*. To read the statute otherwise would be to assign the words "the welfare of" no particular meaning, contrary to settled principles of statutory construction. *Triumph Hosiery Mills, Inc. v. Commonwealth*, 364 A.2d 919, 921 (Pa. 1976) ("The

Legislature cannot be deemed to intend that its language be superfluous and without import"); 1 Pa.C.S. § 1921(a) (directing courts to interpret statute in a way that gives effect to all its provisions); 1 Pa.C.S. § 1922(2) (directing the presumption that the legislature intends "the entire statute to be effective and certain").

It is also important to note that provisions of the crimes code such as § 4304 "shall be construed according to the fair import of their terms," and "when the language is susceptible of differing constructions it shall be interpreted to further the general purposes stated in this title and the special purposes of the particular provision involved." 18 Pa.C.S. § 105 (Principles of construction). The "special purposes" served by § 4304 were clearly stated by the Supreme Court of Pennsylvania in *Commonwealth v. Mack*, 359 A.2d 770 (Pa. 1976), in which the Court overturned a ruling by the Court of Common Pleas finding that provision overbroad. The Supreme Court explained:

> It must be borne in mind that we are dealing with a juvenile statute. "[T]he purpose of juvenile statutes, as the one at issue here, is basically protective in nature. Consequently these statutes are designed to cover a broad range of conduct in order to safeguard the welfare and security of our children. Because of the diverse types of conduct that must be circumscribed, these statutes are necessarily drawn broadly. It clearly would be impossible to enumerate every particular type of adult conduct against which society wants its children protected. We have therefore sanctioned statutes pertaining to juveniles which proscribe conduct producing or tending to produce a certain defined result . . . rather than itemizing every undesirable type of conduct." ...
>
> ... [T]he Superior Court, upholding the broad purposes of one of our . . . juveniles statutes, noted: "The common sense of the community, as well as the sense of decency, propriety and the morality which most people entertain is sufficient to apply the statute to each particular case, and to individuate what particular conduct is rendered criminal by it."

> Thus, statutes such as the one at issue here are to be given meaning by reference to the "common sense of the community" and the broad protective purposes for which they are enacted. With these two factors in mind, we believe that section 4304 is not facially vague. Phrases such as "endangers the welfare of the child" and "duty of care, protection or support" are not esoteric. Rather, they are easily understood and given content by the community at large. An individual who contemplates a particular course of conduct will have little difficulty deciding whether his intended act "endangers the welfare of the child" by his violation of a "duty of care, protection or support."

Commonwealth v. Mack, 359 A.2d at 772, citations omitted.

The principles set forth by the Supreme Court for understanding the scope of §4304, therefore, include recognition that the EWOC provision is "basically protective in nature" and so is "designed to cover a broad range of conduct in order to safeguard the welfare and security of our children." Since it is "impossible to enumerate every particular type of adult conduct against which society wants its children protected," the provision must "be given meaning by reference to the 'common sense of the community' and the broad protective purposes for which [it was] enacted." *Id.*

Put another way, defendant's argument is untenable because it contends that it is the "common sense of the community" to exclude from the "broad protective purpose" of the EWOC provision a class of persons with a duty, not merely to supervise others who have direct contact with children, but to exercise such supervision by finding and removing pedophiles. The law is plainly otherwise. *See Commonwealth v. Brown*, 721 A.2d 1105, 1107 (Pa. Super. 1998) ("we must focus on the meaning of the term "other person supervising the welfare of a child" as an element of the crime in light of the common sense of the community. . . . Accepting appellant's argument would be to accept the idea that this statute is limited to only those persons with permanent, temporary, or

other quasi-legal custody of children. The common sense interpretation of the language of the statute and this Court's recent case law do not support such a narrow reading").

Under the unambiguous terms of the EWOC statute, defendant was a person "supervising the welfare" of children, with a clearly defined duty to protect them from pedophiles under his authority. By doing just the opposite and exposing children to danger, defendant violated the statute, and he did so in no uncertain terms.

Defendant cites no precedent or any other authority on point in support of his argument. He quotes one case, *Commonwealth v. Brown*, *supra* (where the Court considered the interaction between a child and an unrelated adult living in the same house in order to conclude that the adult was, in fact, supervising the child) for the proposition that involvement and physical presence are the keys to determining whether someone is supervising the welfare of a child (Lynn's Omnibus Motion, 6). But *Brown* does not purport to hold that the statute is *limited* to persons who live with and physically care for a child; it merely holds that it *includes* them. *Brown* certainly does not suggest that the EWOC statute *excludes* persons who do not *personally* have custody or control, or that the statute does not include persons with a *duty of supervising* such persons in their exercise of such custody or control.[15]

---

[15] *Commonwealth v. Gerstner*, 656 A.2d 108 (Pa. 1995), involved corruption of minors, not EWOC. The Court concluded that a babysitter, and indeed anyone "entrusted with custody and control of the child during a parent's absence" can be a "person responsible for the child's welfare." *Commonwealth v. Vining*, 744 A.2d 310, 315 (Pa. Super. 2000), held that "Vining had a duty [under EWOC] to protect Marlayna as she accepted the role of babysitter." It did not, of course, suggest that being a babysitter is the *only* way in which to accept a duty to protect a child. Indeed, *Vining* undermines defendant's argument by establishing that an individual with no prior legal relationship with a child may voluntarily accept a protective duty that, when breached in a manner that endangers the welfare of the child, results in criminal liability. *Office of Disciplinary Counsel v. Christie*, 639 A.2d 782 (Pa. 1994), is not on point, as it concerns a disciplinary action against an attorney convicted of sex offenses against minors in the state of Delaware. It is, however, notable that the two minor victims there were not clients of the attorney, and he was afflicted with a psychiatric disorder that contributed to the offense. Here, it was defendant's duty

Defendant Lynn argues that he is outside the scope of the EWOC law because: "There is no identifiable child to protect; there is no identifiable child in physical or psychologically threatening circumstances and no opportunity for the defendant to take action." In other words, he asserts that he should avoid culpability because his acts endangered hundreds of children at a time – at every parish where he assigned a sexual predator. Therefore, he could not be aware of which particular child the priest might molest. Clearly, he misunderstands the scope of the statute. It is not meant to reward those who endanger children en mass rather than one at a time.

Defendant's claim that he had no opportunity to take action is similarly absurd. He could have recommended Avery's permanent removal from ministry in 1992 when he learned of his sexual assault of [redacted]. He could have informed the priest's parish that Avery was resigning because of a report that he had abused a teenager, rather than because he was sick. He could have supervised Avery in accordance with the instructions of the priest's therapists to assure that he was not ministering to adolescents. He could have warned the parishioners at St. Jerome that Avery should not be alone with children.

---

to protect the victims, and he has no psychiatric excuse. *Commonwealth v. Butler*, 621 A.2d 630 (Pa. Super. 1993) (*en banc*), simply has nothing to do with any issue in this case, and its holding (having to do with alleged promises by police to drop or modify charges as a supposed ground for relief) was abrogated by *Commonwealth v. Stipetich*, 652 A.2d 1294 (Pa. 1995). While *Butler* involved allegations of improper contact between a minor and the pastor of a church school, this attenuated factual echo is the sole connection between that case and this. *Commonwealth v. Colwell*, 3 Pa. D & C 153 (1922), a Common Pleas Court opinion that predates the 1972 enactment of the EWOC statute by fifty years, likewise has no connection whatever to the issue here. The statute at issue in that case, § 98 of the Penal Code Of 1860, governed persons having the "legal care and control of any infant." The language of the EWOC provision is obviously different, and much broader. Finally, *Commonwealth v. Taylor*, 471 A.2d 1228, 1231 (Pa. Super. 1984), like *Vining*, undermines defendant's position. In that case Taylor took two children (including his daughter) on an overnight trip and sexually assaulted them in a motel room. In rejecting his sufficiency claim contesting his EWOC conviction, the Superior Court noted that it could find no case "similar to that attributed to appellant in the instant case. Nevertheless, the 'sense of decency, propriety and the morality which most people entertain' enables us to hold that the evidence was sufficient to permit a jury to find appellant's conduct culpable."

He could have heeded another priest's warnings that Avery was still engaging in the, supposedly disallowed, disc jockeying activities that led to James 's abuse. Instead of imploring Avery to "be more low-key" he could have recommended removal of the obviously disobedient and unruly priest. Any of these actions would have denied Avery the opportunity to molest Billy .

With respect to Brennan, Lynn could, and should, have investigated reports that the priest and school counselor hosted parties with high school students and had one of his students living with him under the ruse that he was a nephew. Instead of moving Brennan away from the oversight of those who reported his improper behavior, and placing him in a parish overseen by a friend, Lynn could have suggested more oversight and supervision. When Lynn and Brennan subsequently discussed "rumors" that Brennan was "shacking up" with his former student, Lynn could have demanded to know if the rumors were true and then taken appropriate disciplinary action. Instead he assured Brennan that the illicit relationship would not be included in the priest's personnel file so as not to hamper future assignments. Mark Bukoski was raped within months of that conversation.

Referring to the report of a previous grand jury in 2005, defendant also attempts to exploit the fact that he was not charged under EWOC with prior conduct of the same nature as that here. That report concluded, incorrectly, that the offense was too narrow to cover conduct such as his. But this is legally irrelevant. At best the Commonwealth's inconsistency proves only that one of its conflicting positions was wrong, not that its current position is wrong. And in any case, it is for the court, not the parties, to decide the purely legal issue presented here, the resolution of which is not controlled by the

Commonwealth's prior discretionary decision not to charge defendant in the past. "When the language of a statute is clear and unambiguous, the judiciary must read its provisions in accordance with their plain meaning and common usage." *Commonwealth v. Bell*, 516 A.2d 1172, 1175 (Pa. 1986); *accord*, *Commonwealth v. Ahlborn*, 699 A.2d 718, 720 (Pa. 1997); *Commonwealth v. Dugan*, 769 A.2d 512, 515 (Pa. Super. 2001).

It is also significant that, following the 2005 grand jury report opining (erroneously) that the EWOC statute might not apply to supervisors such as defendant, the legislature responded by amending the EWOC provision in 2006 to make it even more plain that it applies to one who "employs or supervises" others. This change clarifies and reinforces the already existing legislative intent that the provision applies to persons "supervising the welfare" of children, which already included individuals in defendant's position. *See Commonwealth v. Corporan*, 613 A.2d 530, 531 (Pa. 1992) (noting revision of the statute to more clearly state what had already been manifest in the unambiguous language of the prior provision); *see also Commonwealth v. Lassiter*, 722 A.2d 657, 661 n.3 (Pa. 1998) ("this Court has long held that the actions undertaken in subsequent sessions of the Legislature are relevant in interpreting a statute which was passed in a previous session of the Legislature") (citation omitted).[16]

---

[16] *Accord*, *Helvering v. New York Trust Co.*, 292 U.S. 455, 468-469 (1934) ("Mere change of language does not necessarily indicate intention to change the law. The purpose of the variation may be to clarify what was doubtful and so to safeguard against misapprehension as to existing law"); *Colmenares v. Braemar Country Club, Inc.*, 63 P.3d 220, 222 n.2 (Ca. 2003) ("Even a material change in statutory language may demonstrate legislative intent only to clarify the statute's meaning") (citation omitted); *State v. Guzman-Juarez*, 591 N.W.2d 1, 3 (Iowa 1999) ("the time and circumstances of the amendment . . . may indicate that the legislature merely intended to interpret the original act by clarifying and making a statute more specific") (citation omitted); *Holmes v. Maryland Reclamation Assoc., Inc.*, 600 A.2d 864, 880 (Md. Ct. Spec. App. 1992) ("reason and logic dictate that the change in the language clarifies the General Assembly's intent"); *Fund Manager, Pub. Safety Personnel Retirement Sys. v. Tucson Police & Fire Pub. Safety Personnel Retirement Sys. Bd.*, 708 P.2d 92, 97 (Ariz. Ct. App. 1985) ("An amendment which, in effect, construes and clarifies a prior statute will be accepted as the legislative

Finally, defendant is properly charged under the EWOC provision as an accomplice, based on his vicarious criminal liability for the conduct of his underlings. A person is legally accountable for the conduct of another if "he is an accomplice of such other person in the commission of the offense." 18 Pa.C.S.A. § 306(b). One is an accomplice of another in the commission of an offense if "with the intent of promoting or facilitating the commission of the offense, he . . . aids or agrees or attempts to aid such other person in planning or committing it . . ." 18 Pa.C.S.A. § 306(c). Such aid may be established "by the least degree of concert or collusion between the accomplice and the principal." *Commonwealth v. Woodward*, 614 A.2d 239, 242 (Pa. Super. 1992) (citations omitted). The law imposes criminal culpability not only where an accused has engaged in prohibited conduct *as* a principal but also where he has participated in a crime *with* a principal. *Commonwealth v. Spotz*, 716 A.2d 580, 586 (Pa. 1998) (shared criminal intent between the principal and his accomplice makes both culpable for murder).

In order to be liable as an accomplice to others who committed EWOC, Defendant Lynn does not need to be a parent, guardian, or even another person supervising the welfare of a child. Anyone who knowingly assists someone to endanger children is guilty of EWOC. 18 Pa.C.S. §306(e) ("In any prosecution for an offense in which criminal liability of the defendant is based upon the conduct of another person pursuant to this section, it is no defense that the offense in question, as defined, can be committed only by a particular class or classes of persons, and the defendant, not belonging to such class or classes, is for that reason legally incapable of committing the offense in an individual capacity.")

---

declaration of the original act") (citations omitted); *State ex rel. Szabo Food Services, Inc. v. Dickinson*, 286 So. 2d 529, 531 (Fla. 1973) ("The circumstances here are such that the Legislature merely intended to clarify its original intention rather than change the law").

Here, there is abundant evidence that defendant acted in concert with others, for the aid and benefit of pedophiles in their criminal efforts. Such evidence is more than sufficient to charge defendant with EWOC under a theory of accomplice liability. A theory of vicarious liability is not itself a crime, and need not be specified in the information; and an accused may be convicted under such a theory even if charged as a principal. *See Commonwealth v. McDuffie*, 466 A.2d 660, 662 (Pa. Super. 1983) (bill charging a person with a crime as a principal who acted with another, also allows conviction as an accomplice).

With respect to accomplice liability, the Supreme Court has explained that the prosecution may argue to the jury for a verdict convicting the accused of a substantive crime as an accomplice even where the information only charged him as a principal, as long as "the defendant is put on notice that the Commonwealth may pursue theories of liability that link the defendant and another in commission of crimes." *Spotz,* 716 A.2d at 588; *Commonwealth v. Harper*, 660 A.2d 660 596, 599 (Pa. Super. 1995) (even though Commonwealth focused on Harper as the principal, he could be convicted of murder as an accomplice where Commonwealth's evidence showed that two men assaulted the victim); *Commonwealth v. Potts,* 566 A.2d 287, 293 (Pa. Super. 1989) (Commonwealth's failure to proceed on theory of conspiracy or accomplice liability did not preclude his conviction as accomplice, where he was on notice, from Commonwealth's opening argument, that vicarious liability was in issue); *Commonwealth v. Smith*, 482 A.2d 1124, 1127 (Pa. Super. 1984) (even though Smith was accused as a principal, he could be convicted of murder as an accomplice where the evidence showed that he acted with another).

Defendant is properly charged with EWOC.

WHEREFORE, the Commonwealth respectfully requests this Court to deny the motion to dismiss.

Respectfully submitted:

R. SETH WILLIAMS
District Attorney

BY: Mariana Sorensen
Mariana Sorensen
Assistant District Attorney

Hugh J. Burns, Jr.
Chief, Appeals Unit

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY

TRIAL DIVISION - CRIMINAL SECTION

COMMONWEALTH OF PENNSYLVANIA	:	
v.	:	**CP-51-CR-0003525-2011**
CHARLES ENGELHARDT	:	
COMMONWEALTH OF PENNSYLVANIA	:	
v.	:	**CP-51-CR-0003527-2011**
EDWARD V. AVERY	:	
COMMONWEALTH OF PENNSYLVANIA	:	
v.	:	**CP-51-CR-0003528-2011**
JAMES BRENNAN	:	
COMMONWEALTH OF PENNSYLVANIA	:	
v.	:	**CP-51-CR-0003529-2011**
BERNARD SHERO	:	
COMMONWEALTH OF PENNSYLVANIA	:	
v.	:	**CP-51-CR-0003530-2011**
WILLIAM J. LYNN	:	

VERIFICATION

The undersigned hereby verifies that the facts set forth in the foregoing motion are true and correct to the best of my knowledge, information, and belief. This verification is made subject to the penalties for unsworn falsification to authorities under 18 Pa.C.S. § 4904.

Mariana Sorensen

Mariana Sorensen
Assistant District Attorney
Special Investigations Unit
(215) 686-8754

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY

TRIAL DIVISION - CRIMINAL SECTION

COMMONWEALTH OF PENNSYLVANIA	:	
v.	:	**CP-51-CR-0003525-2011**
CHARLES ENGELHARDT	:	
COMMONWEALTH OF PENNSYLVANIA	:	
v.	:	**CP-51-CR-0003527-2011**
EDWARD V. AVERY	:	
COMMONWEALTH OF PENNSYLVANIA	:	
v.	:	**CP-51-CR-0003528-2011**
JAMES BRENNAN	:	
COMMONWEALTH OF PENNSYLVANIA	:	
v.	:	**CP-51-CR-0003529-2011**
BERNARD SHERO	:	
COMMONWEALTH OF PENNSYLVANIA	:	
v.	:	**CP-51-CR-0003530-2011**
WILLIAM J. LYNN	:	

CERTIFICATION OF SERVICE

I, Mariana Sorensen, Assistant District Attorney, hereby certify that on July 22, 2011, I mailed, faxed, and/or emailed a copy of the foregoing motion to:

For James Brennan

Michael T. van der Veen
Kats, van der Veen & Associates
1 Bustleton Pike
Feasterville PA 19053
Phone: (215)396-9001
Fax: (215)396-8388
email: mtv@mkats.com

For William Lynn

Jeff Lindy, Esquire
1800 JFK Blvd. Suite 1500
Philadelphia, PA 19103
Email: jlindy@LindyLawFirm.com

Thomas Bergstrom, Esquire
Buchanan Ingersoll & Rooney
Two Liberty Place
50 S. 16th Street, Suite 3200
Philadelphia, PA 19102-2555
Email: thomasbergstrom@bipc.com

For Edward Avery

Michael Wallace, Esquire
42 South 15th Street #1104
Philadelphia, PA 19102
Email: mikeywallace@hotmail.com

For Charles Engelhardt

Michael McGovern, Esquire
1617 JFK Blvd. #1500
Philadelphia, PA 19103-1815
Email: mmcgovern@mdmc-law.com

For Bernard Shero

Burton Rose, Esquire
1731 Spring Garden Street
Philadelphia, PA 19130-3915
email: barose@barose.law

Mariana Sorensen

Mariana Sorensen
Assistant District Attorney
Special Investigations Unit
(215) 686-8754