

STATE OF NEW MEXICO  
COUNTY OF SANTA FE  
FIRST JUDICIAL DISTRICT

STATE OF NEW MEXICO,  
Plaintiff,

v.

No. D-101-CR-2024-00013

ALEXANDER (ALEC) RAE BALDWIN,  
Defendant.

**ORDER DENYING NON-PARTY CD REQUESTS  
FOR RECORDINGS OF GRAND JURY PROCEEDINGS**

THIS MATTER came before the Court on the Court's own motion following the receipt and filing of multiple CD Requests through which non-parties requested the recordings of the grand jury proceedings that gave rise to the instant action. Having reviewed the requests and being otherwise fully advised, THE COURT FINDS, CONCLUDES, AND ORDERS:

**RULING AND ANALYSIS**

1. The Court denies the requests due to the nature of grand jury proceedings, their historical confidentiality, and in light of the requirements imposed by the rules, statutes, and case law that govern the grand jury process.
2. A grand jury "serves two primary functions: (1) to determine whether there is probable cause to believe that the target of an investigation has committed a crime and (2) to protect innocent citizens from hasty, malicious, or arbitrary prosecutions." *Herrera v. Sanchez*, 2014-NMSC-018, ¶ 15, 328 P.3d 1176. "The grand jury sits without direct supervision from the grand jury judge and fulfills its constitutional responsibilities with help from a prosecuting attorney, who serves as an aide to the grand jury." *Id.* A grand jury proceeding does not offer the same level of protection to the accused, also referred to as the target, as

a normal trial setting. For example, the rules of evidence do not apply to a grand jury proceeding, and the trial court may not dismiss grand jury indictments based on disputes regarding whether the evidence considered by the grand jury would have been admissible at trial. *See* Rule 5-302.2(C)(1) NMRA; *State v. Martinez*, 2018-NMSC-031, ¶ 15, 420 P.3d 568. As a result of the unique nature of grand jury proceedings, there is a “cloak of secrecy which has for centuries surrounded [the grand jury’s] sessions.” *Baird v. State*, 1977-NMSC-067, ¶ 10, 90 N.M. 667. This cloak of secrecy “is designed to protect not only the jurors and witnesses, but to safeguard as well the interests of the state, the accused, and society as a whole.” *Id.*

3. Accordingly, such pre-indictment proceedings are automatically sealed pursuant to Rule 5-123(C)(1)(d) NMRA. Further, per UJI 14-8001 NMRA, the grand jury instructions explain, “[n]o one should have any advance information as to the activities of the grand jury or as to any activities which are planned by the grand jury.” Thus, as a general rule, before the grand jury returns either a no-bill or indictment, any records of grand jury proceedings are confidential and automatically sealed.
4. If the grand jury returns a no-bill, *i.e.*, no indictment was entered, then all records of the grand jury proceedings remain sealed and cannot be released without an order by the grand jury judge. *See* Rule 5-123(C)(1)(a) NMRA; *see also* NMSA 1978, § 31-6-5 (2003) (“No-bills shall be sealed and filed with the district court clerk. Upon application to the court by the state for good cause shown, or upon request by the target, the court may release a sealed no-bill.”). If the grand jury returns an indictment, as it has in this case, then Local Rule LR1-303(A) NMRA, Local Rule LR1-303(C) NMRA, and Rule 5-506 NMRA are triggered.

5. Local Rule LR1-303 states, in part, “Grand jury proceedings, including but not limited to subpoenas for witnesses, docket records, and returns of service, are confidential until an indictment is filed with the court or, if the court orders that an indictment be sealed until arrest, until the indictment is unsealed on arrest.” LR1-303(A). The rule’s language suggests that at least some pre-indictment records lose their confidentiality upon indictment and are subject to disclosure.
6. However, recordings of grand jury proceedings are governed by a different subsection of the local rule. LR1-303(C) specifically governs the handling of recordings of grand jury proceedings, and directs that “[t]he audio recording of any grand jury proceedings shall be deposited with the clerk of the court no later than fifteen (15) days after the grand jury proceedings. The recordings shall be placed in the custody of the clerk and subject to rules relating to records in the custody of the clerk.” (emphasis added).
7. This second sentence of LR1-303(C) is extremely consequential as that language triggers the application of Rule 5-506(C). Rule 5-506(C) states, “[a]t any time after indictment, on request of a party, the district court clerk shall furnish a copy of the tape recording of: (1) the defendant’s testimony before the grand jury; and (2) the entire proceedings, unless the state objects to some portions of the tape, in which case the court shall determine which portions of the proceedings are to be furnished to defendant.”
8. Rule 5-506 uses the terms defendant, state, and party to identify to whom the rule applies. While both defendant and state are the obvious actors in a criminal case, the term party could more broadly mean a third-party, or if defined narrowly, a party to the case. Party is not defined in Rule 5-506; however, it is defined elsewhere in the Rules of Criminal

Procedure for the District Courts. On this point, Rule 5-106 NMRA and Rule 5-123 NMRA are instructive.

9. First, as to Rule 5-106, governing peremptory challenges, the rule defines “party” as “a defendant, the state, or an attorney representing the defendant or the state.” Rule 5-106(A). Second, as to Rule 5-123, governing the public inspection and sealing of court records, the rule defines “public” as “any person or entity, except the parties to the proceeding, counsel of record and their employees, and court personnel.” Rule 5-123(B)(4). Thus, Rule 5-123 explicitly differentiates a party or parties from members of the public. In other words, a party is not merely “any person or entity,” but rather the named litigants in a proceeding. This construction of party, which excludes the general public, is consistent with the listed actors set forth in Rule 5-506.
10. In addition, Rule 5-506 explains the roles of the contemplated actors to whom the Clerk of the Court shall release a recording of a grand jury proceeding. For example, the rule states that “on the request of a party” the recording of the “entire proceedings” shall be given, but the state may object to certain portions being “*furnished to defendant.*” Rule 5-506(C)(1),(2) (emphasis added). The court may also “prohibit disclosure” of certain portions of the testimony based on a “substantial risk of harm to some person,” or portions that are “irrelevant to the defendant.” Rule 5-506(D). These subsections of Rule 5-506 contextualize the actions allowed by the rule as actions taken by either the defendant or by the state as parties to the criminal action.
11. Therefore, the Court concludes that the Rules of Criminal Procedure for the District Courts do not authorize a third-party, or non-party, to obtain a copy of recordings of grand jury proceedings.

12. Furthermore, beyond the Rules of Criminal Procedure for the District Courts, the Court concludes that New Mexico's statutes and case law do not support the disclosure of recordings of grand jury proceedings to a third-party or non-party.
13. For instance, several provisions of Chapter 31, Article 6 of the New Mexico Statutes Annotated—which concerns the grand jury—prescribes the utmost confidentiality that must be afforded to a grand jury proceeding. *See, e.g.*, NMSA 1978, § 31-6-4(B) (2003) (“All taking of testimony shall be in private with no persons present other than the grand jury, the persons required or entitled to assist the grand jury and the attorney, if any, of the target.”); § 31-6-4(C) (“Persons required or entitled to be present at the taking of testimony before the grand jury include the district attorney and the attorney general and their staffs, interpreters, court reporters, security officers, the witness and an attorney for the target.”); § 31-6-4(D) (“If a target has his attorney present, the attorney may be present only while the target witness is testifying and may advise the witness but may not speak so that he can be heard by the grand jurors or otherwise participate in the proceedings.”).
14. The grand jurors are sworn to secrecy, and the oath that they are required to take reads, in part, as follows:

. . . further that you will forever keep secret whatever you or any other juror may have said or in what manner you or any other juror may have voted on any matter before you; and that you will keep secret the testimony of any witness heard by you unless ordered by the court to disclose the same in the trial or prosecution of the witness for perjury before the grand jury, so help you God.

NMSA 1978, § 31-6-6(A)(1) (1979). If a grand juror violates the oath they are guilty of a misdemeanor. *See* § 31-6-6(B). The consequence of criminal charges for a violation of the oath demonstrates the seriousness of a grand juror's duty to abide by the secrecy provisions of the grand jury statutes.

15. As demonstrated by the statutory authority above, the individuals entitled to be present during a grand jury proceeding are limited to those essential to the grand jury process. Even the target's attorney is limited in the scope of their presence before the grand jury. To allow other individuals into the grand jury process, via distribution of recordings to the public, is contrary to the limited access granted by the grand jury statutes.
16. This Court also recognizes that grand jurors are sworn to uphold the highest level of secrecy and must "forever keep secret" information learned during grand jury proceedings. It would be absurd to hold grand jurors to such a high standard, and yet allow the general public to access recordings of grand jury proceedings without restriction. *See* NMSA 1978, § 12-2A-18(A)(3) (1997) ("A statute or rule is construed, if possible, to: . . . (3) avoid an unconstitutional, absurd or unachievable result."); *see also State v. Davis*, 2003-NMSC-022, ¶ 13, 134 N.M. 172 ("No rule of construction necessitates our acceptance of an interpretation resulting in patently absurd consequences."); NMSA 1978, § 12-2A-20(B)(6) (1997) (instructing that "a statute or rule on the same or a related subject, even if it was enacted or adopted at a different time" may be used to aid in statutory construction).
17. In addition to statute, New Mexico case law recognizes the historical secrecy surrounding grand jury proceedings. For example, in *Baird v. State*, the New Mexico Supreme Court acknowledged that "[f]or centuries grand jury sessions have been surrounded by a cloak of seclusion and secrecy that has been jealously guarded and preserved as the only means of insuring that the jury be permitted the freedom of action necessary for a vigorous and effective discharge of its duties." *Baird*, 1977-NMSC-067, ¶ 7; *cf. U.S. v. Sells Engineering, Inc.*, 463 U.S. 418, 424 (1983) ("We consistently have recognized that the

proper functioning of our grand jury system depends upon the secrecy of grand jury proceedings.” (citation and quotation marks omitted)).

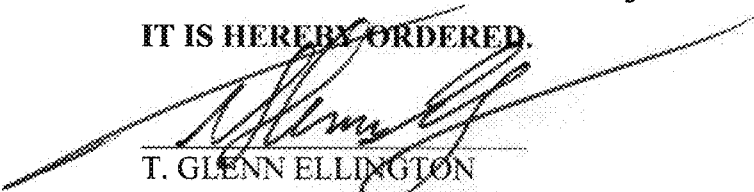
18. In addition, the New Mexico Court of Appeals explains that the grand jury “has been regarded as the shield of innocence against the plottings of private malice, as the defense of the weak against the oppression of political power, and as the guard of the liberties of the people against the encroachments of unfounded accusations from any source.” *State v. Hill*, 1975-NMCA-093, ¶ 7, 88 N.M. 216 (quoting *In Matter of Opinion of Justices*, 123 N.E. 100, 100 (Mass. 1919)). Critically, the secrecy of the grand jury’s proceedings is the life force that animates these democratic safeguards. *See id.* (“[T]hese blessings accrue from the grand jury because its proceedings are secret and uninfluenced by the presence of those not officially and necessarily connected with it. It has been the practice for more than two hundred years for its investigations to be in private, except that the district attorney and his assistant are present.”).

19. In conclusion, neither New Mexico’s grand jury statutes nor case law contemplate the dissemination or disclosure of recordings of grand jury proceedings to non-parties to a criminal action. Rather, both statute and case law confirm that a grand jury’s proceedings must be maintained as confidential and secret.

### CONCLUSION

IT IS THEREFORE ORDERED that all non-party CD Requests for copies of recordings of grand jury proceedings are **DENIED**. IT IS FURTHER ORDERED that the Clerk of the Court, and the parties and their counsel, are ordered to not distribute or otherwise disclose any recording or transcript of the grand jury proceedings related to the instant matter to any non-party.

IT IS HEREBY ORDERED.

  
T. GLENN ELLINGTON  
DISTRICT COURT JUDGE  
DIVISION VII

**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that on the date of acceptance for e-filing a true and correct copy of the foregoing was e-served on counsel registered for e-service in this matter as listed below.

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