California Supreme Court Limits Disclosure of Grand Jury Evidence to Civil Litigants

ROBERT A. HOLLAND

The author explores the background of California's limits on the disclosure of grand jury evidence, a recent decision by the California Supreme Court finding that the state's courts have no inherent power to order disclosure to civil litigants, and some of the ruling's practical implications for future California civil actions.

The California Supreme Court in *Goldstein v. Superior Court*[1] has clarified that California courts have no inherent power to order disclosure of grand jury evidence to civil litigants under circumstances that are not specified in the California Penal Code. Because the number of California county-level grand jury investigations is steadily rising, and it is increasingly common for grand jury investigations to precede or accompany civil actions for damages or restitution, California's limits on civil litigants' access to grand jury evidence have the potential to affect a greater number of civil litigation matters than ever before. This article explores the background of California's limits on the disclosure of grand jury evidence, the *Goldstein* decision, and some of its practical implications for future California civil actions.

Robert A. Holland is a partner in the Los Angeles office of Sidley Austin LLP. Mr. Holland's practice emphasizes appeals and writs, as well as complex and multi-party litigation in state and federal trial courts. He can be reached at rholland@sidley.com.

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BACKGROUND

The Grand Jury's Function and Reasons for the Secrecy Requirement

As explained by the California Supreme Court 20 years ago in *McClatchy Newspapers v. Superior Court*,[2] a grand jury has three basic functions: (1) "to weigh criminal charges and determine whether indictments should be returned"; (2) "to weigh allegations of misconduct against public officials and determine whether to present formal accusations requesting their removal from office"; and (3) "to act as the public's watchdog by investigating and reporting upon the affairs of local government. Of these functions, the watchdog role is by far the one most often played by the modern grand jury in California."[3]

California, like other jurisdictions, deems secrecy of grand jury evidence to be essential to a grand jury's ability to carry out these functions. As the court observed in McClatchy:

> [I]f [grand jury] proceedings were made public, many prospective witnesses would be hesitant to come forward voluntarily, knowing that those against whom they testify would be aware of that testimony. Moreover, witnesses who appeared before the grand jury would be less likely to testify fully and frankly, as they would be open to retribution as well as to inducements.[4]

The Limited Situations in Which California Statutes Authorize Disclosure

Based on the importance of secrecy to the fulfillment of a grand jury's functions, the California legislature has specified only four situations in which disclosure of grand jury evidentiary evidence is permissible.

- *First*, "by court order[,] the testimony of a witness may be disclosed to determine whether it is consistent with testimony given before the court or when relevant to a charge of perjury."[5]
- *Second*, "when an indictment is returned, transcripts of testimony

taken before the grand jury are to be delivered to the defendant and thereafter filed for public access."[6]

- *Third*, "evidentiary materials gathered by one grand jury may be disclosed to a succeeding grand jury."[7]
- *Fourth*, with court approval, a civil grand jury "may release unprivileged evidentiary materials to the public, so long as the names of witnesses and any facts identifying the witnesses are withheld."[8]

California's Pre-*Goldstein* Refusal To Allow Disclosure To The Public Without Statutory Authorization

Before *Goldstein*, the California Supreme Court already had held that neither grand juries nor California courts have inherent power to allow disclosure of grand jury evidence in situations other than those specified by the California legislature.

The court held in *McClatchy* that a grand jury does not have inherent power to disclose evidentiary material to the public. The court reasoned that "the grand jury's powers are only those which the Legislature has deemed appropriate" and that "several statutes governing the grand jury's operation persuasively indicate that the grand jury is not empowered to disclose raw evidentiary materials" absent explicit statutory authority to do so.[9] The court particularly emphasized California Penal Code § 924.4's authorization to disclose evidence to a succeeding grand jury, explaining:

> If prior to the enactment of section 924.4 a grand jury could not disclose evidentiary materials even to a succeeding grand jury, a fortiori it could not, absent separate and express statutory permission, disclose such materials to the public. And further, if before section 924.4 was enacted in 1975 the grand jury was actually empowered to disclose evidence and other materials as it pleased, the Legislature's grant of specific authority to release such materials to succeeding grand juries would have been unnecessary and the enactment of section 924.4 meaningless.[10]

Eleven years later, the court held in *Daily Journal Corp. v. Superior Court*[11] that California courts likewise have no inherent power to order disclosure of grand jury evidence. Relying primarily on its reasoning in *McClatchy*, the court concluded: "[I]f superior courts could disclose materials based only on their inherent powers, the statutory rules governing disclosure of grand jury testimony would be swallowed up in that large exception." Thus, "whatever exercise of authority to disclose grand jury materials has not been expressly permitted by the Legislature is prohibited."[12]

McClatchy and *Daily Journal* together prohibit disclosure of grand jury evidence to the public under any circumstances not specifically authorized by statute. The question left open by those two decisions and presented in *Goldstein* was whether the same prohibition applies to the disclosure of grand jury evidence to civil litigants.

THE *GOLDSTEIN* CASE

Plaintiff's Civil Action and Requests for Access to Grand Jury Evidence for Use in Support of His Claims

The plaintiff in *Goldstein* was convicted of murder based in part on the testimony of a jailhouse informant.[13] Several years after his conviction, the Los Angeles County grand jury issued a public report regarding the misuse of jailhouse informants over the preceding pervasive misuse of jailhouse informants during the preceding 10 years.[14] The Superior Court ordered that evidence obtained and used by the grand jury were "to be kept secure by the court" and "not to be viewed, inspected or copied except by order of the Presiding Judge, Assistant Presiding Judge, or the Supervising Judge of the Criminal Division."[15]

The grand jury's public report prompted the plaintiff to seek a writ of habeas corpus in federal court.[16] Based in part on evidence that the informant who testified against the plaintiff had received benefits in exchange for his testimony, the federal court granted the petition, finding that the informant "fits the profile of the dishonest informant that the Grand Jury Report found to be highly active…at the time of [plaintiff's] conviction."[17]

The plaintiff then brought an action in federal court under 42 U.S.C. § 1983 based on the allegation that police officers and members of the District Attorney's office had wrongfully obtained his conviction by misusing jailhouse informant testimony.[18] While his action was pending, the plaintiff requested by letter that the Superior Court give him access to the evidence considered by the grand jury for use in support of his Section 1983 claims.[19]

The Superior Court's and Court of Appeal's Rulings

In response to the plaintiff's letter, the Superior Court took the position that the plaintiff could obtain that evidence only by serving a federal subpoena.[20] However, when the plaintiff served a federal subpoena, the Superior Court asked him to withdraw the subpoena and instead make a motion to the Superior Court for release of the evidence.[21] The plaintiff complied and filed a motion seeking access to the evidence under several California Penal Code Sections, including Sections 924.2 and 929.[22] The Superior Court denied the motion.[23]

The plaintiff petitioned the California Court of Appeal for a writ of mandate compelling the Superior Court to grant him access to the grand jury evidence.[24] The Court of Appeal granted the petition, rejecting the plaintiff's arguments that disclosure was permitted by the Penal Code sections but holding that California courts have inherent authority to order disclosure of grand jury evidence to civil litigants "to prevent injustice."[25] The Court of Appeal relied in part on: (1) the standards announced in *Douglas Oil Co. v. Petrol Stops Northwest* that allow disclosure of grand jury evidence pursuant to Fed. R. Crim. Proc. 6(e) "when so directed by a court preliminarily to or in connection with a judicial proceeding"; and (2) the California Supreme Court's statement in *Ex Parte Sontag* that disclosure of grand jury evidence may be permitted for "the purposes of public justice."[26] The Court of Appeal distinguished *McClatchy* and *Daily Journal* on the ground that those cases had involved disclosures to the public rather than only to civil litigants.[27]

The Supreme Court's Decision

The Supreme Court reversed, holding that its conclusions and reasoning in *McClatchy* and *Daily Journal* applies equally to disclosures to

civil litigants. As the court stated: "If the courts had broad inherent authority to release grand jury materials to litigants in the interests of justice, there would be no need for the statutes permitting disclosure in limited circumstances. We have not distinguished between public and private disclosure."[28]

The court explained that the standards announced in *Douglas Oil* based on Fed. R. Crim. Proc. 6(e) were inapplicable because California "has taken a different approach. Our statutes give the courts discretion to order disclosure only in limited circumstances[,]" leaving "no room for the courts to fashion broadly applicable standards like those articulated in *Douglas Oil*."[29] The court noted that the plaintiff is "free to renew his attempt to obtain discovery by federal subpoena," which would be subject to the federal disclosure standard.[30] However, the court also cautioned that federal courts are in "conflict" regarding "the extent of federal courts' power to compel disclosure over the objection of a state court."[31]

The court also clarified that *Sontag* does not give California courts inherent power to order disclosure of grand jury evidence to a litigant "in the interests of justice."[32] To the contrary, *Sontag* held that "[t]he mere inconvenience or difficulty of proving [a] fact ought not to overrule the many grave objections" to disclosure "not only not directly authorized, but expressly forbidden by statute."[33] *Sontag* did leave open the possibility that grand jury evidentiary materials could be disclosed in without express statutory authorization "when their disclosure is absolutely necessary."[34] However, the fact that plaintiff in *Goldstein* had been "able to secure his release on habeas corpus without the [grand jury] evidentiary materials" confirmed that his request for the grand jury materials was based not on absolute necessity, but rather on the "'mere inconvenience or difficulty of proving the fact[s]' needed to make out his civil case."[35] The court in *Goldstein* therefore "le[ft] for another day whether a private litigant may obtain disclosure of grand jury [evidentiary] materials without express statutory authorization, on a showing of absolute necessity."[36]

Finally, the court concluded that the plaintiff had not established a basis for disclosure under any applicable Penal Code section. Section 919 did not apply because the grand jury had not made any information available to the public.[37] And, although Section 924.2 might permit disclosure

of relevant portions of grand jury testimony to impeach a witness at trial, the plaintiff had not made a request for the "limited form of disclosure" allowed by that section.[38] The court therefore "le[ft] it for the superior court and the federal district court, with the cooperation of the parties, to sort out additional appropriate procedures for providing [plaintiff] with access to the testimony of grand jury witnesses under section 924.2" if he later chose to seek disclosure under that section.[39]

GOLDSTEIN'S PRACTICAL SIGNIFICANCE

The *Goldstein* decision is practically significant in at least two respects. First, it is likely to affect a considerably greater number of civil actions in the future than have been affected in the past by the *McClatchy* and *Daily Journal* decisions.[40] Second, it gives California civil litigants a unique incentive to invoke federal court jurisdiction instead of or in addition to state court jurisdiction in civil actions involving issues that are the subjects of California grand jury investigations.

The Increasing Number of California Cases Likely To Be Affected by *Goldstein*

The use of California county-level grand juries is increasing. For many years, county-level civil grand juries have routinely investigated the conduct of government agencies and officials and private entities and individuals on an array of issues that also are frequent subjects of civil actions. Those topics have included, among others, health care, education, law enforcement and correctional services, environmental regulation, alternative energy, sanitation, and disaster preparedness.[41] However, counties recently have begun to supplement these civil grand juries with additional, separate grand juries devoted exclusively to criminal matters. For example, Los Angeles County first began impaneling an additional criminal grand jury, in addition to the civil grand jury, in July, 2000.[42] And, in 2008, the legislature authorized Los Angeles County to impanel a second criminal grand jury.[43]

Moreover, it has become increasingly common for criminal grand jury investigations to precede or accompany civil actions based on alleged

statutory violations or business torts. And this trend shows no sign of changing. To the contrary, the number of and criminal grand jury investigations and civil actions that involve common issues is likely to increase even more dramatically in the approaching wave of litigation regarding the liability of financial institutions or government agencies for acts or omissions that may have contributed to the current economic crisis.[44]

These developments make California's grand jury secrecy rules — including the latest clarification of those rules in *Goldstein* — potentially relevant to a significantly greater number of civil actions than ever before.

Goldstein's Impact on California Litigants' Use of Federal Courts

As described above, it remains unclear after *Goldstein* whether California law allows a civil litigant to obtain grand jury evidence without an explicit statutory authorization and based solely on a showing of "absolute necessity." The answer to this question has enormous practical significance in situations where litigants need access to grand jury materials to prove their claims or defenses but are unable satisfy any of the limited statutory grounds for disclosure. One example of such a situation is where a witness with key information: (1) previously has testified before a California county-level grand jury; but (2) later becomes unavailable to testify at any trial or deposition, and therefore cannot be subjected to the type of impeachment that might permit disclosure under California Penal Code § 924.2. Because of the increasing frequency of grand jury investigations discussed above, the California Supreme Court likely will be asked in the foreseeable future to decide whether a litigant can obtain grand jury evidence as a substitute for the testimony of an unavailable witness or for some other purpose that is not authorized by statute but the litigant can show is absolutely necessary.

But, even if the California Supreme Court recognizes "absolute necessity" as a non-statutory ground for disclosure, there is a reasonable probability that the requirements for invoking that ground will be stricter than the federal requirements for disclosure.[45] Thus, regardless of how the California Supreme Court rules on the "absolute necessity" issue, California litigants will have good reason in light of *Goldstein* to view

federal court as a more attractive forum for seeking disclosure of grand jury evidence. This is likely to increase some California litigants' incentive to invoke federal jurisdiction over civil actions involving claims or defenses to which grand jury evidence is relevant. If federal jurisdiction is not available over a California state court action, some litigants are more likely to bring a companion suit in federal court that: (1) raises common factual issues to which the same grand jury evidence might be equally relevant; but (2) still involves parties and/or legal issues sufficiently distinct from the state court action that it does not violate applicable rules against splitting causes of action.

However, there is still one additional unresolved issue that may significantly affect exactly how much incentive litigants ultimately will have to invoke federal jurisdiction to seek disclosure of California county-level grand jury evidence: whether federal courts have the power to order such disclosure over the objection California state courts.[46] As the court noted in *Goldstein*, federal courts are in "conflict" over this question.[47] In *Socialist Workers Party v. Grubisic*,[48] the Seventh Circuit held that "comity dictates that the federal courts defer action on any disclosure requests until the party seeking disclosure shows that the state supervisory court has considered his request and has ruled on the continuing need for secrecy." But it also emphasized in dicta that "federal law determines the scope of the privilege covering [grand jury] materials," and that the requirement of a prior request to the state court thus "*does not give the state courts a veto over disclosure in this federal civil rights case*. This preliminary stage is designed merely to forestall unnecessary intrusion by the federal courts in state grand jury proceedings or, at least, to ensure that the important state interest in secrecy is thoroughly considered."[49]

In contrast, the Third Circuit, in *Camiolo v. State Farm Fire & Cas. Co.*,[50] rejected the Seventh Circuit's analysis, concluding in dicta that: (1) the Seventh Circuit's approach "would seemingly reduce the state court's purported decision to a mere formality, and therefore not really give a state's strong interest in secrecy"; and (2) "it is unclear why Rule 6(e), which only governs federal grand juries, provides a basis for disregarding the states' rules, policies, and determinations on the need for secrecy in their own grand jury proceedings." Federal courts generally owe state

laws and judicial determinations "full faith and credit."[51]

If this conflict ultimately is resolved against federal courts' power to override state court secrecy determinations, California litigants will derive much less practical benefit from invoking federal jurisdiction to seek disclosure of California county-level grand jury evidence. However, until the conflict is resolved, California litigants who believe that such evidence would substantially strengthen their litigation positions have potentially much to gain by taking advantage of the uncertainty and invoking federal jurisdiction to the extent it is available to seek disclosure of that evidence.

NOTES

[1] *Goldstein v. Superior Court*, Case No. S155944 (November 17, 2008).

[2] *McClatchy Newspapers v. Superior Court*, 44 Cal. 3d 1162 (1988).

[3] *Id.* at 1170 (citations and internal quotations omitted).

[4] *Id.* at 1174 (citations and internal quotations omitted).

[5] *Id.* at 1178. The permission to disclose grand jury materials in this situation comes from California Penal Code § 924.2, which provides: "Each grand juror shall keep secret whatever he himself or any other grand juror has said, or in what manner he or any other grand juror has voted on a matter before them. Any court may require a grand juror to disclose the testimony of a witness examined before the grand jury, for the purpose of ascertaining whether it is consistent with that given by the witness before the court, or to disclose the testimony given before the grand jury by any person, upon a charge against such person for perjury in giving his testimony or upon trial therefor."

[6] *Id.* The permission and requirement to disclose grand jury materials in this situation comes from California Penal Code § 938.1, which provides: "If an indictment has been found or accusation presented against a defendant, such stenographic reporter shall certify and deliver to the clerk of the superior court in the county an original transcription of the reporter's shorthand notes and a copy thereof and as many additional copies as there are defendants, other than fictitious defendants, regardless of the number of charges or fictitious defendants included in the same investigation. The reporter shall complete the certification and delivery within 10 days after the indictment has

been found or the accusation presented unless the court for good cause makes an order extending the time. The time shall not be extended more than 20 days. The clerk shall file the original of the transcript, deliver a copy of the transcript to the district attorney immediately upon receipt thereof and deliver a copy of such transcript to each such defendant or the defendant's attorney. If the copy of the testimony is not served as provided in this section, the court shall on motion of the defendant continue the trial to such time as may be necessary to secure to the defendant receipt of a copy of such testimony 10 days before such trial. If several criminal charges are investigated against a defendant on one investigation and thereafter separate indictments are returned or accusations presented upon said several charges, the delivery to such defendant or the defendant's attorney of one copy of the transcript of such investigation shall be a compliance with this section as to all of such indictments or accusations."

[7] *Id.* The permission to disclose grand jury materials in this situation comes from California Penal Code § 924.4, which provides: "Notwithstanding the provisions of Sections 924.1 and 924.2, any grand jury or, if the grand jury is no longer impaneled, the presiding judge of the superior court, may pass on and provide the succeeding grand jury with any records, information, or evidence acquired by the grand jury during the course of any investigation conducted by it during its term of service, except any information or evidence that relates to a criminal investigation or that could form part or all of the basis for issuance of an indictment. Transcripts of testimony reported during any session of the grand jury shall be made available to the succeeding grand jury upon its request."

[8] *Goldstein*, slip op. at 11. The permission to disclose grand jury materials in this situation comes from California Penal Code § 929, which provides: "As to any matter not subject to privilege, with the approval of the presiding judge of the superior court or the judge appointed by the presiding judge to supervise the grand jury, a grand jury may make available to the public part or all of the evidentiary material, findings, and other information relied upon by, or presented to, a grand jury for its final report in any civil grand jury investigation provided that the name of any person, or facts that lead to the identity of any person who provided information to the grand jury, shall not be released. Prior to granting approval pursuant to this section, a judge may require the redaction or masking of any part of the evidentiary material, findings, or other information to be released to the public including, but not lim-

ited to, the identity of witnesses and any testimony or materials of a defamatory or libelous nature."

[9] *McClatchy*, 44 Cal. 3d at 1181.

[10] *Id.* at 1179-81. *See also supra* note 7.

[11] *Daily Journal Corp. v. Superior Court*, 20 Cal.4th 1117 (1999).

[12] *Id.* at 1128-29.

[13] *Goldstein*, slip op. at 2.

[14] *Id.*

[15] *Id.* at 3.

[16] *Id.*

[17] *Id.*

[18] *Id.* at 3-4.

[19] *Id.* at 4.

[20] *Id.*

[21] *Id.*

[22] *Id.*

[23] *Id.*

[24] *Id.* at 6.

[25] *Id.*

[26] *Id.* at 6, 13-14 (citing and quoting *Douglas Oil Co. v. Petrol Stops Northwest*, 441 U.S. 211 (1979) and *Ex Parte Sontag*, 64 Cal. 526 (1884). The three-part test announced in *Douglas Oil Co.* allows disclosure only if: (1) the material "is needed to avoid a possible injustice in another judicial proceeding," (2) "the need for disclosure is greater than the need for continued secrecy," and (3) the disclosure "request is structured to cover only material so needed." Douglas Oil Co., 441 U.S. at 222. In *Sontag*, the California Supreme Court stated that, "when, for the purposes of public justice, or for the protection of private rights, it becomes necessary, in a court of justice, to disclose the proceedings of the grand jury, the better authorities now hold that this may be done." *Sontag*, 64 Cal. at 526 (citations and internal quotations omitted).

[27] *Goldstein*, slip op. at 6.

[28] *Id.* at 12.

[29] *Id.* at 13-14. As the court noted, former Penal Code § 911 allowed a grand juror to disclose matters discussed before the grand jury "when required in the due course of judicial proceedings," but that provision was eliminated in 1983. *Id.* at 13 n. 9.

[30] *Id.* at 7 n. 6.
[31] *Id.* (citing federal cases).
[32] *Id.* at 14-15.
[33] *Sontag*, 64 Cal. at 528.
[34] *Id.*
[35] *Goldstein*, slip op. at 15 (quoting *Sontag*, 64 Cal. at 528).
[36] *Id.* at 16 n. 11. Two justices filed separate concurring opinions on whether a showing of "absolute necessity" could provide a basis for disclosure of grand jury materials. Justice Kennard opined that a trial court would "retain the power to order disclosure of grand jury proceedings" when nondisclosure "would deny the requesting party the right to due process." *Id.* at 2 (Kennard, J., concurring). Justice Moreno opined that, in order to use "absolute necessity" as a basis to obtain grand jury evidence without statutory authorization, "the litigant must show: (1) that the information sought is necessary to prosecute his or her claim; (2) that the information cannot reasonably be obtained through the usual means of civil discovery short of resorting to grand jury materials—'mere inconvenience or difficulty of proving the fact' is not sufficient; (3) that granting the request will not undermine the essential functions of grand jury secrecy, including that of ensuring that the disclosures will not chill the testimony of future grand jury witnesses; (4) that the request is narrowly tailored to accomplish these ends." *Id.* at 9 (Moreno, J., concurring). Justice Moreno emphasized that this four-part requirement "is stricter than under federal law." *Id.*
[37] *Id.* at 16.
[38] *Id.* at 18-19. The court explained that "the appropriate procedure" for invoking § 924.2 as a basis for disclosure "is for the witness to testify first. Counsel may then request the court to examine the transcript of that witness's grand jury testimony in camera, to determine if it provides potentially relevant impeachment material. If it does, the court may release the relevant pages to counsel, with a protective order restricting the use of the material for impeachment." *Id.* at 19.
[39] *Id.* at 19.
[40] Only a handful of California reported decisions since *McClatchy* specifically address the scope of California's grand jury secrecy requirement. *See Alvarez v. Superior Court*, 154 Cal. App. 4th 642 (2007); *People v. Jackson*, 128 Cal. App. 4th 1009 (2005); *San Jose Mercury News, Inc. v. Criminal Grand Jury*, 122 Cal. App. 4th 410 (2004); *Los Angeles Times v. Superior*

Court, 114 Cal. App. 4th 247 (2003); *People v. Superior Court*, 107 Cal. App. 4th 488 (2003); *People v. Superior Court*, 78 Cal. App. 4th 403 (2000).

[41] *See, e.g., Los Angeles County Grand Jury Reports*, http://grandjury.co.la.ca.us/gjreports.html; *Orange County Grand Jury Reports*, http://www.ocgrandjury.org/reports.asp; *San Diego County Grand Jury Reports*, http://www.sdcounty.ca.gov/grandjury/reports.html; *San Francisco County Grand Jury Reports*, http://www.sfgov.org/site/courts_page.asp?id=3680,

[42] http://www.lasuperiorcourt.org/jury/grandjury.htm#2.

[43] California Penal Code § 904.8(a) provides: "Notwithstanding subdivision (a) of Section 904.6 or any other provision, in the County of Los Angeles, the presiding judge of the superior court, or the judge appointed by the presiding judge to supervise the grand jury, may, upon the request of the Attorney General or the district attorney or upon his or her own motion, order and direct the impanelment of up to two additional grand juries pursuant to this section."

[44] *See, e.g.*, Debra Cassens Weiss, "Lawyers Hope Bailout Bill 'a Full Employment Act' for Law Firms," ABA JOURNAL, Oct. 15, 2008, http://www.abajournal.com/news/lawyers_hope_bailout_bill_a_full_employment_act_for_law_firms/

[45] *See supra* at 4 & n. 36.

[46] *See supra* at 4 & n. 31.

[47] *Id.*

[48] *Socialist Workers Party v. Grubisic*, 619 F.2d 641 (7th Cir. 1980).

[49] *Id.* at 644-45 (emphasis added). For federal district court decisions refusing to give state courts "veto" power over federal courts' disclosure of grand jury evidence subject to state secrecy requirements, *see, e.g., Palmer v. Estate of Stuart*, 2004 U.S. Dist. LEXIS 21788 at *6 (S.D.N.Y. Nov. 1, 2004); *Scheiner v. Wallace*, 1995 U.S. Dist. LEXIS 18873 at *11 (S.D.N.Y. Dec. 18, 1995); *Puricelli v. Morrisville*, 136 F.R.D. 393 at *16 (E.D. Pa. 1991).

[50] *Camiolo State Farm Fire & Cas. Co.*, 334 F.3d 345 (3d Cir. 2003).

[51] *Id.* at 359 n. 10. For federal district court decisions reflecting the Third Circuit's skepticism about federal courts' power to override state court decisions regarding the secrecy of grand jury evidence subject to state secrecy requirements, *see, e.g., Resolution Trust Corp. v. Castellett*, 156 F.R.D. 89, 96 (D.N.J. 1994); *Shell v. Wall*, 760 F. Supp. 545, 546 (W.D.N.C. 1991).