



SAMUEL C. STRETTON, ESQUIRE  
301 SOUTH HIGH STREET  
P.O. BOX 3231  
WEST CHESTER, PA 19381  
(610) 696-4243  
ATTORNEY I.D. NO. 18491

COMMONWEALTH OF PENNSYLVANIA : IN THE COURT OF COMMON PLEAS  
: CENTRE COUNTY, PENNA.  
vs. : CRIMINAL DIVISION  
:  
GERALD SANDUSKY : CP-14-CR-2421-2011  
: CP-14-CR-2422-2011

MOTION OF FORMER GRAND JURY JUDGE BARRY FEUDALE  
TO PRECLUDE HIS TESTIMONY AND TO TRANSFER THE ISSUES  
TO THE HONORABLE NORMAN KRUMENACKER

Former Grand Jury Judge Barry Feudale, by his counsel,  
Samuel C. Stretton, Esquire, hereby moves to preclude Former  
Judge Feudale's testimony for the following reasons:

1. By Order, dated May 4, 2016, Judge John Cleland ordered  
a hearing to be held on May 20, 2016 in Centre County. In the  
Order, Judge Cleland raised the issue of whether Judge Barry  
Feudale withheld Brady material from defense counsel. Attached  
and marked Exhibit "A" is a copy of that Order.

2. A subpoena was dropped off by Attorney Alexander  
Lindsay who had a subpoena issued to Judge Feudale. This was  
served at the Judge's legal residence and given to his son.  
Judge Feudale was not present and was never personally served.

3. Judge Feudale has been represented by present counsel,  
Samuel C. Stretton, Esquire, for several years in reference to  
these Grand Jury matters. Mr. Stretton is not available on May  
20<sup>th</sup> since his daughter is getting married in Southwest Virginia

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ROTHSCHILD  
CENTRE COUNTY, PA

and Mr. Stretton will be in Southwest Virginia on May 20<sup>th</sup> and May 21<sup>st</sup> and will not return until Sunday evening, May 22, 2016. Mr. Stretton, therefore, is not available to be with Judge Feudale. Mr. Stretton believes that it is important that he be present.

4. More importantly, the subpoena on Judge Feudale, presumably on the issue of Brady material, would violate Grand Jury secrecy. Judge Feudale is bound by Grand Jury secrecy and as recently as January of 2016, he signed a secrecy oath at the request of Judge Norman Krumenacker, the current Grand Jury Judge, requiring his secrecy.

5. Grand Jury secrecy is absolutely required by Statute 42 PaCSA 4549. There is absolutely no way Judge Feudale could testify in open PCRA proceeding and not touch on Grand Jury material. It would be impossible. This could make him liable for a criminal prosecution if he did. He could also be held in contempt.

6. Therefore, Mr. Stretton suggests that the issue involving Brady material and any testimony be referred to the Grand Jury Judge, the Honorable Norman Krumenacker, to resolve within the confines of Grand Jury secrecy. Otherwise, it would be impossible for Judge Feudale to testify on any issue of the Grand Jury without violating his secrecy oath and the Pennsylvania Statutes involving Grand Jury.

7. Further, there is a judicial privilege where the decision-making and reasons for a decision of a judge cannot be obtained through trial testimony or subpoena. In the case of Leber v. Stretton, 928 A2d 262 (Pa.Super., 2007), the Superior Court found a judicial privilege and precluded District Judges from having to testify in the libel suit about the reasons for their decisions. Judge Feudale, as Grand Jury Judge, made judicial decisions. He should not be subject to questions about the basis of his decision-making pursuant to that judicial privilege.

8. Because of the issues that Judge Feudale's testimony would implicate Grand Jury secrecy and his secrecy oath and further because of the issues of judicial privilege, Judge Feudale respectfully requests that his testimony on these issues be barred or else the matters be referred to the Grand Jury Judge, Judge Krumenacker.

9. Further, Judge Feudale respectfully requests the hearing be rescheduled to a time when his attorney can be present to make these arguments on his behalf.

Respectfully submitted,

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Samuel C. Stretton, Esquire  
Attorney for Judge Feudale  
301 S. High St., P.O. Box 3231  
West Chester, PA 19381  
(610) 696-4243  
Attorney I.D. No. 18491

SAMUEL C. STRETTON, ESQUIRE  
301 SOUTH HIGH STREET  
P.O. BOX 3231  
WEST CHESTER, PA 19381  
(610) 696-4243  
ATTORNEY I.D. NO. 18491

COMMONWEALTH OF PENNSYLVANIA	:	IN THE COURT OF COMMON PLEAS
	:	CENTRE COUNTY, PENNA.
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	:	
GERALD SANDUSKY	:	CP-14-CR-2421-2011
	:	CP-14-CR-2422-2011

PROOF OF SERVICE

I hereby certify I am this date serving a copy of the Motion of Former Grand Jury Judge Barry Feudale to Preclude his Testimony in the captioned matter upon the following persons in the manner indicated below. Service by Federal Express addressed as follows:

1. Honorable John M. Cleland, Senior Judge  
c/o Office of the Court Administrator and  
Office of the Clerk of Courts of Centre County  
Centre County Courthouse  
102 South Allegheny Street  
Bellefonte, PA 16823
2. Honorable Norman A. Krumenacker III, President Judge  
Cambria County Courthouse  
200 South Center Street  
Ebensburg, PA 15931
2. Jennifer Peterson, Esquire  
Assistant Attorney General  
Office of the Attorney General  
Criminal Prosecutions Sections  
16<sup>th</sup> Floor - Strawberry Square  
Harrisburg, PA 17102
3. Alexander Lindsay, Esquire  
The Lindsay Law Firm  
110 East Diamond Street, Suite 300  
Butler, PA 16001

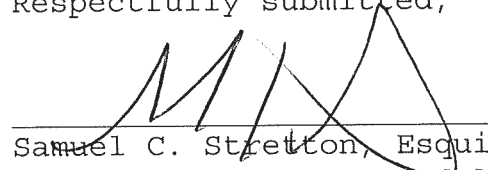
Service by First-Class Mail as follows:

3. Former Judge Barry Feudale  
223 Happy Hollow Road  
Coal Township, PA 17866

5/16/16

Date

Respectfully submitted,

  
\_\_\_\_\_  
Samuel C. Stretton, Esquire  
Attorney for Judge Feudale  
301 S. High St., P.O. Box 3231  
West Chester, PA 19381-3231  
(610) 696-4243  
Attorney I.D. No. 18491

COMMONWEALTH OF  
PENNSYLVANIA

vs.

GERALD A. SANDUSKY,  
Defendant

IN THE COURT OF COMMON PLEAS OF  
CENTRE COUNTY, PENNSYLVANIA  
CRIMINAL DIVISION  
NOS. CR-2421-2011; CR 2422-2011

ORDER

AND NOW, May 4, 2016, it is ordered as follows:

That a hearing shall be held on May 20, 2016, beginning at 9:00 a.m. in Courtroom 1 of the Centre County Courthouse to provide the defense with an opportunity to prove the following allegations raised in the Defendant's Post Conviction Relief Act Petition:

1. That, in referring in his closing argument to those "known only to God," Joseph McGettigan: (1) was referring to the allegations regarding Victim #2; (2) if so, was lying because he knew Victim # 2 was A.M.; and (3) Joseph Amendola knew Mr. McGettigan was lying.
2. That Judge Barry Feudale withheld Brady material from defense counsel.
3. That the Office of Attorney General withheld Brady material from defense counsel.
4. That the Office of Attorney General leaked otherwise secret grand jury information for the purpose of locating additional victims of the Defendant's crimes.

It is further ordered that defense counsel shall, on or before May 20, 2016, submit a brief on the issue of whether the grand jury lacked subject matter jurisdiction to investigate the allegations regarding the Defendant. The Commonwealth's reply brief shall be due on or before May 27, 2016.

BY THE COURT:

  
JOHN M. CLELAND, S.J.

Exhibit A

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DEBRA C. JAMES  
PROTHONOTARY  
CENTRE COUNTY