



IN THE COURT OF COMMON PLEAS OF
CENTRE COUNTY, PENNSYLVANIA
CRIMINAL DIVISION

COMMONWEALTH OF PENNSYLVANIA	:	CP-14-CR-2421-2011
	:	CP-14-CR-2422-2011
	:	
v.	:	
	:	HONORABLE SENIOR JUDGE
GERALD A. SANDUSKY,	:	NORMAN A. KRUMENAKER
	:	SUPERVISING GRAND JURY
PETITIONER.	:	JUDGE

**PETITION FOR RELEASE OF
REEDER-BROWN REPORT INCLUDING FINDINGS
AND RECOMMENDATIONS RELATING TO GRAND JURY LEAKS
IN THE THIRTY-THIRD STATEWIDE INVESTIGATING GRAND JURY
INCLUDING THE SANDUSKY INVESTIGATION OR IN THE ALTERNATIVE
PETITION FOR APPOINTMENT OF A SPECIAL PROSECUTOR**

AND NOW, comes Gerald A. Sandusky, Petitioner by and through his Attorney, Alexander H. Lindsay, Jr. and the Lindsay Law Firm, who move your Honorable Court, via the following Petition to Release the Findings and Recommendations of Messrs. James M. Reeder and Kenneth Brown, appointed by prior Supervising Judge of the Grand Jury, Barry Feudale, to release the Findings and Recommendations (of both Reeder and Brown) related to their investigation leaks in the Thirty-Third Statewide Investigating Grand Jury including the Sandusky Investigation or in the Alternative Petition for Appointment of A Special Prosecutor and in support thereof state as follows:

1. Petitioner, Gerald A. Sandusky (hereinafter "Sandusky") was convicted after jury trial of 45¹ of 48 charges filed against him related to allegations that he sexually abused ten men (during their minority), eight of whom were identified at trial.

¹ Sandusky was convicted, after jury trial, of eight counts of Involuntary Deviate Sexual Intercourse under 18 Pa.C.S. § 3123(a)(7), seven counts of Indecent Assault under 18 Pa.C.S. § 3126(a)(7) and (8), nine counts of Unlawful Contact with a Minor under 18 Pa.C.S. § 6318(a)(1)(5), ten counts of Corruption

2. The Honorable John M. Cleland sentenced Sandusky to an aggregate sentence of 30 to 60 years' imprisonment, with credit for 112 days served on the aforementioned counts. Sandusky is currently incarcerated, serving the sentence imposed at State Correctional Institute-Greene, 169 Progress Drive, Waynesburg, PA 15370.

3. Sandusky filed direct appeals to the Superior Court of Pennsylvania and the Supreme Court of Pennsylvania.² He has exhausted his state direct appeals.

4. Sandusky timely filed a PCRA (under seal) and thereafter an Amended PCRA in the Court of Common Pleas of Centre County, Pennsylvania. In the Amended PCRA, Sandusky raised, *inter alia*, specific discovery requests (under Pa.R.Crim.Proc. Rule 902 (E)(1)) related to alleged improprieties, irregularities and illegal acts. The Amended PCRA is being heard by the trial Judge, Senior Judge John M. Cleland.

5. In response to the Amended PCRA, Judge Cleland directed Sandusky to file a List of Specific Discovery Requests (with authority in support of each request). Pursuant to the Court's Order, Sandusky filed a List of Specific Discovery Requests and Legal Authority In Support Of Each Request. A copy of the List of Specific Discovery Requests is attached hereto as Exhibit A.

of Minors under 18 Pa.C.S. § 6301(a)(ii), ten counts of Endangering the Welfare of Children under 18 Pa.C.S. § 4304, and one count of Criminal Attempt to Commit Indecent Assault under 18 Pa.C.S. §901.

² Sandusky sought reversal of his convictions and the judgment of sentence on direct appeal to the Superior Court. The Superior Court affirmed Sandusky's convictions. See *Commonwealth v. Sandusky*, Docket Nos. 338 MDA 2013 and 343 MDA 2013 (Pa. Super. 2013). Thereafter, Sandusky sought allocatur from the Pennsylvania Supreme Court. The Supreme Court denied Sandusky's Petition For Allowance Of Appeal on April 2, 2014. See *Commonwealth v. Sandusky*, Docket Nos. 835 MAL 2013 and 836 MAL 2013 (Pa. 2014). Under 42 Pa.C.S. § 9545(b)(3), Sandusky's judgment of sentence became final on July 1, 2014, (upon the expiration of the 90-day period for Defendant to seek a writ of *certiorari* from the Supreme Court of the United States).

6. On November 5, 2015, Senior Judge John M. Cleland conducted a hearing on Sandusky's Discovery issues and thereafter issued an Order as to discovery requests "regarding the investigating grand jury process."

7. The November 5th Order regarding the investigating grand jury process states as follows:

ORDER

AND NOW, November 5, 2015 in consideration of the foregoing
It is ordered as follows:

1. . . .
2. . . .
3. That the defendant's discovery requests "regarding the investigating grand jury process" as detailed beginning at page 17 of the "List of Specific Discovery Requests" filed on September 29, 2015 is denied, without prejudice to filing such a request with the Hon. Norman A. Krumenaker, the supervising judge of the grand jury.
4. . . .

BY THE COURT:

/s/ John M. Cleland

John M. Cleland, S.J.
Specially Presiding

A copy of Judge Cleland's Order of November 5, 2015 is attached as Exhibit B.

I. REQUEST FOR RELEASE TO COUNSEL OF THE REEDER-BROWN REPORT ON GRAND JURY LEAKS DURING THE THIRTY-THIRD INVESTIGATING GRAND JURY OR IN THE ALTERNATIVE FOR APPOINTMENT OF A SPECIAL PROSECUTOR TO INVESTIGATE GRAND JURY LEAKS IN THE THIRTY-THIRD STATEWIDE INVESTIGATING GRAND JURY.

8. Among other things, the Defendant Sandusky requested the following:

- a. "The Defendant requests authority from this Court to issue compulsory process, that is Subpoenas, to obtain the report, if any exists, of Attorney James M. Reeder, who was appointed by Judge Barry F. Feudale to investigate and prosecute leaks coming from the Grand Jury that recommended charges against the Defendant, Jerry Sandusky."

9. In making this request, Defendant Sandusky relied on the recent Supreme Court ruling in the case of *In Re: The thirty-Fifth Statewide Investigating Grand Jury; Petition of: Attorney General Kathleen g. Kane No. 197 MM 2014 decided March 31, 2015*.

10. The ruling of the Supreme Court in the *Kane* case sets forth the seriousness with which the Pennsylvania Supreme Court views widespread abuses in investigating Grand Juries by prosecutors in this state.

11. Sandusky claims that such abuses, including the leak of grand jury information in his case entitles him to an extraordinary remedy: dismissal of all the criminal charges pertaining to the victims who were identified after the details of his investigation were published by the media.

12. Sandusky requests the Court to craft an exclusionary rule that bars the Commonwealth from utilizing the testimony of any witnesses who happened to come forward in the wake of a breach of grand jury secrecy.

13. Paragraphs 227 (page 50) through 234 of the Defendant's Amended Petition for Post Conviction Relief (attached as Exhibit C) sets forth the basis for the Defendant's position that the Attorney General's Office or its agents deliberately leaked grand jury information to certain members of the press and others.

14. These paragraphs of the Defendant's Amended Petition for Post Conviction Relief are based on information found at pages 40 through 56 of the Moulton Report (attached as Exhibit D), which was commissioned by Attorney General Kane herself.

15. As stated in Paragraph of 229 of the Sandusky's Amended Petition for Post Conviction Relief "the indisputable chain of facts show that the Commonwealth's case, which

had remained essentially stalled since it opened in May of 2009, rapidly advanced in the Summer of 2011 after the facts of the investigation was leaked to Gannon”.

16. As stated in Paragraph 231 of the Defendant’s Petition for Post Conviction Relief, the Defendant believed that the leaking of the information, during the time that the Commonwealth’s investigation had stalled, was a deliberate act by the Prosecution and its agents, or other agents of the Thirtieth and/or Thirty-Third Statewide Investigating Grand Jury to advance the investigation and spur other alleged victims to come forward.

17. From the clear allegations in the Moulton report, commissioned by Attorney General Kane, it appears that, at a minimum, there were colorable allegations or indications that the sanctity of the grand jury process was breached.

18. In Paragraph 238 of the Amended Petition for Post Conviction Relief, it is noted that in the case of *In Re: The Thirty-Fifth Statewide Investigating Grand Jury; Petition of: Attorney General Kathleen G. Kane No. 197 MM 2014 decided March 31, 2015* at Page 3, citing *In Re: Dauphin County Fourth Investigating Grand Jury, 610 Pa, 296, 19 A.3d 491 (2011)* it is stated:

There, this Court recently observed that “[t]he very power of the grand jury, and the secrecy in which it must operate, call for a strong judicial hand in supervising the proceedings” and indicated that, “[w]hen there are colorable allegations or indications that the sanctity of the grand jury process has been breached those allegations warrant investigation, the appointment of a special prosecutor to conduct such an investigation is appropriate.” *Id.* at 318, 19 A.3d at 503-04. Further, the supervising judge commented:

The Supervising Judge of a Statewide Investigating Grand Jury must have inherent authority to investigate a grand jury leak, when there is a conflict of interest as there is here. Clearly, Attorney General Kane could not investigate herself. Otherwise potentially serious violations of grand jury secrecy could go unaddressed. *Id.* at Page 4

19. In Paragraph 242 of the Amended Petition for Post Conviction Relief, the Defendant Sandusky notes that based on the foregoing, very recent opinion of the Pennsylvania Supreme Court it is clear that, to the extent the investigating grand jury system had been abused by unauthorized leaks, it falls on the role of the supervising Judge to monitor for abuses and, in the appropriate case, appoint a special prosecutor.

20. On or about February 8, 2013, Judge Barry Feudale, one of the preceding Supervising Judges of the Grand Jury, issued an Order appointing former Assistant Attorney General, James M. Reeder as a special prosecutor to investigate, *inter alia*, grand jury leaks during two Statewide Investigating Grand Juries³ and a Dauphin County grand jury.⁴ In his capacity as special prosecutor, Reeder was given 6 months, until August 8, 2013, to investigate, report, make recommendations and if circumstances warranted, file charges. A copy of the AP news release of February 27, 2013 reporting the appointment of a special prosecutor is attached as Exhibit E.

21. In addition to the foregoing, counsel was informed at a proceeding on November 5, 2015 (held before Senior Judge John M. Cleland) during the questioning of Attorney General Kathleen Kane, that a second special prosecutor, Kenneth Brown, was appointed. The AP reported the appointment in April 2013, indicating that Brown was appointed to assist James Reeder in his investigation. A copy of the transcript of the proceeding of November 5, 2015 and the AP news release of April 5, 2013, reporting the appointment of a second special prosecutor is attached hereto as Exhibit F.

³ Including the Thirty-Third and Thirty-Sixth Statewide Investigating Grand Jury. The Thirty-Third Statewide Investigating Grand Jury included the investigation of Sandusky, ex PSU President Graham Spanier, ex-athletic director Tim Curley and retired V.P. Gary Shultz.

⁴ Dauphin County Fourth Investigating Grand Jury.

22. In May 2013 Judge Feudale was removed as the Supervising Grand Jury Judge by the Supreme Court of Pennsylvania on Motion by the Office of the Attorney General and Attorney General Kathleen Kane. Judge Feudale was removed prior to the discharge of the duties and obligations of the two special prosecutors, Reeder and Brown. It is believed that consistent with the Order issued by Judge Feudale, Reeder's appointment/mandate began on February 8, 2013 and expired on August 8, 2013.

23. Since the time of Feudale's removal, in conjunction with the Sandusky PCRA Counsel has inquired, directly, of Mr. Reeder (at his office in Lancaster County) regarding the issuance of any report or findings consistent with his mandate as ordered by former Grand Jury Supervising Judge Feudale. Mr. Reeder will neither confirm nor deny that he complied with the Court order by issuing a report or findings within the time frame allocated in Judge Feudale's appointment order. Indeed Mr. Reeder has stated to counsel's staff that, absent an order from the Supervising Grand Jury Judge or the Supreme Court, he will not provide any information whatsoever related to his appointment as special prosecutor by Judge Feudale.

24. Counsel is informed that former special prosecutor Kenneth Brown is now Chief Counsel in the Commonwealth of Pennsylvania Office of Inspector General. Counsel has been unable to reach Chief Counsel Brown via telephone, however, based on the contact with ADA Reeder, it is anticipated that any response from Chief Counsel Brown would be in the same vein.

25. In an article published on November 5, 2015, on pennlive.com titled "Kathleen Kane's feud with Barry Feudale: 7 takeaways," a reference to the Reeder-Brown investigation appears. That reference stated:

3. Feudale released a few emails of his own on Wednesday. One reportedly came from James Reeder, one of the investigators initially tasked with looking into whether there were leaks from the Sandusky grand jury [http://www.pennlive.com/midstate/index.ssf/2013/04/second_

investigator_named_to_a.html] . He wrote in June 2013 that he and Ken Brown “are feeling somewhat adrift.” In the email, Reeder said that Kane’s Attorney General’s Office wasn’t cooperating with requests for materials and that he and Brown had not been paid for their work. Neither investigator could be reached for comment Thursday. Ardo said he didn’t know anything about the complaint.

A copy of the pennlive.com article is attached hereto as Exhibit G.

26. The referenced email would appear to indicate that the Attorney General’s Office was not cooperating with the special prosecutors and once Judge Feudale was removed as the Grand Jury Supervising Judge, it appears questionable whether or not the special prosecutor’s investigation was conducted or completed.

27. The Superior Court in the case of *Commonwealth v. Frey*, 41 A.3d 605, 611 (2011) stated:

In PCRA proceedings, discovery is only permitted upon leave of court after a showing of exceptional circumstances. 42 Pa.C.S.A. § 9545(d)(2); Pa.R.Crim.P. 902(E)(1). The PCRA and the criminal rules do not define the term “exceptional circumstances.” Rather, it is for the trial court, in its discretion, to determine whether a case is exceptional and discovery is therefore warranted. *Commonwealth v. Dickerson*, 900 A.2d 407, 412 (Pa.Super.2006).

We will not disturb a court’s determination regarding the existence of exceptional circumstances unless the court abused its discretion. *Commonwealth v. Lark*, 560 Pa. 487, 746 A.2d 585, 591 (2000). An abuse of discretion is not a mere error in judgment. *Commonwealth v. Riley*, 19 A.3d 1146, 1149 (Pa.Super.2011). Instead, it is a decision based on bias, ill will, partially, prejudice, manifest unreasonableness, or misapplication of law. *Id.* Moreover, we recall that the appellant has the duty to convince us an abuse occurred. *Commonwealth v. Bennett*, 19 A.3d 541, 543 (Pa.Super.2011).

28. Sandusky contends, under the ruling in *Commonwealth v. Frey, supra*, that Courts have very broad discretion concerning whether or not “*exceptional circumstances*” exist.

Furthermore, there appears to be no guidance in the rule or case authority concerning what is the

appropriate scope of discovery or the type of discovery which may be taken. Sandusky urges this Court to exercise its discretion in a manner commensurate with the profound significance of this case.

29. Particularly, Sandusky seeks an Order from this Court releasing to counsel, under seal, the report of Special Prosecutors Reeder and Brown, consistent with their appointment by Judge Barry F. Feudale to investigate, make findings and recommendations as to leaks coming from the Thirty-Third Investigating Grand Jury - the Grand Jury investigating, *inter alia*, Jerry Sandusky.

30. In the event that the Court wishes the Reeder-Brown report to remain under seal, counsel asks the Court take note that counsel and his staff assigned to this matter have submitted Secrecy Oaths to this Court on a prior occasion.

31. Sandusky therefore requests that the Court issue an Order directing that the Reeder-Brown report be released, under seal, to counsel within seven (7) days of the date of the Court's Order.

32. In the event that the Court determines that Special Prosecutors Reeder and Brown did not fulfill the mandate of Judge Feudale's Order then counsel, contending that it is indisputable that there are colorable allegations or indications that the sanctity of the grand jury process has been breached and those allegations warrant investigation, seeks the appointment of a special prosecutor to conduct such an investigation which is both appropriate and mandated. See, *In Re: The Thirty-Fifth Statewide Investigating Grand Jury; Petition of: Attorney General Kathleen G. Kane*, 624 Pa. 361, 112 A.3d 624 (2015).

33. Accordingly then, in the alternative, if the court finds that special prosecutors Reeder and Brown did not comply with Judge Feudale's order counsel respectfully requests that

the Court appoint a special prosecutor, not previously employed by or having any association with the Office of Attorney General, to investigate leaks, (previously identified in this motion), report their findings, and where grounds exist, to file charges and prosecute those parties responsible for grand jury leaks.

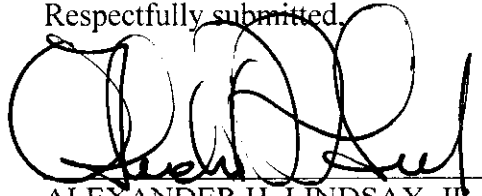
34. Finally, if the Court determines that there are colorable allegations that the Office of Attorney General obstructed the investigation of special prosecutors Reeder and Brown, as suggested by Judge Feudale, counsel respectfully requests that this Court authorize the aforementioned special prosecutor to investigate those allegations, report findings and where grounds exist, file charges and prosecute the parties responsible for such obstruction.

35. A hearing to determine the merits of the foregoing Petition is requested.

WHEREFORE, for all of the foregoing reasons, counsel respectfully requests that the Court issue an Order directing that the Reeder-Brown report and findings be released, under seal, to counsel within seven (7) days of the date of the Order.

In the event that the Court determines that special prosecutors Reeder and Brown did not fulfill the mandate of Judge Feudale's Order appointing them, it is respectfully requested that the Court, under the authority provided in *In Re: The Thirty-Fifth Statewide Investigating Grand Jury; Petition of: Attorney General Kathleen G. Kane* 624 Pa. 361, 112 A.3d 624 (2015) appoint a special prosecutor to investigate leaks from the Thirty-Third Statewide Investigating Grand Jury, including the Sandusky investigation, issue a report and findings and where grounds exist, to file charges and prosecute the responsible parties.

Respectfully submitted,


A horizontal line is drawn across the signature.

ALEXANDER H. LINDSAY, JR. ESQ.
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EXHIBIT A

IN THE COURT OF COMMON PLEAS OF
CENTRE COUNTY, PENNSYLVANIA
CRIMINAL DIVISION

COMMONWEALTH OF PENNSYLVANIA	:	CP-14-CR-2421-2011
	:	CP-14-CR-2422-2011
v.	:	
	:	
GERALD A. SANDUSKY,	:	
	:	
PETITIONER.	:	HONORABLE SENIOR JUDGE JOHN M. CLELAND

**DEFENDANT'S LIST OF SPECIFIC DISCOVERY REQUESTS AND LEGAL
AUTHORITY IN SUPPORT OF EACH REQUEST**

INTRODUCTION

The Defendant, pursuant to Pa.R.Crim. P.902 (E)(1), in paragraph 469 of his Amended Petition for Post Conviction Relief stated that this case presents extraordinary circumstances that warrant discovery in various areas. This Court, by order of September 15, 2015 ordered that counsel for the Defendant should within two weeks submit a list of specific discovery requests and legal authority in support of each request. The following is filed pursuant to that order.

As stated, this request is filed pursuant to Rule 902 (E)(1) which reads as follows:

(E) Requests for Discovery

(1) Except as provided in paragraph (E)(2), no discovery shall be permitted at any stage of the proceedings, except upon leave of court after a showing of exceptional circumstances.

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Obviously, the question for this Court is what are "exceptional circumstances" as meant by this rule. At the outset, it appears that there is a dearth of authority concerning the meaning of "exceptional circumstances".

Our Superior Court in the case of *Commonwealth v. Frey*, 41 A.3d 605, 611 (2011) stated the following:

In PCRA proceedings, discovery is only permitted upon leave of court after a showing of exceptional circumstances. 42 Pa.C.S.A. § 9545(d)(2); Pa.R.Crim.P. 902(E)(1). The PCRA and the criminal rules do not define the term "exceptional circumstances." Rather, it is for the trial court, in its discretion, to determine whether a case is exceptional and discovery is therefore warranted. *Commonwealth v. Dickerson*, 900 A.2d 407, 412 (Pa.Super.2006).

We will not disturb a court's determination regarding the existence of exceptional circumstances unless the court abused its discretion. *Commonwealth v. Lark*, 560 Pa. 487, 746 A.2d 585, 591 (2000). An abuse of discretion is not a mere error in judgment. *Commonwealth v. Riley*, 19 A.3d 1146, 1149 (Pa.Super.2011). Instead, it is a decision based on bias, ill will, partially, prejudice, manifest unreasonableness, or misapplication of law. *Id.* Moreover, we recall that the appellant has the duty to convince us an abuse occurred. *Commonwealth v. Bennett*, 19 A.3d 541, 543 (Pa.Super.2011).

Thus, it appears that the Trial Court is given very broad discretion concerning whether or not "exceptional circumstances" exist. Furthermore, there appears to be no guidance in the rule or case authority concerning what is the appropriate scope of discovery or the type of discovery which may be taken. At the outset, the Defendant urges this Court to exercise its discretion in a manner commensurate with the profound significance of this case.

This case is exceptional to say the least. It cannot be argued that this is a "run of the mill" sexual abuse case. At the outset, with this in mind, the Defendant asks this Court to be mindful of certain factors:

1. The Defendant, a highly esteemed community member and renowned football coach at Pennsylvania's largest educational institution, and who has consistently maintained his innocence, has received what amounts to a life sentence;
2. There are other cases, especially, *Commonwealth v. Spanier*, *Commonwealth v. Curley*, and *Commonwealth v. Shultz*, also involving highly esteemed members of the Penn State academic community, have been significantly and will be significantly affected by what occurs in this case and with what will occur in this case;
3. This case, which the Defendant obviously believes has resulted in a profound injustice, has besmirched the reputation of a previously esteemed educational institution, Penn State University;
4. The allegations as set forth in the Amended Petition for Post Conviction Relief are strong. The Commonwealth's response to the Defendant's Amended Petition for Post Conviction Relief is peppered with such language as, "audacious" and "outrageous". As the Court noted in a pretrial conference, the Defendant is alleged that the behavior of certain individuals involved in his prosecution was unethical and perhaps criminal. The investigation of these allegations may be far better suited to a sworn statement setting as opposed to open court;
5. The number of allegations set forth in the Defendant's Amended Petition for Post Conviction Relief, all of which the Defendant believes to be legitimate, would require a substantial amount of this Court's time merely to hold an evidentiary hearing. By permitting the Defendant to conduct discovery, it is anticipated that there would be streamlining of the evidentiary hearing, if granted by this Court;
6. It is anticipated that many of those individuals from whom the Defendant seeks information, will resist cooperating with the Defendant. Therefore, subpoena power is of significant importance.

The specific requests and authorities are as follows.

SPECIFIC REQUESTS FOR DISCOVERY AND AUTHORITIES

I. Defendant's Discovery Requests Regarding the Defendant's Amended Petition for Post Conviction Relief IV C2, Discovery Related to Trial Counsel's Failure to Object and Demand a Mistrial when the Prosecutor Made a Blatantly False Statement to the Jury

These specific discovery requests are related to Trial Counsel's failure to object and demand a mistrial when the prosecutor made a blatantly false statement to the jury in his summation. The allegations in question commenced at paragraph 169 of the Defendant's Petition on page 37 and continues to paragraph 204 on page 45. This discovery request was also referred to in paragraph 469(f) in the Defendant's Amended Petition wherein the Defendant requested discovery concerning whether the Defendant's constitutional rights were violated by activities of law enforcement and private attorneys regarding Allan C. Myers.

A. Specific Discovery Requests

1. The Defendant requests authority from this Court to issue compulsory process, subpoenas to the following individuals and to take statements under oath from each of the following individuals:

- a. Allan C. Myers;
- b. Corporal Joseph Leiter, Pennsylvania State Police;
- c. Trooper James Ellis, Pennsylvania State Police;
- d. Inspector Corricelli, United States Postal Inspection Service;
- e. Attorney Joseph McKettigan.

2. Petitioner seeks discovery of the following information:

- a. Any and all documents reflecting communications between any attorney, officer, investigator, agent, or other Commonwealth personnel or persons working with Commonwealth personnel (including but not limited to United States Postal Inspectors) and Allan C. Meyers and/or any agent, representative, or attorney of Allan C. Myers relating to Mr. Myers's potential testimony at trial in this matter;

- b. Any and all documents reflecting communications between any attorney, officer, investigator, agent, or other Commonwealth personnel and Allan C. Myers and/or any agent, representative, or attorney of Allan C. Myers relating to Mr. Myers's availability to testify at trial in this matter;
- c. Any and all documents in the Commonwealth's possession relating to efforts to serve a subpoena for trial upon Allan C. Myers, either directly or through his counsel;
- d. Any and all notes of oral communication between any attorney, officer, investigator, agent, or other Commonwealth personnel or persons working with Commonwealth personnel (including but not limited to United States Postal Inspectors) and Allan C. Myers and/or any agent, representative, or attorney of Allan C. Myers relating to Mr. Myers's potential appearance, availability, and testimony at trial in this matter.

B. Argument

The Defendant, at paragraph 170 of his Amended Petition for Post Conviction Relief states that during the prosecutor's closing argument, he stated the following:

I don't want to tug at your heart strings. I want to remind you of what the substance of this case is about, because it's what happened to those boys.

You know what? Not just those boys, to others unknown to us, to others presently known to God but not to us, but we know what the defendant did to them because adults saw them and adults told you about them.

In paragraph 173 of the Amended Petition, the Defendant states:

Alternatively, this statement was a lie, as the only potential victim who was presented at trial to which this statement could apply was Victim #2, the individual in the shower, supposedly the victim witnessed by the star witness for the prosecution, Michael McQueary.

In paragraph 174 it is stated:

Victim #2 was, as both the prosecution and defense well knew, an individual whose name was Allan C. Myers.

What makes this misstatement of fact by the prosecutor particularly insidious is that it was made in conjunction with another statement made by the prosecutor in this case. As stated by the Defendant in paragraph 150 of his Amended Petition for Post Conviction Relief,

The defendant's explanation on television, is there anything else you missed? Mr. Amendola read it with great animation. I'm not sure if there was anything – any other important information communicated because he didn't provide you with something that could have been enormously helpful to us, could have solved many problems today.

* * *

One thing he didn't which he could have provided to Bob Costas, he could have provided it to anybody at any time. He had the complete capacity and exonerate himself at the time and just say who was there because this is a day – remember, Mike McQueary, why remember him and not the little boy you're soaping and just being innocently cleansing to? But he didn't provide that name to anybody, ever, certainly not to Bob Costas, no. He forgot that.

Thus, the Defendant was subjected to a preverbal, ethical "double whammy". That is, the prosecutor in his summation, lied to the jury about his knowledge of who "Victim #2" was and then suggested in no uncertain terms that the Defendant should have come forward and given the name.

The Commonwealth in its response to the Defendant's Amended Petition for Post Conviction Relief was indignant in its response. More specifically the Commonwealth stated, "To suggest that officer of this court would intentionally lie and violate his oath is a serious allegation and one that should only be buttressed with legitimate evidence. Here Sandusky offers no evidence in support of his position except for self-serving speculation about the prosecutor's mindset and motivations. He can hardly establish that this was a meritorious claim that counsel should have preserved through an objection/request for mistrial if its validity in is

such serious doubt. Accordingly, this claim should be dismissed outright without any further analysis."

Curiously, it was with this allegation that Sandusky in his Petition, offers very specific evidence. The history of Victim #2, Allan C. Myers, is set forth in great detail in paragraphs 175 through 193 of the Defendant Sandusky's Petition. At the beginning of the investigation, Myers appeared to be a staunch supporter of Jerry Sandusky. As noted in paragraph 176 of the Defendant's Amended Petition, on May 6, 2011, Allan C. Myers submitted a letter to a publication, wherein he stated:

I am one of those many Second Mile kids who became a part of Jerry's "family." He has been a best friend, tutor, workout mentor and more. We've worked together, competed together, travelled together and laughed together. I lived with Jerry and Dottie for three months. Jerry's been there for me for 13 years and stood beside me at my senior parent's football night.

I drove 12 hours to attend his mom's funeral. I don't know what I would have done without him

As stated in paragraph 177, prior to the trial the Defendant engaged an investigator, Curtis Everhart, who interviewed Allan C. Myers about the allegations relating to the Defendant Jerry Sandusky. This information was reduced to a summary of the interview and is set forth in some length in paragraph 179 of the Amended Petition on page 39. In subparagraph E of paragraph 179, Everhart states, "I asked Myers about a specific time period in 2002 when he would work out with Jerry. Myers stated it would have been the night that was described as alleged Victim Number Two (2) in the grand jury report. "The day was March 1, 2002, I am very positive". As noted in subparagraph F, Everhart noted:

Myers stated he and Jerry had just finished a workout and went into the shower area to shower and leave. "I would usually work out one or two days a week, but this particular night is very clear in my mind. We were in the shower and Jerry and I were slapping

towels at each other trying to sting each other. I would slap the walls and would slide on the shower floor, which I am sure you could have heard from the wooden locker area. While we were engaged in fun as I described, I heard the sound of a wooden locker close, a sound I have heard before. I never saw who closed the locker. The grand jury report says Coach McQueary said he observed Jerry and I engaged in sexual activity. This is not the truth and McQueary is not telling the truth. Nothing occurred that night in the shower."

As noted in subparagraph G, Everhart noted:

I asked, "How did you know this was the night McQueary described?" Myers stated, "I heard the wooden locker close. McQueary said he went to the locker room to obtain items from a locker. I know what the door sounds like when it is closed, as I said before. I never saw McQueary look into the shower that night. I am sure." I asked Myers, "Can you be more specific if possible?" Myers said, "That same week Jerry either told me in person or on the phone that the night we were in the showers, Coach McQueary reported that he saw us engaged in sexual acts and reported this to school officials. Jerry told me to expect a call from PSU officials about that night. To be more specific, the last night that Jerry and I showered at the PSU Complex was March 1, 2002, I am certain."

As noted in subparagraph H, Everhart noted:

I asked Myers, "Did PSU officials ever contact you?" Myers said, "Never. The next contact I had was when PSP troopers interviewed me regarding the Sandusky case." Myers again stated, "At no time that night, March 1, 2002, did Jerry sexually assault me with anal or oral intercourse, nor did I perform such on Jerry. This is wrong not to tell the truth." Myers said again, "I am alleged Victim Number Two (2) on the grand jury report as the events described match that night in exact details except that Jerry never sexually assaulted me. I would be very sure if something like that happened and I would have called the police. What McQueary said he observed is wrong. I can't understand why this was said. It is not the truth."

As noted in subparagraph I, Everhart noted:

Myers described, "I told PSP about numerous trips I would take with Jerry and nothing ever happened except Jerry putting his right hand on my left knee. I described that I would stay at Jerry's home, sometimes have meals, sometimes stay overnight. I would shower separate from Jerry at this home. I felt very uncomfortable with the PSP interview process as they would try to put words in my mouth, take my statement out of context. The PSP investigators were clearly angry and upset when I would not say what they wanted to hear. My final words to the PSP were, "I will never have anything bad to say about Jerry."

Myers, as set forth in paragraph 180, was interviewed by two State Police Officers, Joseph Leiter and James Ellis. The State Police report is found in the Appendix at page 436. No mention is made of any inappropriate conduct on the part of the Defendant Sandusky by Allan Myers. On February 28, 2002 Inspector Corricelli interviewed Allan Myers concerning his relationship with Jerry Sandusky. Once again there was no mention of any inappropriate contact with Mr. Sandusky. A copy of this memorandum is found in the Appendix at page 438. On March 8, 2012, Inspector Corricelli again interviewed Mr. Myers. On this occasion Mr. Myers related that he was ready to discuss his alleged sexual abuse. He further alleged he was abused on at least three trips he took with Mr. Sandusky outside of Pennsylvania. A copy of this memorandum is found in the Appendix at page 441. On March 16, 2002 Inspector Corricelli again interviewed Allan Myers wherein he indicated that the only time there was sexual conduct by Sandusky was at the Lasch Building on the Pennsylvania State University campus. He noted that Michael McQueary was present. A summary of this interview is found on page 443 of the Appendix.

In paragraph 186 of the Petition it is indicated that Trial Counsel Karl Rominger was informed by the prosecutors in the case that in order to keep law enforcement officers from interviewing Allan Myers outside of his attorney's presences, a private attorney sequestered Myers in an undisclosed location so that he was unable to be contacted by law enforcement officials.

From the foregoing, it is clear that the Commonwealth was aware that Allan C. Myers claimed he was "Victim #2". The Commonwealth in its brief suggests that Sandusky, in his petition, "Goes on to detail the interviews of Allan C. Myers ("Myers") who denied, then admitted, then denied again he was Victim Two." This isn't true. The Defendant Sandusky is not aware of any statement given by Allan C. Myers wherein he denied he was Victim #2.

There are two points made in the Commonwealth's response to Defendant's petition to which Sandusky agrees. First of all, at the bottom of page 23 of the Commonwealth's response, the Commonwealth concedes that "the Prosecutor was unmistakably referring to the two unnamed victims in this remarks." The second point is that the allegation made by the defense is a very serious one. Rather than respond to this very serious allegation which, in and of itself, should result in a new trial for the Defendant, the Commonwealth seems to suggest to this Court that the allegation is so serious that it should be dismissed outright "without any further analysis". The Commonwealth suggests that Sandusky offers no evidence in support of his position "except for self-serving speculation about the prosecutor's mindset and motivations". Of course, the Defendant must speculate about the prosecutor's mindset in his petition and that is why the Defendant wishes to take the prosecutor's sworn statement to determine, with precision, what his mindset and motivations were.

Whatever his mindset was, it is clear he had motivation to misrepresent to the jury the existence of Allan C. Myers. If Myers testified consistently with his earlier statements, and indeed his last statement, the credibility of the Commonwealth's star witness would have been significantly undermined. McQueary was, as was noted in the Commonwealth's summation, an extremely significant part of the Commonwealth's case. Furthermore, if Allan C. Myers testified consistently with his earlier statements (with which he would have undoubtedly been

cross-examined by the defense at trial) it would have undermined not only the Sandusky case but also the prosecutions of Curley, Schultz and Spanier, as McQueary would have to be considered the star witness in those cases. Finally, it was on McQueary's reported statement in the leaked grand jury presentment, which turned out to be incorrect, that led to the highly publicized, and profoundly unjust, termination of Penn State icon Joe Paterno and his subsequent disgrace.

The Defendant Sandusky vigorously disagrees with the Commonwealth that this claim should be dismissed outright without any further analysis. Analysis of this very serious matter is requested and indeed, from the evidence, demanded. The only way this analysis can occur is if the Defendant can receive the discovery which he has requested.

Finally, the Defendant asks the Court to be mindful of Rule 500 of the Pennsylvania Rules of Criminal Procedure. This rule deals with the preservation of testimony after institution of criminal proceedings. Under Rule 500 (A)(1) at any time after the institution of a criminal proceeding, upon motion of any party, and after notice of hearing, the court may order the taking and preserving of the testimony of any witness who may be unavailable for trial or for any other proceeding, or when due to exceptional circumstances, it is in the interest of justice that the witness' testimony be preserved. Certainly, there are questions, based on the history of this case concerning whether Allan C. Myers will be available for trial. For this reason, it is requested that his testimony be preserved by taking of his sworn statement.

II. Defendant's Discovery Requests Regarding the Defendant's Amended Petition for Post Conviction Relief IV G, the claim that the Defendant's Constitutional Right to Impeachment Evidence was Infringed by the Failure to Disclose the Alleged Victims' Financial Incentives to Testify Against Sandusky, Including Contingent Fee Agreements with Private Attorneys Pursuant to Private Litigation Against Penn State University.

A. Specific Discovery Requests

The Defendant requests copies of any signed agreements between certain government witnesses and their private civil attorneys. These witnesses include the following:

- a. Brett Houtz;
- b. Aaron Fischer;
- c. Dustin Struble;
- d. Zachary Konstas;
- e. Allan C. Myers
- f. Jason Simcisko

B. Argument

As noted in paragraph 327 of the Defendant's Amended Petition for Post Conviction Relief, page 77, it is stated that upon information and belief, many if not all of the purported victims who testified in this matter have pursued civil lawsuits against Pennsylvania State University, with many settling with the University. According to an October 28, 2013 press release from Penn State University, the University reached a settlement agreement with 26 alleged victims for a total settlement of approximately 59.7 million. This equates to an average settlement of approximately 2.29 million per victim. See Penn State University's settlements announced for Sandusky victims, a copy of the press release can be found at page 572 of the

Appendix. If the witness, purporting to be victims, who testified at the Defendant's trial, had engaged private civil attorneys to pursue financial claims against Penn State University, this information would have been highly significant to a jury evaluating their credibility. Obviously if they had a financial incentive to testify favorably to the Commonwealth, the jury should have known this.

It is the position of the Defendant there is ample reason to believe that these witnesses had contingent fee agreements with private counsel. The Commonwealth, in its response to the Defendant's Amended Petition for Post Conviction Relief, conveniently for the Defendant, sets forth specific excerpts of the testimony of these witnesses. On page 52 of its response, the following is clear from reviewing these statements:

1. These witnesses had a private attorney;
2. These witnesses did not pay the lawyer any money at the time they testified;
3. These witnesses signed an agreement;
4. These witnesses consistently claimed not to have known the terms of the agreement.

If these witnesses signed contingent fee agreements wherein the attorney would be paid a percentage of what the individual would recover in a civil suit, it would directly contradict the testimony of these witnesses and would be highly probative of the lack of credibility of these witnesses.

More specifically, the testimony of Brett Houtz can be found at page 52 of the Commonwealth's response to the Defendant's Amended Petition. He admits that he had an attorney who was with him at police interviews and appeared before the Grand Jury. He denies that he ever paid the lawyer anything. He was asked: Q. Have there been any discussions about

pursuing some sort of civil action? A. No. He admits that he signed an agreement with his attorney, "Basically just for his representation." He denies that he knows exactly what it says. If in fact the agreement that he signed was a contingent fee agreement it would directly contradict his testimony.

Aaron Fisher's significant testimony on this subject can be found on page 54 of the Commonwealth's response to the Defendant's Amended Petition. He states that his mother hired an attorney to keep the press away from him. When asked, "And I'm guessing you probably don't know what type of financial arrangements have been made with this attorney." His answer was, "I don't know anything about that kind of stuff. All I know is I'm here to tell the truth about what happened to me, just like everybody else." This of course would be contradicted if he in fact had signed a contingent fee agreement.

The significant cross examination of Dustin Struble may be found at page 56 of the Commonwealth's response to the Defendant's Amended Petition. Dustin Struble states that he has a local lawyer representing him. He denies that he was aware that the lawyer advertises that represented alleged victims of Penn State sexual abuse. When asked if the only reason he retained him was to protect his anonymity in this matter he replied, "No, that's not the only reason. I just - I didn't want to go through this alone. I wanted somebody that could help me. Somebody that could help me with some of the behind-the-scenes legal things." He denies that he paid him anything. When asked if he signed any sort of fee agreement with him. He replies, "I signed something. I'm not sure what it was." Once again, if Struble signed a contingent fee agreement, it would directly contradict his testimony.

Zachary Konstas' cross-examination can be found at page 59 of the Commonwealth's response to the Defendant's Amended Petition. He states that had recently obtained counsel.

When asked if he paid his attorney any money for the things that the attorney did for him. He replied, "Zero." When asked if he signed any sort of agreement with him in terms of how he was to be paid. He replied, "I signed something to let him represent him. I don't know legal stuff, so I don't remember what was in that." Once again, if Konstas signed a contingent fee agreement, which in all probability he did, this would make clear to the jury what his purpose in testifying was.

Jason Simcisko's cross-examination can be found at page 61 of the Commonwealth's response to the Defendant's Amended Petition. He was asked whether he hired private counsel. He replied, "I didn't really hire them. Well, they approached me because they were representing someone else." He denied that he paid the attorney any money. He admitted that he signed an agreement with them in terms of their representation.

In the Commonwealth's response, it seems to be suggested that because the jury was aware that Sandusky's defense, at least in part, consisted of a theory that the victims should not be believed because they were motivated by money this is sufficient impeachment of the witnesses. The purpose of impeachment is not to make the jury aware of a potential defense. The purpose of impeachment is to establish that the witnesses were not telling the truth about their motivation for giving testimony. These witnesses, because of the ineffective cross-examination and impeachment, were able to convey the false theory that the attorneys in question were not hired for the purpose of obtaining settlements on behalf, but were just there to help them through a difficult ordeal.

The Commonwealth also in its response, at page 52 states that the problem with the Defendant's argument is that the Defendant Sandusky cannot establish that any such agreements and/or incentives existed at the time of the trial. This argument essentially is that the

Commonwealth has no obligation to reveal the existence of the agreements in questions until the Defendant proves that these documents existed. Obviously the Defendant is asking the Commonwealth to reveal whether they exist or not. If the Commonwealth candidly answers that it doesn't know, then the defense should be permitted to subpoena these specific documents from the attorney's in question. These attorneys can hardly claim attorney/client privilege in light of the testimony given by their clients at trial that the agreements do in fact exist.

The Commonwealth concedes at page 50 that the evidence in question is critical wherein it is stated the following:

"Impeachment evidence[,] which goes to the credibility of a primary witness against the accused[,] is critical evidence and it is material to the case whether that evidence is merely promise or an understanding between the prosecution and the witness."
Commonwealth v. Strong, 761 A.2d 1167, 1175 (Pa. 2000)).
"However, mere conjecture as to an understanding is not sufficient to establish a *Brady* violation. *Id* (citation omitted). Finally, "[t]here is no *Brady* violation when the defendant knew or, with reasonable diligence, could have uncovered the evidence in question [.]"
Paddy, 15 A.3d at 451; *Commonwealth v. Carson*, 913 A.2d 220, 246 (Pa. 2006), cert. denied, 128 S.Ct. 384 (U.S. 2007) ("No *Brady* violation can occur where the evidence is available to the defense through non-governmental sources, or, with reasonable diligence, the defendant could have discovered the evidence.")

As stated by the Commonwealth, there is no *Brady* violation when the Defendant knew or, with reasonable diligence, could have uncovered the evidence in question. Of course this is our point. Defense counsel at trial made no effort to subpoena these documents or even request them from the Commonwealth.

Curiously, the Commonwealth suggests that during the three years since his convictions, Sandusky has had ample opportunity to investigate any financial motives on the part of the victims and to subpoena documents for purposes of his appeal. The defense is unfamiliar with

any procedure that would permit a petitioner in a post conviction relief act petition to subpoena documents without leave of court. If there is such a procedure it would obviate a necessity for this argument. All we are asking for in this item is for the Court to sanction Sandusky's use of compulsory process.

III. Defendant's Discovery Requests Regarding the Investigating Grand Jury Process as Used in this Case as an Unconstitutionally Deprived Sandusky of his Right to Due Process.

A. Specific Discovery Requests

1. The Defendant requests authority from this Court to issue compulsory process, that is Subpoenas, to obtain the report, if any exists, of Attorney James M. Reeder, who was appointed by Judge Barry F. Feudale to investigate and prosecute leaks coming from the Grand Jury that recommended charges against the Defendant, Jerry Sandusky.

2. The Defendant requests authority from this Court to issue compulsory process, Subpoenas to the following individuals and take statements under oath from each of them:

- a. Attorney Frank Fina;
- b. Attorney Jonelleh Eshbach;
- c. Sara Gannim;
- d. Michael Gillum, Psychologist;
- e. Aaron Fisher;
- f. Dawn Hennessy;
- g. Deb McCord;
- h. Any other individual who had access to the proceedings before the Grand Juries investigating the activities of the Defendant, Jerry Sandusky.

3. Any and all records, documents, and correspondence, including e-mails, that were transmitted between any and all members of the judiciary, and any representative, agent, officer, or employee of the Pennsylvania Office of Attorney General, including but not limited to Frank Fina, Jonelle Eshbach, Richard Sheetz, Joseph McGettigan, Anthony Sassano, Randy Feathers, and/or Timothy Shaffer, which communications occurred in the timeframe during which the Sandusky investigation was before any grand jury empanelled by the Commonwealth.

B. Argument

In the Commonwealth's response to the Defendant's Petition for Post Conviction Relief, the Commonwealth suggests that the Defendant Sandusky is capitalizing upon the publicity surrounding the subject of Grand Jury leaks which has pervaded media coverage in Pennsylvania to catapult his next claim into focus. (Page 31 of Commonwealth's Response). This is not true. On the contrary it is the Defendant Sandusky's intention to capitalize on the recent Supreme Court ruling in the case of *In Re: The thirty-Fifth Statewide Investigating Grand Jury; Petition of: Attorney General Kathleen g. Kane No. 197 MM 2014 decided March 31, 2015*. The Defendant Sandusky suggests to this Court that the ruling of the Supreme Court in the *Kane* case totally changed the landscape of Pennsylvania Law regarding the seriousness with which the Pennsylvania Supreme Court views widespread abuses of investigating Grand Juries by prosecutors in this state.

On Page 31 of the Commonwealth's Response, the Commonwealth states this:

Sandusky claims that the leak of grand jury information in this case entitles him to an extraordinary remedy: Dismissal of all of the criminal charges pertaining to the victims who were identified after the details of his investigation were published by the media. Conflating principles of federal law, Sandusky would have this Court craft a so-called exclusionary rule that bars the

Commonwealth from utilizing the testimony of any witnesses who happened to come forward in the wake of a breach of grand jury secrecy. Because there is no basis in the law for such a remedy, Sandusky is not entitled to relief.

The Commonwealth correctly states Sandusky's claim. Sandusky does indeed claim that the leak of grand jury information in his case entitles him to an extraordinary remedy: dismissal of all the criminal charges pertaining to the victims who were identified after the details of his investigation were published by the media. Sandusky would indeed have this Court craft an exclusionary rule that bars the Commonwealth from utilizing the testimony of any witnesses who happened to come forward in the wake of a breach of grand jury secrecy. As will be more fully set forth in what follows, the time has come for such relief to breaches of grand jury secrecy.

Paragraphs 227 (page 50) through 234 of the Defendant's Amended Petition for Post Conviction Relief sets forth the basis for the Defendant's position that the Attorney General's Office or its agents deliberately leaked grand jury information to certain members of the press and others. These paragraphs of the Defendant's Amended Petition for Post Conviction Relief are based on information found at pages 40 through 56 of the Moulton Report, which was commissioned by Attorney General Kane herself.

As stated in Paragraph of 229 of the Sandusky's Amended Petition for Post Conviction Relief "the undisputed change of facts show that the Commonwealth's case, which had remained essentially stalled since it opened in May of 2009, rapidly advanced in the Summer of 2011 after the fact of the investigation was leaked to Gannon". As stated in Paragraph 231 of the Defendant's Petition for Post Conviction Relief, the Defendant believed that the leaking of the information, during the time that the Commonwealth's investigation had stalled, was a deliberate act by the Prosecution and its agents, or other agents of the Thirtieth and/or Thirty-Third Statewide Investigating Grand Jury to advance the investigation and spur other alleged victims to

come forward. Indeed, as stated in Paragraph 232 of the Amended Petition, Eshbaugh had expressly stated that the Prosecution was unlikely to identify any additional witnesses until the investigation became public.

From the clear allegations in the Moulton report, commissioned by Attorney General Kane, it appears that, at a minimum, there are colorable allegations or indications that the sanctity of the grand jury process was breached. In Paragraph 238 of the Amended Petition for Post Conviction Relief, it is noted that in the case of *In Re: The Thirty-Fifth Statewide Investigating Grand Jury; Petition of: Attorney General Kathleen G. Kane No. 197 MM 2014* decided March 31, 2015 at Page 3, citing *In Re: Dauphin County Fourth Investigating Grand Jury*, 610 Pa. 296, 19 A.3d 491 (2011):

There, this Court recently observed that “[t]he very power of the grand jury, and the secrecy in which it must operate, call for a strong judicial hand in supervising the proceedings” and indicated that, “[w]hen there are colorable allegations or indications that the sanctity of the grand jury process has been breached those allegations warrant investigation, the appointment of a special prosecutor to conduct such an investigation is appropriate.” *Id.* at 318, 19 A.3d at 503-04. Further, the supervising judge commented:

The Supervising Judge of a Statewide Investigating Grand Jury must have inherent authority to investigate a grand jury leak, when there is a conflict of interest as there is here. Clearly, Attorney General Kane could not investigate herself. Otherwise potentially serious violations of grand jury secrecy could go unaddressed. *Id.*
at Page 4

In Paragraph 242 of the Amended Petition for Post Conviction Relief, the Defendant Sandusky notes that based on the foregoing, very recent opinion of the Pennsylvania Supreme Court it is clear that, to the extent the investigating grand jury system had been abused by unauthorized leaks, it falls on the role of the supervising Judge to monitor for abuses and in the appropriate case appoint a special prosecutor; however, in the present case, the supervising Judge

did not appoint a special prosecutor. Indeed, from the record, it is apparent that the supervising Judge apparently did nothing with respect to the leaks.

This brings us to the curious case of Attorney James M. Reeder and his investigation. As stated, the position of the Defendant Sandusky in his Petition was that it appeared that the supervising Judge apparently did nothing with respect to the leaks. Subsequent to the filing of the Petition, Counsel for the Defendant learned the Supervising Judge apparently did indeed do something with respect to the leaks. Attached hereto and marked Exhibit "A" is a news story from the Pittsburgh Post Gazette, dated February 28, 2013 wherein it had indicated the supervising Judge of the Statewide Grand Jury that recommended charges against Jerry Sandusky had appointed a special prosecutor to investigate the leaks coming from it and to other panels. According to the news account, Judge Barry F. Feudale signed the four-page Order appointing Attorney James M. Reeder on February 8, 2013. It goes on to note that Reeder, a former lawyer from the State Attorney General's Office was to investigate and prosecute any illegal disclosure of information protected by the rules of Grand Jury secrecy, as well as any "breach of official duty or other unlawful act."

The story noted that Judge Feudale issued the Order because a preliminary investigation led him to believe a deeper probe into violations of grand jury secrecy was needed. At the conclusion of Mr. Reeder's work, he was to submit a report to the State with recommendations on preserving grand jury secrecy, Judge Feudal wrote.

One of the major thrusts of the Defendant Sandusky's argument regarding the investigating grand jury process depriving him of his right to Due Process was the failure of Judge Feudale to appoint a special prosecutor. Counsel anticipated being severely chided by the Commonwealth for its failure to be aware that a special prosecutor had, indeed, been appointed

by Judge Feudale. In the Response filed by the Commonwealth to the Amended Petition Post Conviction Relief, there was nothing regarding the appointment of Attorney James M. Reeder, not one word.

Counsel for Defendant Sandusky had a paralegal, James M. Smith, contact Attorney James M. Reeder on September 22, 2015 to ascertain what had occurred with regard to his investigation and subsequent report. Mr. Reeder informed Mr. Smith, in no uncertain terms, that he would not even speak with anyone regarding his investigation without a Court Order.

It needs to be emphasized that at this stage of the proceedings Sandusky is not seeking this Court to order dismissal of all of the criminal charges. We are merely asking that we be permitted to inquire into those allegations made in the Moulton Report. On Page 31 of its Response, the Commonwealth notes that Sandusky avers - - *without any supporting evidence* - - that " the leaking of information, during the time of Commonwealth's investigation had stalled, *was a deliberate act* by the Prosecution and its agents, or other agents of the [Thirtieth or Thirty-Third SWIGJ] to advance the investigation and spur the other alleged victims to come forward." The obvious question arises, how in the world would Sandusky be able to produce the supporting evidence without having the opportunity to question, under oath, the players involved in the leaking of the information.

It is important to emphasize that Sandusky in his Petition is claiming, not only he was a victim of malicious behavior on the part of the Attorney General's Office in leaking information from the investigating grand juries in question to further their investigation, he is alleging that these leaks were part of the systemic break down of the grand jury process as over time by the Attorney General's Office and supervising Judges. As noted in Paragraph 237 of the Petition, it is apparent that the jury system has irreparably broken down in Pennsylvania by irresponsible

prosecutors and lack of oversight by supervising Judges. Indeed, the citizens of Pennsylvania are now being confronted with the unseemly spectacle of leaks from an investigating grand jury charge with investigating leaks from another grand jury. Paragraph 237. *See Wallace McKelvey, Kathleen Kane Should Be Charged in Connection with Leaks, Grand Jury Says: Report*, Harrisburg Patriot-News, January 8, 2015, available at http://www.pennlive.com/politics/index.ssf/2015/01/kathleen_kane_leaked_secret_in.html. See Appendix, P. 459. It is believed by Sandusky that it is this systemic breakdown precipitated the Supreme Court's opinion in the Kane case, *Supra*.

It needs to be emphasized by the Defendant in this case that, at this stage of the proceeding, we are not asking for the application of the exclusionary rule barring the Commonwealth from utilizing the testimony of any witnesses who happen to come forward in the wake of the breach of grand jury secrecy, nor are we asking a dismissal of all the criminal charges pertaining to the victims who were identified after the details of the investigation was leaked to the media. We are asking the Court to defer any such decision until a point when the evidentiary record can be developed and to confer upon the Defendant the ability to develop that evidence.

Finally, attached as Exhibit "B" is correspondence between the undersigned and the Attorney General's Office with regard to communications between representatives of the Attorney General's Office and supervising judges of the grand jury investigation involving Mr. Sandusky. Prior to the filing of the Defendant's Amended Petition for Post Conviction Relief, then Chief Deputy Attorney General James P. Barker declined to provide the documents requested.

As noted in counsel for Sandusky's letter, the Defendant and counsel learned through various news accounts that there were a number of inappropriate emails and communications between members of the Attorney General's staff and various members of the judiciary. The Defendant believes that these might have included inappropriate communications of an "*ex parte*" nature between members of the Attorney General's staff conducting the investigation and the supervising judge or judges of the grand jury investigation. This would of course result in a "tainting" of the grand jury investigation and would have likely had significance in the grand jury presentment accusing the Defendant of various criminal acts and subsequent prosecution.

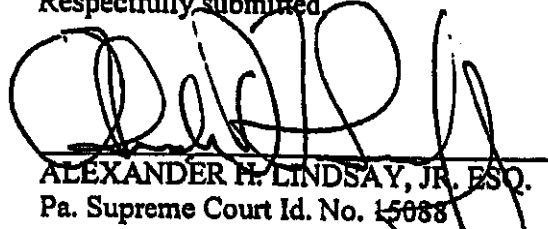
As the Attorney General declined to provide this information, we are requesting that the Court order certain information to be transmitted to the Defendant. This includes:

1. Any and all records, documents, and correspondence, including e-mails, that were transmitted between any and all members of the judiciary, and any representative, agent, officer, or employee of the Pennsylvania Office of Attorney General, including but not limited to Frank Fina, Jonelle Eshbach, Richard Sheetz, Joseph McGettigan, Anthony Sassano, Randy Feathers, and/or Timothy Shaffer, which communications occurred in the timeframe during which the Sandusky investigation was before any grand jury empanelled by the Commonwealth.

CONCLUSION

For the foregoing reasons it is requested that the Defendant be permitted to go forward with the requested discovery.

Respectfully submitted



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2013

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Pittsburgh Post-Gazette

Special prosecutor assigned to probe Pa. grand jury leaks

February 28, 2013 12:00 AM

By Paula Reed Ward Pittsburgh Post-Gazette

The supervising judge of the statewide grand jury that recommended charges against Jerry Sandusky has appointed a special prosecutor to investigate leaks coming from it and two other panels.

Judge Barry F. Feudale signed the four-page order appointing attorney James M. Reeder on Feb. 8.

It gives the former lawyer from the state attorney general's office until Aug. 8 to investigate and prosecute any illegal disclosure of information protected by the rules of grand jury secrecy, as well as any "breach of official duty or other unlawful act."

Judge Feudale issued the order, he wrote, because a preliminary investigation led him to believe a deeper probe into violations of grand jury secrecy was needed.

At the conclusion of Mr. Reeder's work, he is to submit a report to the state with recommendations on preserving grand jury secrecy, Judge Feudale wrote.

The order includes three grand juries: the 33rd Statewide Investigating Grand Jury, the 36th Statewide Investigating Grand Jury and the Dauphin County Fourth Investigating Grand Jury.

The 33rd Statewide Investigating Grand Jury handled the child sex abuse case against former Penn State University assistant football coach Sandusky, as well as three top administrators there. The still-pending case involving those administrators — former Penn State president Graham Spanier, former athletic director Timothy Curley and former vice president for business and finance Gary Schultz — is listed among the case captions on the order.

EX A

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Their charges of perjury, conspiracy and endangering welfare of children are on hold while Judge Feudale attempts to resolve motions by the defendants regarding their representation by former Penn State general counsel Cynthia Baldwin.

The defendants argue that testimony provided by Ms. Baldwin against their clients that led to new charges should not have been permitted because they believed she represented them before the grand jury in January 2011. Ms. Baldwin has said she was representing Penn State, not the men.

Judge Feudale, in his recent order, said the special prosecutor should also investigate a rule in the Pennsylvania Code as "Who May be Present During Session of an Investigating Grand Jury." In that rule, people permitted to attend include the attorney for the witness being examined.

Charles DeMonaco, the attorney representing Ms. Baldwin, said Judge Feudale's order "has nothing to do with Cynthia Baldwin or any of the pending motions regarding Cynthia Baldwin."

As for the 36th Statewide Investigating Grand Jury listed in the order, Judge Feudale notes that it has "yet to be empaneled."

The Dauphin County Fourth Investigating Grand Jury was empaneled in 2006 and was tasked with investigating the slot machine license sought by Scranton businessman Louis A. DeNaples. Perjury charges against him were dropped in 2009.

A special prosecutor appointed in May 2009 to probe grand jury secrecy violations in the case reported a year later that he was unable to determine where media leaks originated.

In an April 2011 opinion, Supreme Court Chief Justice Ronald Castille wrote that the special prosecutor's "ultimate inability to determine the source of any breach of grand jury secrecy does not necessarily end the matter."

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OF COUNSEL
JOHN J. VIERTHALER
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December 4, 2014

Senior Deputy Attorney General James P. Barker
Office of the Attorney General of Pennsylvania
16th Floor – Strawberry Square
Harrisburg, Pennsylvania 17120

Re: Commonwealth v. Gerald A. Sandusky
Centre County Court of Common Pleas
CP-14-CR-0002421-2011 & CP-14-CR-0002422-2011

Dear Mr. Barker:

As you know, this law firm represents the Defendant Gerald A. Sandusky with respect to the filing of his PCRA Petitions at the above numbers. In conducting the research for the PCRA Petition, we have come to the conclusion that there may be discovery not disclosed prior to this date which would constitute after discovered evidence or even "*Brady*" materials.

In reviewing the report of H. Geoffrey Moulton, Jr. concerning the investigation conducted by Mr. Moulton into the investigation of the Defendant's activities, it appears not only that the grand jury investigation played a significant role in the investigation and prosecution of the Defendant but also that a number of very significant decisions were made by the supervising judge or judges of the grand juries in questions. These decisions may have included the following:

1. The report details an apparent leak of grand jury information to a reporter from the *Patriot News* and is the *Centre Daily Times*. Nowhere in the report does it indicate that an investigation was done concerning the leaks of grand jury information or, if there was an investigation, what the result of that investigation revealed;
2. On page 73 of the report there is reference to Deputy Attorney General Frank Fina seeking and obtaining a protective order from the supervising grand jury judge, directing the witnesses not to

disclose the fact or substance of their testimony to anyone other than their own attorney;

3. On page 79 of the report there is reference made to an execution of a search warrant which was signed by the supervising grand jury judge;
4. While it does not appear to be referenced in the Moulton Report, it appears that a psychologist, Michael Gillum, appeared with a witness, A.F., during A.F.'s grand jury testimony. Having such an individual appear with a witness in front of the grand jury would be highly irregular and could have only occurred with court approval;

The Defendant, and counsel, have learned through various news accounts that there were a number of inappropriate emails and other communications between members of the Attorney General's staff and various members of the judiciary. The Defendant believes that these might have included improper communications of an "*ex parte*" nature between members of the Attorney General's staff conducting the grand jury investigation and the supervising judge or judges of the grand jury investigation. This would, of course, result in a "tainting" of the grand jury investigation and would have likely had significance in the grand jury presentment accusing the Defendant of various criminal acts and also his subsequent prosecution.

Accordingly, I ask that you provide this office with the following:

1. Any and all records, documents, and correspondence, including e-mails, that were transmitted between any and all members of the judiciary, including but not limited to Judge Barry Feudale, Judge Norman Krumenacker, and/or Judge Todd Hoover; and any representative, agent, officer, or employee of the Pennsylvania Office of Attorney General, including but not limited to Frank Fina, Jonelle Eshbach, Richard Sheetz, Joseph McGettigan, Anthony Sassano, Randy Feathers, and/or Timothy Shaffer, which communications occurred in the timeframe during which the Sandusky investigation was before any grand jury empanelled by the Commonwealth. Also,
2. Any and all records, documents, and correspondence, including e-mails, that were transmitted between any and all members of the judiciary, including but not limited to Judge Barry Feudale, Judge Norman Krumenacker, and/or Judge Todd Hoover; and any representative, agent, officer, or employee of the Pennsylvania Office of Attorney General, including but not limited to Frank Fina, Jonelle Eshbach, Richard Sheetz, Joseph McGettigan, Anthony Sassano, Randy Feathers, and/or Timothy Shaffer, relating to the

investigations of Graham Spanier, Gary Schultz, and/or Tim Curley which communications occurred in the timeframe during which the investigation was before any grand jury empanelled by the Commonwealth concerning Graham Spanier, Gary Schultz and/or Tim Curley.

Please feel free to contact me with any questions relating to the forgoing request.

I am thanking you in advance for your kind attention to this matter.

Very Truly Yours,

THE LINDSAY LAW FIRM, P.C.

COPY

Alexander H. Lindsay, Jr.

AHL:ms



COMMONWEALTH OF PENNSYLVANIA
OFFICE OF ATTORNEY GENERAL

KATHLEEN G. KANE
ATTORNEY GENERAL

December 29, 2014

Alexander H. Lindsay, Jr.
The Lindsay Law Firm, P.C.
110 East Diamond Street, Suite 301
Butler, PA 16001-5982

In re: Commonwealth v. Gerald A. Sandusky, No. CP-14-CR-2421-2011, No. CP-14-CR-2422-2011 (C.P. Centre County)

Dear Mr. Lindsay:

Our Office has received your letter dated December 5, 2014, requesting discovery in the above-referenced matter. It is my understanding that you will be representing Mr. Sandusky with respect to a to-be-filed petition for relief under the Post Conviction Relief Act. As I indicated during our telephone call, because no petition is pending, it is the position of our Office that discovery is premature. Further, there are no exceptional circumstances that warrant discovery as required by Pa.R.Crim.P. 902(E)(1). Of course, the disclosure of evidence under *Brady v. Maryland* is independent of discovery rules. However, I do not see that the materials requested constitute *Brady* material. Also, some of the records and information that you have requested are not such as I may provide, such as Grand Jury materials. Finally, the request appears to be overly broad, as many of the records sought are completely unrelated to the prosecution of Mr. Sandusky and therefore would not be discoverable in any way.

For these reasons, the Office of Attorney General declines to provide the requested materials. If you have any questions or if I may be of assistance in some other way, please feel free to contact me at (717) 705-0098.

Sincerely,

A handwritten signature in black ink that reads "James P. Barker".

James P. Barker
Chief Deputy Attorney General
Criminal Law Division
Appeals and Legal Services Section
14th Floor—Strawberry Square
Harrisburg, PA 17120

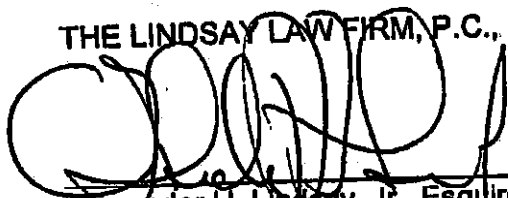
CERTIFICATE OF SERVICE

I, Alexander H. Lindsay, Jr., Esquire, hereby certify that a true and correct copy of the foregoing document was served on the 28th day of September 2015, via U.S. Mail delivery on the following:

Honorable John M. Cleland, Sr. Judge c/o Office of the Court Administrator, and
Office of the Clerk of Courts of Centre County and
Centre County Courthouse
102 South Allegheny Street
Bellefonte, Pennsylvania 16823

Assistant Attorney General Jennifer Peterson
Office of the Attorney General - Criminal Prosecutions Section
16th Floor Strawberry Square
Harrisburg, Pennsylvania 17120

THE LINDSAY LAW FIRM, P.C.,



Alexander H. Lindsay, Jr., Esquire
Counsel for Defendant

EXHIBIT B

IN THE COURT OF COMMON PLEAS OF CENTRE COUNTY, PENNSYLVANIA
CRIMINAL DIVISION

COMMONWEALTH OF PENNSYLVANIA :

VS. :

GERALD A. SANDUSKY :

CP-14-CR-2421-2011

CP-14-CR-2422-2011

MEMORANDUM AND ORDER

DATED: November 5, 2015

Counsel for the defendant, Gerald A. Sandusky, has filed a petition under the Post-Conviction Relief Act. Associated with that petition, counsel has also filed a request for discovery seeking information on a variety of subjects from a variety of sources. I scheduled argument on the defense discovery requests to be held on October 29, 2015.

The afternoon before the scheduled argument the Attorney General of Pennsylvania, Kathleen G. Kane, issued a press release. The press release appeared to assert that the Hon. Barry Feudale, the presiding judge of the investigating grand jury which investigated the circumstances eventually leading to the charges filed against the defendant, had been involved in some way in the leak of secret grand jury information regarding the Sandusky investigation.

As a result, on October 29, 2015, I entered an order directing the Attorney General "to disclose under seal, any information of which she is aware...that Judge Feudale and/or prosecutors of the Office of the Attorney General in any way orchestrated, facilitated, cooperated in, or arranged for disclosure of otherwise secret grand jury material in this case." On November 4, 2015, the Attorney General filed a timely

response under seal to my order; to which counsel for the defense filed a response under seal later in the day.

Concerned that the Attorney General's response merited some clarification, I entered an order directing her to appear today at 1:00 p.m. at the Pennsylvania Judicial Center to answer questions from me and defense counsel regarding her response. The order to appear was in accordance with the terms of my October 29, 2015 order. The proceeding was held in camera with only the Attorney General, the Commonwealth attorney, the defense attorney, the court reporter and me present.

I ordered the hearing to be held in camera to assure that if any secret grand jury information was discussed or disclosed, it would not be subject to disclosure to anyone other than those present, all of whom had been administered or were covered by a grand jury secrecy oath.

As provided in the attached order, because the hearing did not, in fact, result in the disclosure of any otherwise secret grand jury information, the previously imposed seal will be lifted and the responses of the Attorney General and defense counsel, and a transcript of today's proceeding when prepared, will be open to public inspection.

In defense counsel's request for discovery he sought information regarding the processes of the investigating grand jury to determine if abuses of the grand jury proceeding had deprived the defendant of his right to due process. Normally, such a request would be more appropriately directed to the currently presiding judge of the investigating grand jury, the Hon. Norman A. Krumenacker. Because, however, the Attorney General had apparently asserted in her October 28, 2015 press release that Judge Feudale and attorneys of the Office of Attorney General had been involved in

leaking or orchestrating grand jury leaks, it became apparent that I needed to address that specific issue and accordingly issued the orders that led to today's appearance by the Attorney General.

The Attorney General testified under oath for approximately one-half hour, answering questions both from me and defense counsel. While the transcript of her testimony will be filed in due course, suffice it to say that, in summary, she testified that she is aware of no information, including emails or oral or written communications, that either prove to her, or persuade her, that Judge Feudale and/or any attorneys for the Office of Attorney General orchestrated, facilitated, cooperated in, or arranged for the disclosure of otherwise secret grand jury information in this case. She testified that it was not her intention in any way to have given that impression in her October 28, 2015 press release.

Because the Attorney General has clarified whatever interpretation might have been applied to her October 28, 2015 press release and testified, under oath, that she has no information implicating Judge Feudale or any attorneys of the Office of Attorney General in the participation in any grand jury leaks in this case, I will deny the defendant's discovery request regarding the grand jury procedures in deference to consideration of any subsequent request made by defense counsel to Judge Krumenacker.

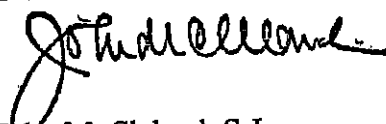
A ruling on the remaining defense requests for discovery of information regarding other issues in the case will be addressed in a subsequent order.

ORDER

AND NOW, November 5, 2015, in consideration of the foregoing, it is ordered as follows:

1. That the seal previously imposed on documents filed by the Attorney General and defense counsel on November 4, 2015 is lifted.
2. That the transcript of the hearing held in camera today when filed need not be filed under seal.
3. That the defendant's discovery requests "regarding the investigating grand jury process" as detailed beginning at page 17 of the "List of Specific Discovery Requests" filed on September 29, 2015 is denied, without prejudice to filing such a request with the Hon. Norman A. Krumenacker, the supervising judge of the grand jury.
4. That ruling is reserved on the remainder of the requests for discovery contained in the said list of requests.

BY THE COURT:

A handwritten signature in black ink, appearing to read "John M. Cleland", written over the printed name.

John M. Cleland, S.J.
Specially Presiding

EXHIBIT C

IN THE COURT OF COMMON PLEAS OF
CENTRE COUNTY, PENNSYLVANIA
CRIMINAL DIVISION

COMMONWEALTH OF

v.

GERALD A. SANDUSKY,

PETITIONER.

CP-14-CR-2421-2011

CP-14-CR-2422-2011

HONORABLE SENIOR JUDGE
JOHN M. CLELAND

COPY

TYPE OF PLEADING:

AMENDED PETITION FOR POST
CONVICTION RELIEF

FILED ON BEHALF OF:

PETITIONER, GERALD A. SANDUSKY

COUNSEL FOR PETITIONER:

ALEXANDER H. LINDSAY, ESQUIRE
Pa. Supreme Court Id. No. 15088

THE LINDSAY LAW FIRM
110 EAST DIAMOND STREET, STE. 300
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FILED 110 250000
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224. Despite requests from Sandusky's current counsel, the Commonwealth has refused to disclose emails between Fina and Judge Feudale. A copy of Defendant's correspondence seeking copies of these emails is attached hereto at Appendix, P. 457.

225. Given how some of the emails concerned the Attorney General's review into this case may reveal in further infringements on Sandusky's legal rights.

226. Since the Commonwealth refuses to disclose the emails to counsel, Sandusky believes and avers that exceptional circumstances have been presented under Pa.R.Crim.P. 902(E)(1), and Sandusky is entitled to discovery for reasons as more fully set forth in Sandusky's original P.C.R.A. Petition currently under seal by order of court.

227. This is especially true in light of the Moulton Report, commissioned by Attorney General Kane. To summarize, the Moulton Report recognized that the investigation had stalled until Sara Ganim published leaked details of the investigation in the Harrisburg Patriot-News. *See*, Moulton Report at Appendix, P. 40-56.

228. According to the Moulton Report:

- a. In March 2009, Senior Deputy Attorney General Jonelle H. Eshbach was assigned to investigate Sandusky once the case was referred to the Pennsylvania Office of Attorney General. Moulton Report at Appendix, P.43.
- b. On May 1, 2009, Attorney Fina decided to refer the investigation into Mr. Sandusky to the Thirtieth Statewide Investigating Grand Jury. *Id.* at Appendix, P.45-46. ("According to Fina, while many sexual-assault cases are not necessarily appropriate for referral to an investigating grand jury, this one was, particularly because of the perceived need to keep the investigation secret.").

- c. At the time of the referral, the only alleged victim to come forward of which the Commonwealth was aware was A.F., a/k/a Victim #1. *Id.* at Appendix, P. 43-49 .
- d. The Commonwealth sought to identify additional victims, but it was having no luck in doing so. *Id.* at Appendix, P. 50-53.
- e. By the end of 2009, the Commonwealth only identified one victim willing to testify. *Id.* In December 2009, Eshbach advised the grand jurors, "As of now, we haven't found any other victims. We're still trying. I suspect, although I don't know for sure, that perhaps when this becomes public, we might have some other people turn up. That sometimes happens, but we have been trying pretty hard to find some other folks and so far have not." *Id.* (emphasis added) at Appendix, P. 55.
- f. In March 2010, Eshbach prepared a draft presentment related solely to A.F., because "she believed that after a year of looking, the investigation was unlikely to find additional victims, at least until after charges were filed, and because she felt that A.F. deserved to have his allegations heard in court. Eshbach had no illusions that a case against Sandusky, with A.F. as the sole victim, would be easy. Nevertheless, she believed she had adequate corroboration at that time to charge and try Sandusky; she also hoped that once A.F.'s allegations against Sandusky were made public, other victims would come forward." Moulton Report at Appendix, P. 57.
- g. Attorney Fina had reservations about the draft presentment. According to the Moulton Report, "Fina recalls that his first reaction to the presentment was the "very strong" belief that the case was too weak to go forward; he believed that

Sandusky would be acquitted at trial (if the case got that far), both because A.F. was not a strong witness and because Sandusky had significant resources and an outstanding reputation in the community. Moreover, he believed that an acquittal would likely doom any subsequent prosecution. In Fina's view, the key was finding more victims before the case was charged." *Id.* at Appendix, P. 59-60.

- h. The investigation continued to stall through the summer of 2010 because the prosecution was not able to identify any other victims. *Id.* at Appendix, P. 59-64. ("Between Fina's August 12 [2010] admonition that the investigation 'must do everything possible to find other victims' and the end of October [2010], the investigation did not succeed in identifying any new victims.").
- i. The investigation had completely stalled until a November 3, 2010, anonymous email to Centre County Assistant District Attorney Stacy Parks Miller suggested investigators interview Michael McQueary. *Id.* at Appendix, P. 66.
- j. Despite McQueary coming forward, no additional witnesses were presented to the Thirtieth Statewide Investigating Grand Jury by the time its term expired in January 2011, and the case was again referred to the Thirty-Third Statewide Investigating Grand Jury. *Id.* at Appendix, P.71.
- k. On March 31, the Harrisburg Patriot-News and the Centre Daily Times published a story written by Sara Ganim providing details of the supposedly confidential investigation. *Id.* at Appendix, P.73.
- l. The Moulton Report credits the Ganim story with opening the floodgates of the investigation, stating "The publication of Ganim's story had two almost immediate consequences. First, it raised within the investigation the alarming

prospect of a leak of grand jury information. Second, it generated two significant leads on additional criminal conduct by Sandusky.” *Id.* at Appendix, P. 74.

m. Specifically, according to the Moulton Report, Ronald Petrosky called the Pennsylvania State Police on the afternoon the Ganim article was published, stating that he had information relevant to the case. *Id.* at Appendix, P. 74-75.

n. In the aftermath of Ganim’s report, the “investigation continued to gain momentum,” including:

- i. The Office of Attorney General assigned additional agents to the investigation;
- ii. Attorney Benjamin Andreozzi contacted investigators claiming to represent a new alleged victim of abuse, B.S.H.;
- iii. Additional alleged victims appearing before the grand jury, including D.S. and M.S.

o. Additionally, Attorney Fina sought and received an order from Judge Feudale prohibiting the witnesses who testified on or after April 14, 2011 from disclosing “the fact or substance of their testimony” to anyone other than the witness’s attorney. *Id.* at Appendix, P.77-78.

229. The indisputable chain of facts shows that the Commonwealth’s case, which had remained essentially stalled since it opened in May 2009, rapidly advanced in the summer of 2011 after the fact of the investigation was leaked to Ganim.

230. Moreover, there is evidence that Sara Ganim directly contacted Deb McCord, mother of Z. K. and told her she should reach out to investigators. Specifically, on March 30, 2011, Corporal Joseph Leiter wrote a report detailing a conversation with Ms. McCord, stating:

On Thursday, March 24, 2011, I received a telephone call from Deb McCord relative being again contacted by Sara Ganim, Harrisburg Patriot News, apologizing for not writing the Jerry Sandusky article earlier as she had previously told McCord she would do but that she was going to print the article over the weekend of March 26 and Ganim was calling McCord to see if she wanted to add anything to her previous statements. McCord advised Ganim that she did not make any previous statement and that she had nothing to speak to her about. Ganim then told McCord that the State Police were not going to do anything with this investigation and that Ganim was providing McCord with an opportunity to have her story told. Again McCord advised Ganim that she had nothing to say to her and hung up.

On Monday, March 28, 2011 I received a telephone call from Deb McCord who related that she had received a text message from Sara Ganim on this date at 0930 hours. Ganim said in the text, "Debra. It's Sara from the Patriot. I just want to pass along this agent's name and number. The attorney general has expressed interest in helping you." McCord did not respond. A copy of this text is attached to the station copy of this report.

A copy of Corporal Leiter's report is attached hereto at Appendix, P. 458.

231. Defendant believes and therefore avers that the leaking of the information, during the time that the Commonwealth's investigation had stalled, was a deliberate act by the prosecution and its agents, or other agents of the Thirtieth and/or Thirty-Third Statewide Investigating Grand Jury to advance the investigation and spur other alleged victims to come forward.

232. Indeed, Eshbach had expressly stated that the prosecution was unlikely to identify any additional witnesses until the investigation became public. *See Moulton Report at Appendix, P.54.*

233. The leak of grand jury information had the express result that Attorney Fina desired, in that additional witnesses came forward before the Commonwealth filed charges against Mr. Sandusky.

234. The leak of grand jury information, in violation of the "secrecy" required, prejudiced Sandusky and created an incentive for people to fabricate accounts of abuse because of the attention drawn to the investigation and a thirst for financial reward.

235. Sandusky is unaware of any evidence that the supervising judge of both the Thirtieth and Thirty-Third Statewide Investigating Grand Jury, or anyone else, took any steps to investigate the leak.

236. While the fact that someone leaked details of the investigation to Sara Ganim was known to the defense upon publication of Ganim's article, the entire scope of the leak and how it impacted the investigation was not known and could not have been discovered by trial counsel until the Moulton Report was published.

237. Moreover, it is apparent that this case is one more example of how the investigating grand jury system has irreparably broken down in Pennsylvania by irresponsible prosecutors and lack of oversight by supervising judges. Indeed, the citizens of Pennsylvania are now being confronted with the unseemly spectacle of leaks from a current investigating grand jury charged with investigating leaks from another investigating grand jury. See Wallace McKelvey, *Kathleen Kane Should Be Charged in Connection with Leaks, Grand Jury Says: Report*, Harrisburg Patriot-News, January 8, 2015, available at http://www.pennlive.com/politics/index.ssf/2015/01/kathleen_kane_leaked_secret_in.html. See Appendix, P. 459.

238. Recently our Supreme Court has reaffirmed the inherent power of the supervising judge of the Grand Jury to investigate leaks and indeed has a duty to do the same. In the case of *In Re: The Thirty-Fifth Statewide Investigating Grand Jury; Petition of: Attorney General*

EXHIBIT D



REPORT TO THE ATTORNEY GENERAL
ON THE INVESTIGATION OF GERALD A. SANDUSKY

May 30, 2014^{*}

H. Geoffrey Moulton, Jr.
Special Deputy Attorney General

^{*} As amended, June 23, 2014.

Smith, however, had been in the office in 1998 and was generally aware of the investigation. Smith remembers telling Madeira, at the time of the referral from District Attorney Salisbury, about the earlier investigation of Sandusky. Madeira states that he does not recall such a discussion. In any event, no one disputes that neither Madeira nor anyone else from the Centre County District Attorney's Office passed on information about the 1998 investigation to OAG when the case was transferred in March 2009.

B. Phase Two: Receipt of Case by OAG (March 2009) through Draft Presentment (March 2010)

The assignment of SDAG Eshbach to the Sandusky investigation on March 17, 2009, was made by then-Chief Deputy Attorney General ("CDAG") Frank Fina, who headed the Criminal Prosecutions Section within the Criminal Law Division at OAG. Fina reported to EDAG Sheetz, who ran the Criminal Law Division. Sheetz reported to First Deputy Attorney General William H. Ryan, Jr., who in turn reported to Attorney General Tom Corbett.⁶⁶ Both Ryan and Corbett recall learning about the matter very soon after it arrived at OAG. According to Corbett, he recognized right away the significance of the allegations.

Fina explained that he assigned that matter to Eshbach because of her skill as a lawyer and her considerable experience in handling child-sexual-abuse cases. In Pennsylvania, the vast majority of child-sexual-abuse cases are prosecuted by county district attorney's offices; OAG gains jurisdiction of such cases only when referred by a district attorney based on a conflict of interest (as in Sandusky) or inadequate resources.⁶⁷ Most of Eshbach's experience in this area had come during her time as an assistant district attorney in York County, although she did prosecute many of the child-sexual-abuse cases that came to OAG based on county-level

⁶⁶ Corbett had been sworn in as Attorney General on January 18, 2005.

⁶⁷ See 71 PA. STAT. ANN. § 732-205(a)(3).

conflicts. On March 17, 2009, she received from Centre County District Attorney Madeira the eight-page PSP report that Madeira had received from District Attorney Salisbury in early February. As noted above, neither Madeira nor anyone from the Centre County District Attorney's Office told Eshbach or anyone at OAG about the 1998 allegations against Sandusky.

By the time the investigation was transferred to OAG, Tpr. Cavanaugh had been replaced by Tpr. Timothy Lear as the lead PSP investigator.⁶⁸ Tpr. Lear interviewed A.F. on March 12, 2009, and again on March 19, 2009. According to the report of the March 19 interview, at which A.F.'s psychologist was present, A.F. related, though reluctantly, that Sandusky had performed oral sex on A.F. several times and that Sandusky also had forced A.F. to perform oral sex on Sandusky. No prosecutor participated in either interview. On April 3, 2009, Eshbach met A.F. for the first time, at a meeting with Tpr. Lear, A.F.'s mother, and A.F.'s psychologist. At the meeting, Eshbach explained the expected course of the investigation going forward, including the likelihood of A.F. testifying in the Grand Jury. Eshbach did not ask A.F. any substantive questions regarding the abuse by Sandusky, relying instead on the information provided by investigators.

On May 1, 2009, OAG submitted the Sandusky investigation to the Thirtieth Statewide Investigating Grand Jury. Pursuant to the Investigating Grand Jury Act,⁶⁹ the Notice of Submission explained the nature of the investigation and why OAG believed the investigative resources of the Grand Jury were needed:⁷⁰

⁶⁸ Tpr. Cavanaugh was assigned to PSP's Lamar barracks, which covers Clinton County, where A.F. lived and went to school. Tpr. Lear was assigned to PSP's Rockview barracks, which covers Centre County, where Sandusky lived and committed most of the abuse described by A.F.

⁶⁹ See 42 PA. CONS. STAT. §§ 4541-4553.

⁷⁰ See 42 PA. CONS. STAT. § 4550.

The Pennsylvania State Police are pursuing an investigation based upon a founded Clinton County Children and Youth Services complaint alleging sexual assault by a Centre county adult male upon a juvenile male with whom he became acquainted through his sponsorship of a charity for disadvantaged youth. It is believed that other minor males have been similarly assaulted through this connection. The investigation concerns allegations of involuntary deviate sexual intercourse, indecent assault, and corruption of minors in Clinton and Centre counties. The powers of the grand jury are needed in order for the investigation of this matter to advance to a satisfactory conclusion. In particular, the power of the grand jury to compel the attendance of witnesses is needed. Witnesses with knowledge may be too embarrassed or intimidated to admit their knowledge of the violations because the actor is well-regarded and influential and is also known as the founder of a charity that raises funds for and serves disadvantaged children. Young men who are potentially involved are in fear of revealing what they know due to the suspect's power and influence.

The power of the grand jury to compel testimony under oath is needed. It is critical in a sexual assault case where no physical evidence exists to test the reliability of information provided by the witness and to obtain testimonial evidence which could be used at a criminal trial as substantive evidence if the witness testifies differently at trial. See *Commonwealth v. Lively*, 530 Pa. 464, 610 A.2d 7 (1992).

The power of the grand jury to subpoena documents is needed in order to obtain information that would not otherwise be available. Specifically, telephone records and business records may be needed to corroborate the testimony of the witnesses.⁷¹

According to Fina, the decision to use a grand jury⁷² to investigate Sandusky was his, a decision with which both his supervisor, Sheetz, and the line prosecutor, Eshbach, agreed. According to then-Attorney General Corbett, he was informed of this decision and agreed with it. According to Fina, while many sexual-assault cases are not necessarily appropriate for referral to an investigating grand jury, this one was, particularly because of the perceived need to keep the investigation secret. In addition to the reasons set out in the Notice of Submission, Fina was concerned that without the protection of grand-jury-secrecy orders, the investigation would

⁷¹ NOTICE OF SUBMISSION OF INVESTIGATION NO. 29, ¶ 3 (attached as part of Appendix C).

⁷² Consistent with OAG practice, the term "grand jury" in this report refers to grand juries generally. The term "Grand Jury" refers to a particular body, here the Grand Jury that was employed to investigate Sandusky. As discussed later in the report, the term of the Thirtieth Statewide Investigating Grand Jury expired while the Sandusky investigation was ongoing, and it was replaced by the Thirty-Third Statewide Investigating Grand Jury. See *infra* Part One, Section D. Where convenient, this report uses "Grand Jury" to refer to both bodies.

become public. And if the investigation became public, he feared that any other Sandusky victims, who apparently had not complained about Sandusky to date, would be more reluctant to come forward, particularly given Sandusky's prominence in the community.⁷³ According to Eshbach, she also believed that this investigation belonged in a grand jury, chiefly for the reasons included in the Notice of Submission. In addition, she noted that while at OAG she had successfully used a grand jury to investigate another multi-victim child-sexual-abuse case, against a police officer in Marysville, Pennsylvania.⁷⁴ On May 5, the supervising grand jury judge accepted the submission and the Sandusky investigation was designated "Notice No. 29" in the Thirtieth Statewide Investigating Grand Jury,⁷⁵ which met for one week each month in Harrisburg.

Later in May, Tpr. Scott Rossman replaced Tpr. Lear as the lead investigator for PSP. Also in May, OAG Agent Anthony Sassano was assigned to the case. According to Eshbach, she asked for the addition of an OAG agent to assist Tpr. Rossman. Fina and Randy Feathers, who was then an OAG Regional Director and Sassano's supervisor, each take credit for the selection of Sassano, offering similar reasons: Sassano's skill and experience as an investigator, including experience investigating sexual-assault cases during his 20 years of work for the City of Altoona Police Department, as well as the fact that Sassano worked in and was familiar with

⁷³ Fina stated that he saw the investigation as presenting two possibilities: either A.F. was telling the truth, in which case Sandusky was not only a child molester but also likely a serial child molester who had left a string of victims, or A.F. was not telling the truth, in which case Sandusky was innocent. According to Fina, in either event secrecy was paramount.

⁷⁴ See Attorney General Corbett & PA State Police Announces Arrest of Marysville Police Officer Charged with Sex Crimes Involving Numerous Teenage Girls, PENNSYLVANIA OFFICE OF ATTORNEY GENERAL, Oct. 25, 2007, <http://www.attorneygeneral.gov/press.aspx?id=3042&LangType=1034>; The Associated Press, *Ex-Pa. Officer Guilty of Sex Crimes While On Duty*, USA TODAY, Oct. 26, 2008, http://usatoday30.usatoday.com/news/nation/2008-10-26-pa-minors_N.htm; see also Commonwealth v. Pavlovich, No. 2145 MDA 2009 (Pa. Super Ct. Apr. 29, 2011) (affirming appeal from Commonwealth v. Pavlovich, No. CP-50-CR-0000042-2008) (Ct. Com. Pl. Perry County)).

⁷⁵ See In Re: The Thirtieth Statewide Investigating Grand Jury, Notice No. 29, Order, May 5, 2009 (attached as part of Appendix C).

State College, where Sandusky resided. According to Fina, Sassano, who was assigned to the Bureau of Narcotics Investigation and Drug Control at OAG, had as much relevant experience as any agent at OAG at the time. According to Agent Sassano, at this stage of the investigation Tpr. Rossman was the lead investigator; Agent Sassano was to assist Tpr. Rossman as needed.⁷⁶

At the time the Sandusky investigation came to OAG, the office was heavily invested in a set of investigations and prosecutions involving the Pennsylvania Legislature that fell under the heading of “Bonusgate.” According to an OAG press release, the investigations began in 2007 “after a series of newspaper stories revealed that millions of dollars of taxpayer funded bonuses were paid to employees of the Pennsylvania Legislature,” and they “uncovered the illegal use of millions of dollars in taxpayers’ funds, resources and state employees for political campaign purposes.”⁷⁷ The work on Bonusgate was extremely labor intensive for both prosecutors and agents at OAG. Agent Sassano’s assignment to Sandusky occurred in conjunction with the

⁷⁶ At the time, according to Sassano, that meant helping to coordinate matters in the Grand Jury and handling the planned telephone call from A.F. to Sandusky. See *infra* notes 81-82 and accompanying text.

⁷⁷ *Attorney General Corbett Announces Charges in Legislative Bonus Investigation – 12 Suspects Charged in 1st Phase of the Investigation*, THE ATTORNEY GENERAL’S PRESS OFFICE—PENNSYLVANIA OFFICE OF ATTORNEY GENERAL, July 10, 2008, <http://www.attorneygeneral.gov/press.aspx?id=3771>. In July 2008, in the first phase of the Bonusgate investigation, OAG brought charges against 12 then-current and former members of the House Democratic Caucus. *Id.* The charges focused on the directing of public employees to work on political campaigns while being paid by taxpayers, and the payment of state-funded bonuses for such work.

In November 2009, in the second phase of the investigation, OAG brought similar charges against 10 then-current and former members of the House Republican Caucus. See *Attorney General Corbett Announces Criminal Charges in Second Phase of Legislative Investigation; 10 Suspects Charged*, THE ATTORNEY GENERAL’S PRESS OFFICE—PENNSYLVANIA OFFICE OF ATTORNEY GENERAL, Nov. 12, 2009, <http://www.attorneygeneral.gov/press.aspx?id=4834>. The second phase of the investigation is also commonly referred to as “Computergate” because it involved the use of taxpayer funds to create computer programs that were designed to facilitate campaign and election activities. See *id.*; Angela Coulombis, *6th ‘Computergate’ Defendant Expected to Plead Guilty*, PHILLY.COM, Sept. 19, 2011, http://articles.philly.com/2011-09-19/news/30176126_1_guilty-plea-jury-selection-campaign-manager. Finally, in December 2009, OAG brought charges against three other then-current and former members of the House Democratic Caucus, as part of the ongoing Bonusgate investigation based upon conduct similar to that which had been discovered in the first phase of the investigation. See *Attorney General Corbett Announces Additional Charges in Ongoing Public Corruption Investigation*, THE ATTORNEY GENERAL’S PRESS OFFICE—PENNSYLVANIA OFFICE OF ATTORNEY GENERAL, Dec. 15, 2009, <http://www.attorneygeneral.gov/press.aspx?id=4919>.

Ultimately, the investigation resulted in 22 individuals being convicted or pleading guilty. See Charles Thompson, *Tom Corbett and Bonusgate: Did Senate Republicans Get A Break?*, PENNLIVE, Feb. 27, 2013, http://www.pennlive.com/midstate/index.ssf/2013/02/tom_corbett_and_bonusgate_did.html.

reassignment of several other cases from OAG Bureau of Criminal Investigations (“BCI”) agents in Harrisburg who were working on Bonusgate to other OAG agents in various field offices.⁷⁸

In June 2009, the grand jury investigation got underway. On June 16, Tpr. Rossman and A.F. both appeared before the Grand Jury. Tpr. Rossman testified about the investigation to date, described Sandusky’s efforts to “groom” and then sexually assault A.F.,⁷⁹ expressed the belief that Sandusky had victimized others, and explained the hope that use of the Grand Jury would help identify more victims. A.F. testified about his interactions with Sandusky. Consistent with his most recent interviews, including an interview by Tpr. Rossman on June 8, 2009, A.F. acknowledged that Sandusky had performed oral sex on him and that on at least one occasion he had performed oral sex on Sandusky. He did so with great difficulty, however, and was able to testify about the oral sex only with one-word answers in response to leading questions.⁸⁰

⁷⁸ Cf. Greg Bock, *Relief Follows Sandusky Verdict*, ALTOONAMIRROR.COM, June 24, 2012, <http://www.altoonamirror.com/page/content.detail/id/561937/Relief-follows-Sandusky-verdict.html?nav=756> (“During the Bonusgate investigation, we had a shortage of investigators in Harrisburg” (quoting former OAG Regional Director Randy Feathers)).

⁷⁹ The process of “grooming”

is defined as a variety of techniques used by a sex offender to access and control potential and actual child victims. This process takes access, time, and interpersonal skill. How much time depends on the needs of the child and skills of the adult. If done well the process not only gains the victim’s initial cooperation, but also decreases the likelihood of disclosure by the victim and increases the likelihood of ongoing, repeated access.

KENNETH V. LANNING, *CHILD MOLESTERS: A BEHAVIORAL ANALYSIS – FOR PROFESSIONALS INVESTIGATING THE SEXUAL EXPLOITATION OF CHILDREN* 27 (National Center for Missing & Exploited Children, 5th ed. 2010), available at http://www.missingkids.com/en_US/publications/NC70.pdf. For a more detailed description of the “grooming” process, see *id.* at 26-28. See also CARLA VAN DAM, *THE SOCIALLY SKILLED CHILD MOLESTER: DIFFERENTIATING THE GUILTY FROM THE FALSELY ACCUSED* 7, 43-44 (Routledge 2013) (originally published by The Haworth Press, Inc. 2006).

⁸⁰ Adolescent boys often have great difficulty describing the details of the abuse they suffered. See LANNING, *supra* note 79, at 85 (“Many children, especially adolescent boys, vehemently deny their involvement with a pedophile.”); William Winslade et al., *Castrating Pedophiles Convicted of Sex Offenses Against Children: New Treatment or Old Punishment?*, 51 SMU L. REV. 349, 411 n.37 (1998) (observing “that shame may be a powerful factor in keeping boys from reporting sexual abuse, and that even when sexual abuse is uncovered, boys may be extremely reluctant to discuss the sexual abuse”).

Following A.F.'s initial grand jury testimony, the investigation sought both to secure evidence that would corroborate A.F.'s allegations and to identify additional Sandusky victims. In terms of the search for other victims, the focus at the time was on using A.F. and officials at CMHS to identify other boys who had spent significant time with Sandusky in the recent past. That effort resulted in the interview of F.P., a former CMHS student previously interviewed by Tpr. Cavanaugh, and F.A., who had spent time with both Sandusky and A.F. While each denied being a victim of sexual misconduct, both described what investigators believed was "grooming" behavior by Sandusky. F.P. told Agent Sassano on June 17, 2009, that he had met Sandusky through The Second Mile, that Sandusky had given him gifts and taken him to football games and golf outings, and that Sandusky occasionally had placed his hand on F.P.'s knee while they were driving in Sandusky's car. F.A., who also met Sandusky through The Second Mile, was interviewed by Tpr. Rossman on July 14, 2009, and testified in the Grand Jury on August 17, 2009. According to F.A.'s testimony, while riding in a car with Sandusky and A.F., he had witnessed Sandusky placing his hand on A.F.'s knee and reaching across the seat to tickle A.F. F.A. testified that Sandusky had engaged in the same knee-touching and tickling behavior with him, and that Sandusky's conduct had made him very uncomfortable.

The efforts at corroborating A.F.'s allegations, in addition to securing the testimony of F.A., included having A.F. place a consensual phone call to Sandusky,⁸¹ interviewing two people affiliated with the Keystone Central School District who had had contact with both Sandusky and A.F., and subpoenaing telephone records. While A.F. eventually spoke to Sandusky in a recorded phone call, Sandusky did not admit to criminal conduct. Nevertheless, according to

⁸¹ Under Pennsylvania's Wiretapping and Electronic Surveillance Control Act, 18 PA. CONS. STAT. § 5701 *et seq.*, a law enforcement officer may intercept and record a conversation as part of a criminal investigation as long as one of the parties to the conversation has given prior consent and the officer has obtained approval from a qualified representative of the appropriate prosecutorial entity. *See id.* § 5704(2)(ii).

Eshbach, Sandusky's odd behavior on the call provided support for A.F.'s allegations.⁸² The two witnesses associated with the District, Joseph Miller and Steven Turchetta, had been interviewed by Tpr. Cavanaugh in January; both testified in the Grand Jury on July 15, 2009.

Miller testified about the weight-room incident that A.F. had first described to CMHS officials the previous November. Miller confirmed walking into the weight room after school hours and finding A.F. and Sandusky lying face-to-face on mats. According to Miller, A.F. and Sandusky both appeared to be surprised, as was he, and Sandusky quickly volunteered that he and A.F. were "just working on wrestling moves." Miller told the Grand Jury that he had found the situation somewhat odd – Sandusky and A.F. were in a secluded room ill-equipped for wrestling while the larger wrestling room was available next door, and Sandusky was not a wrestling coach – but had thought little of it at the time because of Sandusky's stellar reputation in the community for helping children. Steven Turchetta testified that he was an assistant principal and head football coach at CMHS, that Sandusky was a volunteer assistant football coach at CMHS, and that Sandusky "mentored" children in the District, including A.F., who participated in programs run by The Second Mile. Turchetta confirmed A.F.'s account that it was not unusual for him, as assistant principal, to call A.F. and other students out of class or activity period at the end of the day to see Sandusky at Sandusky's request. Turchetta, who did not testify at trial, further told the Grand Jury that Sandusky was sometimes "controlling," "clingy," and "needy" in his relationships with The Second Mile students he mentored. He also discussed the other students with whom Sandusky had formed "mentoring" relationships while at

⁸² The phone call, which lasted for seven minutes and 35 seconds, consisted chiefly of A.F. asking Sandusky whether he had abused anyone else besides A.F., and of Sandusky telling A.F. that he (Sandusky) could not talk to him (A.F.). Sandusky repeatedly said he had to get off the phone, but then stayed on the line. Eventually, Sandusky told A.F. that he did not know what he was talking about and hung up.

CMHS, students he had identified for Tpr. Cavanaugh, and that Tpr. Cavanaugh had interviewed, back in January.

On July 27, 2009, the Grand Jury issued subpoenas to three telephone service providers for records of telephone calls placed to and from phones used by Sandusky, A.F., and A.F.'s mother. According to Agent Sassano's later grand jury testimony, the records showed, in a 19-month period, 61 phone calls from Sandusky's home phone to A.F.'s home phone; 57 calls from Sandusky's cell phone to A.F.'s home phone; four calls from A.F.'s home phone to Sandusky's cell phone; and one call from A.F.'s mother's cell phone to Sandusky's cell phone.

The investigation reached the end of 2009 with only one Sandusky victim, A.F., available to testify. Tpr. Rossman did succeed in identifying M.S., who later described himself as another Sandusky victim, in the fall of 2009. During an October 29, 2009, interview with Tpr. Rossman, however, M.S. flatly denied that Sandusky had ever touched him inappropriately.⁸³ Much later, during the Sandusky trial in June 2012, M.S. contacted OAG and stated that he had in fact been the victim of sexual abuse by Sandusky.⁸⁴

As the criminal investigation proceeded through the first nine months of 2009, Sandusky pursued his right to challenge the Clinton County CYS determination, made in January, that A.F.'s allegations against Sandusky were "indicated."⁸⁵ Eventually, a hearing before a DPW

⁸³ M.S. repeated this denial when testifying before the Grand Jury on April 11, 2011.

⁸⁴ Other investigative steps taken in 2009 included sending a subpoena for Sandusky's credit report and reviewing the results, and a review of income reports concerning Sandusky from the Pennsylvania Department of Labor and Industry.

⁸⁵ As the CPSL existed at the time, after a report of suspected child abuse was determined to be "indicated," the report was entered in the Statewide central register, the ChildLine registry, and was expunged from the pending complaint file. 23 PA. CONS. STAT. § 6338(a) (2008), *amended by* Act of Dec. 18, 2013, P.L. 1170, No. 108 (effective Dec. 31, 2014), Act of Apr. 7, 2014, P.L. 388, No. 29 (effective Dec. 31, 2014), and Act of May 14, 2014, P.L. ___, No. 45 (effective Dec. 31, 2014); 55 PA. CODE § 3490.35. At that time, the perpetrator, among others, had to be given notice of the determination of the report, including "an explanation of the implications of the determination." 23 PA. CONS. STAT. § 6338(a) (2008), *amended by* Act of Dec. 18, 2013, P.L. 1170, No. 108

hearing officer was scheduled for September 30, 2009. Had the hearing taken place, A.F. would likely have been called as a witness and been subject to cross-examination by Sandusky's lawyer. This prospect concerned Eshbach, who sought and secured an order from the supervising grand jury judge temporarily staying the DPW hearing.⁸⁶ That order became moot, however, when Sandusky withdrew his request for a hearing, apparently after his lawyer learned from Clinton County CYS that A.F. was alleging more than indecent assault.

On September 3, 2009, Agent Sassano sent an email to Eshbach and Tpr. Rossman suggesting that they consider four different investigative steps: (1) getting a search warrant for Sandusky's home computer; (2) pursuing a lead provided by A.F.'s mother that the Philadelphia Eagles had offered A.F. season tickets; (3) accessing Sandusky's employment records at Penn State; and (4) serving a grand jury subpoena on Centre County CYS for similar complaints about Sandusky.⁸⁷ Two of those suggestions – pursuing the season-tickets lead and subpoenaing Penn

(effective Dec. 31, 2014), Act of Apr. 7, 2014, P.L. 388, No. 29 (effective Dec. 31, 2014), and Act of May 14, 2014, P.L. ___, No. 45 (effective Dec. 31, 2014); *see also* 55 PA. CODE § 3490.40(a). The notice also had to "inform the recipient of his right, within 45 days after being notified of the status of the report, to appeal an indicated report, and his right to a hearing if the request is denied." 23 PA. CONS. STAT. § 6338(a) (2008), *amended by* Act of Dec. 18, 2013, P.L. 1170, No. 108 (effective Dec. 31, 2014), Act of Apr. 7, 2014, P.L. 388, No. 29 (effective Dec. 31, 2014), and Act of May 14, 2014, P.L. ___, No. 45 (effective Dec. 31, 2014).

A perpetrator of an indicated report then "may, within 45 days of being notified of the status of the report, request the secretary [of DPW] to amend or expunge an indicated report on the grounds that it is inaccurate or it is being maintained in a manner inconsistent with" the CPSL. 23 PA. CONS. STAT. § 6341(a)(2) (2008), *amended by* Act of Dec. 18, 2013, P.L. 1170, No. 108 (effective Dec. 31, 2014), and Act of May 14, 2014, P.L. ___, No. 45 (effective Dec. 31, 2014); *see also* 55 PA. CODE § 3490.105a(a). If a perpetrator filed such a request, the secretary of DPW had 30 days to decide "whether or not to grant the request." 55 PA. CODE § 3490.105a(b); *see also* 23 PA. CONS. STAT. § 6341(c) (2008), *amended by* Act of Dec. 18, 2013, P.L. 1170, No. 108 (effective Dec. 31, 2014), and Act of May 14, 2014, P.L. ___, No. 45 (effective Dec. 31, 2014). If the secretary denied the request, the perpetrator had "45 days from the date of the letter giving notice of the decision to deny the request in which to request a hearing" "before the secretary or a designated agent of the secretary." 23 PA. CONS. STAT. § 6341(c) (2008), *amended by* Act of Dec. 18, 2013, P.L. 1170, No. 108 (effective Dec. 31, 2014), and Act of May 14, 2014, P.L. ___, No. 45 (effective Dec. 31, 2014); *see also* 55 PA. CODE § 3490.106a. Such a hearing would be held before DPW's Bureau of Hearings and Appeals. 55 PA. CODE § 3490.106a(d).

⁸⁶ Had the hearing gone forward, Sandusky apparently would not have been obligated to testify in support of his position.

⁸⁷ Email from Anthony Sassano, Agent, Pa. Office of Attorney Gen., to Jonelle H. Eshbach, Senior Deputy Attorney Gen., Pa. Office of Attorney Gen., and cc Scott Rossman, Trooper, Pa. State Police (Sept. 03, 2009, 01:08 PM) (attached as Appendix D).

State for Sandusky's employment records – were acted on in late 2009 and early 2010. The other two – searching Sandusky's computer and seeking records of complaints from Centre County CYS – were not pursued until much later. The Grand Jury issued its first subpoena to Centre County CYS on January 28, 2011. Sandusky's home (including his computer) was not searched until June 21, 2011.

Both Eshbach and Fina were asked why these investigative steps suggested by Agent Sassano were not undertaken at the time. Eshbach explained that she expected if Centre County CYS had information about other allegations against Sandusky, investigators would already know about it, so issuing a subpoena would be of no value. As for the search warrant, Eshbach said that at the time she did not believe that a search of Sandusky's computer would bear fruit – Sandusky had been aware of the investigation since January and would have had the chance to destroy any incriminating evidence in the meantime, and in any event, she had been told that Sandusky was not a regular computer user. Fina, in addition to the explanations given by Eshbach, said that he believed they would have had difficulty establishing probable cause for a search at the time, and that he was also concerned that either action – searching Sandusky's home or sending a subpoena to Centre County CYS – would result in the investigation becoming public and thus make it more difficult to persuade additional victims to come forward.⁸⁸

On November 16, 2009, A.F. testified before the Grand Jury for a second time. According to Eshbach, she wanted to determine whether A.F. would be able to describe Sandusky's conduct in his own words, rather than by responding to leading questions as he had in June. At the November 16 session, he was able to do so with respect to Sandusky performing

⁸⁸ Ryan and Corbett both explained that they left matters of operational detail, such as what subpoenas to issue and when and where to search, to the professionals below them in the chain of command.

oral sex on him. While A.F. also eventually confirmed that he had performed oral sex on Sandusky, he did so only with a one-word answer to a leading question.

On December 16, 2009, at the fifth and final grand jury session of the year concerning Sandusky, Eshbach summarized the state of the investigation in an exchange with grand jurors:

MS. ESHBACH: As of now, we haven't found any other victims. We're still trying. I suspect, although I don't know for sure, that perhaps when this becomes public, we might have some other people turn up. That sometimes happens, but we have been trying pretty hard to find some other folks and so far have not. We are pursuing one other, just so you know.

A JUROR: When do you see this moving forward from out of here? I'm just curious.

MS. ESHBACH: As soon as I can write a presentment for you guys. They want – my bosses want us to pursue every angle. They have said, you know, go where the evidence leads. So depending upon whether anything comes out of, for example, looking at Penn State, we would look there before we actually gave you guys a presentment to consider; but I have to do that before you guys are done.

A JUROR: Have you pursued anybody from Penn State prior to when he was a coach up there?

MS. ESHBACH: Not yet. Not yet. It is kind of – we're going to ask, but we sort of suspect that we are going to get a door closed in our face, that there are no records or anything like that. That is what we bring people in here for.⁸⁹

Eshbach asked Penn State for records the following month, issuing a subpoena on January 7, 2010, for Sandusky's employment and personnel records. In a memorandum to her superiors about the subpoena, Eshbach explained:

The reason for the issuance of the subpoena to Penn State is because we have some suspicion that the university may have become aware of Sandusky's inappropriate behavior towards the many young boys he was in contact with while he was employed at the university, through his creation and participation in the Second Mile Program. Sandusky was routinely surrounded by young men, although we have been unable to develop any victims other than the one minor victim who has testified before the Grand Jury. However, it is worthy of note that

⁸⁹ Thirtieth Statewide Investigating Grand Jury, In re: Notice No. 29, Transcript of Proceedings, Witness: Anthony Sassano, Dec. 16, 2009, at 8-9.

Sandusky left Penn State as the defensive coordinator of the very successful, Division One-A Penn State Nittany Lion Football team at a relatively young age and rather abruptly. Although [it] is obvious that he was not going to be Joe Paterno's successor at any time in [the] near future at the time of his retirement, it was at the time odd that he retired so abruptly. We therefore are seeking any records which might indicate that his reason for leaving the university's employ was other than by his own choice. I recognize that it is possible that the records might be sanitized concerning this but believe after consulting with the investigators and many of you, that is a lead we must pursue.⁹⁰

According to Agent Sassano's later report, the records supplied by Penn State in response to the subpoena contained no derogatory information about Sandusky.

Following the final grand jury session of 2009, Eshbach began to work on a draft presentment summarizing the evidence gathered to date and recommending charges against Sandusky with A.F. as the sole victim. She completed the draft and delivered it to her supervisor in early March 2010. At that time, Fina was in the middle of a lengthy Bonusgate trial against former Pennsylvania state representative Michael Veon and three others.⁹¹ As a result of his responsibility for that case, Fina had decided in late 2009, in consultation with Sheetz, that CDAG Glenn Parno, chief deputy of the Environmental Crimes Section of the Criminal Law Division, would temporarily assume Fina's supervisory duties for cases and attorneys in the Criminal Prosecutions Section in Harrisburg. As a result, Eshbach gave her draft presentment to Parno rather than Fina.

⁹⁰ Significant Event Memorandum from Jonelle H. Eshbach, Senior Deputy Attorney Gen., Pa. Office of Attorney Gen., through Glenn A. Parno, Chief Deputy Attorney Gen., Pa. Office of Attorney Gen., to Richard A. Sheetz, Jr., Executive Deputy Attorney Gen., Pa. Office of Attorney Gen. (Jan. 11, 2010) (attached as Appendix E).

⁹¹ See The Associated Press, *Jury Convicts Ex-Pa. Lawmaker Mike Veon in Public Corruption Trial*, PENNLIVE, Mar. 22, 2010, http://www.pennlive.com/midstate/index.ssf/2010/03/mike_veon_bonusgate_trial_verd.html; *Bonusgate Timeline*, PITTSBURGH POST-GAZETTE, Feb. 12, 2012, <http://www.post-gazette.com/state/2012/02/12/Bonusgate-timeline/stories/201202121834>; see also Court of Common Pleas of Dauphin County, Criminal Docket, No. CP-22-CR-0004656-2008, Commonwealth v. Veon, at 12-43 (docket entries detailing the progression of the case); Commonwealth v. Veon, No. 73 MDA 2011 (Pa. Super. Ct. Dec. 13, 2012) (quashing appeal from Commonwealth v. Veon, No. CP-22-CR-0004656-2008 (Ct. Com. Pl. Dauphin County)).

C. Phase Three: Draft Presentment (March 2010) through McQueary Tip (November 2010)

By March 15, 2010, Fina was still in trial, Parno had reviewed the draft presentment, and Eshbach had incorporated his suggested changes.^{92*} The draft was forwarded to Sheetz for review. According to Eshbach, she prepared the draft presentment in part because she believed that after a year of looking, the investigation was unlikely to find additional victims, at least until after charges were filed, and because she felt that A.F. deserved to have his allegations heard in court.⁹³ Eshbach had no illusions that a case against Sandusky, with A.F. as the sole victim, would be easy. Nevertheless, she believed she had adequate corroboration at that time to charge and try Sandusky; she also hoped that once A.F.'s allegations against Sandusky were made public, other victims would come forward.

Between the time Eshbach prepared the draft presentment in early 2010 and the final decision not to bring charges based on a single victim, Eshbach's efforts in the Sandusky investigation were focused on getting the presentment approved. According to Eshbach, she expected the presentment to be approved promptly, despite the case's apparent weaknesses, in part because she never before submitted a presentment to her supervisors that had not been approved promptly. On March 15, 2010, in the first of just two grand jury sessions related to Sandusky in all of 2010, Eshbach told the grand jurors:

⁹² The March 15, 2010, draft presentment is attached as Appendix F. According to Parno, while he signed off on the form of the presentment, he told Eshbach that he was concerned that the evidence "was thin," particularly given Sandusky's standing in the community; he passed the presentment to his superiors without a recommendation for or against proceeding at that time. * In responding to this report, Parno asked to clarify this footnote, stating: "1. After reviewing the draft Presentment prepared by DAG Eshbach in March 2010, my concern regarding the viability of a criminal prosecution was based primarily on three factors: (1) Gerald Sandusky's outstanding reputation in the community; (2) insufficient corroborative evidence of AF's allegations; and (3) the inability to locate any additional victims of abuse. 2. Although I did not make a specific recommendation to my superiors with respect to proceeding with a Presentment, I advised both DAG Eshbach and EDAG Sheetz of my aforementioned concerns shortly after reviewing the draft Presentment." See Responses, Glenn A. Parno, at 1.

⁹³ Fina recalls that in late 2009, while discussing the case with Eshbach, he suggested that she "write it up" so that they could better evaluate the strength of the case.

That is it. I would love to say that I would think you would have the presentment in the next 24 hours, but I think you will get it in the next session. My version of it is done. But it is – there are other eyes reviewing it before it comes to you.⁹⁴

The same day, Eshbach emailed a copy of the draft presentment to Agent Sassano and Tpr.

Rossman, saying:

Here's the draft currently under review by the EDAG and ultimately the AG and First Deputy. I will let you know but suspect the Grand Jury will approve it in April. Then we will talk about coordinating the arrest. I know our press office will have something to say about how it is handled.⁹⁵

Eshbach also communicated her belief that the presentment would likely be approved shortly, and that Sandusky's arrest would soon follow, to A.F.'s psychologist. The psychologist passed this information on to A.F. and his mother, writing a letter outlining plans to deal with media pressures likely to follow a public announcement of charges. As a result, in the spring of 2010, A.F. believed that Sandusky would soon be charged, a fact that led to his increasing frustration over the next 18 months.

On April 1, 2010, Sassano emailed Eshbach asking if she had news on the presentment.⁹⁶

Eshbach forwarded Sassano's email to Parno and Sheetz, asking: "Where do we stand?"⁹⁷

⁹⁴ Thirtieth Statewide Investigating Grand Jury, In re: Notice No. 29, Transcript of Proceedings, Witness: Anthony Sassano, March 15, 2010, at 9. At the same session, Agent Sassano testified about the offer of Eagles tickets that A.F.'s mother had received in 2009. Sassano explained that his investigation revealed that the offer was not for free tickets but for the opportunity to purchase tickets, and that the call was unrelated to A.F.'s allegations against Sandusky.

⁹⁵ Email from Jonelle H. Eshbach, Senior Deputy Attorney Gen., Pa. Office of Attorney Gen., to Anthony Sassano, Agent, Pa. Office of Attorney Gen., and Scott F. Rossman, Trooper, Pa. State Police (Mar. 15, 2010, 11:45 AM) (contained in Appendix G).

⁹⁶ Email from Anthony Sassano, Agent, Pa. Office of Attorney Gen., to Jonelle H. Eshbach, Senior Deputy Attorney Gen., Pa. Office of Attorney Gen., and cc Scott Rossman, Trooper, Pa. State Police (Apr. 01, 2010, 10:32 AM) (contained in Appendix G).

⁹⁷ Email from Jonelle H. Eshbach, Senior Deputy Attorney Gen., Pa. Office of Attorney Gen., to Glenn A. Parno, Chief Deputy Attorney Gen., Pa. Office of Attorney Gen., and Richard A. Sheetz, Executive Deputy Attorney Gen., Pa. Office of Attorney Gen. (Apr. 01, 2010, 10:55 AM) (contained in Appendix G).

Sheetz in turn forwarded the emails to Fina, saying he was “holding this to talk to you.”⁹⁸

According to Eshbach, she had not heard back from any of her superiors by the time the Grand Jury was scheduled to meet in April,⁹⁹ which is what she told Agent Sassano when he asked again on April 19.¹⁰⁰ Sassano inquired again in late May, to which Eshbach responded that she had still “heard nothing.”¹⁰¹ In the meantime, Eshbach had offered Sandusky, through his attorney, the opportunity to testify in the Grand Jury. Eshbach viewed this offer as one of the final investigative steps to be taken in advance of bringing charges against Sandusky. On May 17, 2010, she reported to Fina and Sheetz that Sandusky, through his attorney, had declined the invitation.

According to Eshbach, at this point she continued to believe that she would soon gain approval to proceed with charging Sandusky. She hoped that Fina’s return to supervising the case would accelerate the pace of its review by those higher in the chain of command. Fina completed the Veon trial in late March 2010 and was back supervising the work of the Criminal Prosecutions Section by late April or early May. It was then that he first reviewed a draft of the Sandusky presentment. Fina recalls that his first reaction to the presentment was the “very strong” belief that the case was too weak to go forward; he believed that Sandusky would be

⁹⁸ Email from Richard A. Sheetz, Executive Deputy Attorney Gen., Pa. Office of Attorney Gen., to Frank G. Fina, Chief Deputy Attorney Gen., Pa. Office of Attorney Gen. (Apr. 01, 2010, 11:40 AM) (contained in Appendix G).

⁹⁹ The Grand Jury met the week of April 12.

¹⁰⁰ Email from Anthony Sassano, Agent, Pa. Office of Attorney Gen., to Jonelle H. Eshbach, Senior Deputy Attorney Gen., Pa. Office of Attorney Gen., and cc Scott Rossman, Trooper, Pa. State Police (Apr. 19, 2010, 8:52 AM) (contained in Appendix G); Email from Jonelle H. Eshbach, Senior Deputy Attorney Gen., Pa. Office of Attorney Gen., to Anthony Sassano, Agent, Pa. Office of Attorney Gen. (Apr. 19, 2010, 11:49 AM) (contained in Appendix G).

¹⁰¹ Email from Anthony Sassano, Agent, Pa. Office of Attorney Gen., to Jonelle H. Eshbach, Senior Deputy Attorney Gen., Pa. Office of Attorney Gen., and cc Scott Rossman, Trooper, Pa. State Police (May 28, 2010, 10:02 AM) (contained in Appendix G); Email from Jonelle H. Eshbach, Senior Deputy Attorney Gen., Pa. Office of Attorney Gen., to Anthony Sassano, Agent, Pa. Office of Attorney Gen. (May 28, 2010, 4:36 PM) (contained in Appendix G).

acquitted at trial (if the case got that far), both because A.F. was not a strong witness and because Sandusky had significant resources and an outstanding reputation in the community. Moreover, he believed that an acquittal would likely doom any subsequent prosecution. In Fina's view, the key was finding more victims before the case was charged. Nevertheless, Fina suggested changes to the presentment, which Eshbach incorporated into the draft.¹⁰² On June 7, 2010, Eshbach sent the revised draft back to Fina,¹⁰³ who in turn forwarded it to Sheetz.¹⁰⁴

On Monday, June 14, 2010, Eshbach sent an email to Sheetz asking if the presentment would be approved for submission to the Grand Jury that week.¹⁰⁵ Sheetz responded by saying that "Bill Ryan was to give it to Tom. I will check."¹⁰⁶ According to Sheetz, at this point he believed that the case was not ready to be charged – the victim was troubled, the investigation had failed to develop significant corroboration, Sandusky was a community icon with considerable resources, and a loss at trial, which Sheetz thought likely, would make a later prosecution extremely difficult. Sheetz explained that he sent the draft presentment to Ryan not because he believed that the case should be charged, but because it was possible that Ryan would view the matter differently, and because both Eshbach and PSP advocated proceeding with charges. According to Ryan, when he first read the draft presentment sometime in the middle of

¹⁰² See Email from Jonelle H. Eshbach, Senior Deputy Attorney Gen., Pa. Office of Attorney Gen., to Frank G. Fina, Chief Deputy Attorney Gen., Pa. Office of Attorney Gen. (May 28, 2010, 4:38 PM) (contained in Appendix G); Email from Jonelle H. Eshbach, Senior Deputy Attorney Gen., Pa. Office of Attorney Gen., to Frank G. Fina, Chief Deputy Attorney Gen., Pa. Office of Attorney Gen. (June 07, 2010, 12:55 PM) (contained in Appendix G).

¹⁰³ The June 7, 2010 draft presentment is attached as Appendix H.

¹⁰⁴ Email from Jonelle H. Eshbach, Senior Deputy Attorney Gen., Pa. Office of Attorney Gen., to Frank G. Fina, Chief Deputy Attorney Gen., Pa. Office of Attorney Gen. (June 07, 2010, 12:55 PM) (contained in Appendix G); Email from Frank G. Fina, Chief Deputy Attorney Gen., Pa. Office of Attorney Gen., to Richard A. Sheetz, Executive Deputy Attorney Gen., Pa. Office of Attorney Gen. (June 07, 2010, 3:32 PM) (contained in Appendix G).

¹⁰⁵ Email from Jonelle H. Eshbach, Senior Deputy Attorney Gen., Pa. Office of Attorney Gen., to Richard A. Sheetz, Executive Deputy Attorney Gen., Pa. Office of Attorney Gen. (June 14, 2010, 3:43 PM) (contained in Appendix G).

¹⁰⁶ Email from Richard A. Sheetz, Executive Deputy Attorney Gen., Pa. Office of Attorney Gen., to Jonelle H. Eshbach, Senior Deputy Attorney Gen., Pa. Office of Attorney Gen. (June 14, 2010, 3:56 PM) (contained in Appendix G).

June, he was concerned that the case was too weak to take to trial for many of the same reasons articulated by Fina and Sheetz. He also believed that Sandusky almost certainly had other victims, particularly because of his relationship with The Second Mile, and that the better course was to continue the search for other victims before charging. At the same time, Ryan concluded that the matter was of sufficient importance that he needed to pass the draft presentment along to the Attorney General before any final decision was made.

According to Eshbach, she heard nothing further during June, and so asked again by email on July 14:

The grand jury asked me again, as they have for the last 4 months, why we don't have that particular presentment for them. They are very anxious to approve it. L[i]kewise, I continue to get calls and mail from the victim's mother and therapist. Can someone please tell me what the hold up is? ¹⁰⁷

Sheetz forwarded Eshbach's email to Ryan, suggesting: "Maybe we can talk to Tom about this on Friday, too?" ¹⁰⁸ According to Eshbach, she heard nothing in response to her July 14 email. According to Ryan, he did not participate in a meeting with Corbett about the presentment until early August.

On August 12, 2010, an email from A.F.'s mother prompted Eshbach to ask again, in an email to Sheetz and Fina: "This is my fourth message from the victim's mother on Sandusky. Does anyone want to answer my questions about why we are stalled since winter[?]" ¹⁰⁹ This

¹⁰⁷ Email from Jonelle H. Eshbach, Senior Deputy Attorney Gen., Pa. Office of Attorney Gen., to Richard A. Sheetz, Executive Deputy Attorney Gen., Pa. Office of Attorney Gen., Frank G. Fina, Chief Deputy Attorney Gen., Pa. Office of Attorney Gen., and Christopher D. Carusone, Chief Deputy Attorney Gen., Pa. Office of Attorney Gen. (July 14, 2010, 10:57 AM) (contained in Appendix G).

¹⁰⁸ Email from Richard A. Sheetz, Executive Deputy Attorney Gen., Pa. Office of Attorney Gen., to William H. Ryan, Jr., First Deputy Attorney Gen., Pa. Office of Attorney Gen. (July 14, 2010, 11:28 AM) (contained in Appendix G).

¹⁰⁹ Email from Jonelle H. Eshbach, Senior Deputy Attorney Gen., Pa. Office of Attorney Gen., to Richard A. Sheetz, Executive Deputy Attorney Gen., Pa. Office of Attorney Gen., and Frank G. Fina, Chief Deputy Attorney Gen., Pa. Office of Attorney Gen. (Aug. 12, 2010, 2:26 PM) (contained in Appendix G).

email prompted a definitive response from Fina later the same day, in an email to Sheetz and Eshbach: “We are still working on the case, looking for better corroboration of our single victim. We need to do everything possible to find other victims.”¹¹⁰ Eshbach understood this to mean that the case would not be charged as it then stood, and that the investigation would continue.¹¹¹ She communicated that understanding to A.F.’s mother,¹¹² and told Agent Sassano and Tpr. Rossman: “My bosses have directed that we try harder to find any other corroboration for [A.F.]. At this point, they are unwilling to allow the presentment to go to Grand Jury as it stands right now.”¹¹³ According to Eshbach, while she did not agree with the decision, she understood it, given the difficulties presented by proceeding with A.F. as the sole victim, and did not object.

According to Agent Sassano, during the time that the draft presentment was being considered, he had serious concerns about whether the case was strong enough to go forward, even though he had no doubt that A.F. was telling the truth. In particular, he feared that the combination of a particularly fragile victim and a potential defendant with significant resources who was revered in the community would lead to an acquittal. He further feared that such an acquittal would make any later prosecution of Sandusky far more difficult. Sassano discussed these concerns with his supervisor, Regional Director Feathers, who agreed. According to

¹¹⁰ Email from Frank G. Fina, Chief Deputy Attorney Gen., Pa. Office of Attorney Gen., to Jonelle H. Eshbach, Senior Deputy Attorney Gen., Pa. Office of Attorney Gen., and Richard A. Sheetz, Executive Deputy Attorney Gen., Pa. Office of Attorney Gen. (Aug. 12, 2010 3:40 PM) (contained in Appendix G).

¹¹¹ Fina recalls telling Eshbach sometime well before the August 12 email that the case would not go forward as proposed and that investigators needed to find additional victims. He says that he was “highly frustrated” by Eshbach’s email because it was readdressing something that he believed had already been settled. According to Eshbach, the first time she recalls receiving a definitive answer about the proposed presentment, from Fina or anyone else, was in the August 12 email.

¹¹² Email from Jonelle H. Eshbach, Senior Deputy Attorney Gen., Pa. Office of Attorney Gen., to A.F.’s Mother (Aug. 12, 2010, 3:53 PM) (contained in Appendix G).

¹¹³ Email from Jonelle H. Eshbach, Senior Deputy Attorney Gen., Pa. Office of Attorney Gen., to Anthony Sassano, Agent, Pa. Office of Attorney Gen., and Scott Rossman, Trooper, Pa. State Police (Aug. 18, 2010, 8:50 PM) (contained in Appendix G).

Feathers, another reason not to bring charges at the time was that a Centre County jury would likely be sympathetic to Sandusky and disinclined to convict. Feathers in turn discussed the matter with his boss, Chief of Criminal Investigations Francis Noonan. According to Noonan, he agreed with the concerns expressed by Sassano and Feathers and, at some point before the final decision was made, brought those concerns to Sheetz.

According to Fina, Sheetz, and Ryan, they all shared the same concerns voiced by Sassano and Feathers. In addition, they feared that if Sandusky were tried and acquitted based on a single victim, charging and convicting him based on other victims discovered later would be extremely difficult if not impossible, given the near-certain defense claim of an ill-motivated prosecution. These factors, they say, along with the belief that other victims existed, led them each to the strongly held view that Sandusky should not be charged without more effort to find additional victims.

At some point after July 14, 2010, likely in the first half of August,¹¹⁴ then-Attorney General Corbett discussed the Sandusky investigation, and the possibility of charging the case with A.F. as the sole victim, at a meeting with Fina, Sheetz, and Ryan. Eshbach was not present at the meeting. When asked why this meeting did not occur earlier, in light of the June 14 email, Ryan explained that there may have been scheduling problems because Corbett was out of the office frequently during that time and, in any event, Ryan did not view the matter as urgent since he, Sheetz, and Fina were all going to recommend not charging at that time. While recollections of the meeting differ in detail, all participants agree that Fina, Sheetz, and Ryan each recommended to Corbett that the case not be charged at that time, and that further efforts be

¹¹⁴ Because the OAG email backup system did not store calendar entries, no calendar entries were retrieved during the recovery process.

made to find additional victims. The reasons given were those outlined above. According to Corbett, he agreed with that reasoning and, whether at this meeting or in other discussions, often stated his belief that the investigation needed to keep looking for additional victims.¹¹⁵ Ryan recalls that at the end of the meeting, Corbett said that he would review the presentment and get back to them. Both Ryan and Sheetz recall that, very soon thereafter, Corbett spoke with Sheetz and told him that he agreed with the recommendation that Sandusky should not be charged at that time, but that instead the investigation should continue. Sheetz relayed this information to Ryan and Fina.

Between Fina's August 12 admonition that the investigation must "do everything possible to find other victims" and the end of October, the investigation did not succeed in identifying any new victims. In September, Tpr. Rossman contacted A.F.'s mother and A.F.'s psychologist to ask if either of them, or A.F., had any additional information that might help the investigation. Initially, those inquiries did not generate any new leads. On October 26, 2010, however, Tpr. Rossman spoke with A.F.'s mother, who alerted Rossman to the existence of recent internet postings that suggested that Sandusky was a child molester. These postings, made largely on websites hosting discussions about Penn State football, appeared to have been prompted by the public announcement, in mid-September, that Sandusky had retired from The Second Mile.¹¹⁶ Later in 2010 and into early 2011, investigators expended considerable effort in

¹¹⁵ Corbett does not recall discussing the details of what had been done or should be tried to identify additional victims, saying that he delegated that responsibility to the professionals in his office, who had a very good track record of conducting successful criminal investigations.

¹¹⁶ See Brendan Monahan, *Sandusky Retires*, THE DAILY COLLEGIAN, Sept. 15, 2010, http://www.collegian.psu.edu/archives/article_1dde1f91-95fb-586c-8fa0-d16f769a9ba1.html; Amanda Clegg, *Second Mile Founder Retires*, THE ALTOONA MIRROR, Sept. 17, 2010, <http://www.altoonamirror.com/page/content.detail/id/542384/Second-Mile-founder-retires.html?nav=742>; see also Christian Red, *Penn State Scandal: Timeline of Sex Abuse Scandal that Has Rocked Happy Valley*, NEW YORK DAILY NEWS, Nov. 13, 2011, <http://www.nydailynews.com/sports/college/penn-state-scandal-timeline-sex-abuse-scandal-rocked-happy-valley-article-1.976843>.

tracking down and interviewing individuals who had posted comments suggesting that Sandusky had engaged in child sexual abuse. In the end, none of the posters interviewed had first-hand knowledge of criminal conduct by Sandusky.

In the fall of 2010, two events involving A.F. consumed additional investigative time. First, A.F. reported to school officials, and then to Tpr. Rossman, that he had been approached in school by a man he did not know who asked A.F. questions about his identity and about his involvement in The Second Mile, questions that made A.F. extremely uncomfortable. Investigators were unable to identify the man described by A.F. Second, on October 21, A.F. was seriously injured in a one-car accident that resulted in him being airlifted to a medical facility for treatment. At first, investigators were concerned that the accident might have been related to the school incident that A.F. had described earlier. They eventually concluded, however, that the school incident and the car accident were unrelated.

As of November 2, 2010, the date of the Pennsylvania gubernatorial election, little progress had been made in finding additional victims. The only identified victim, A.F., was in bad shape both physically and emotionally. Eshbach, fearing for A.F.'s well-being and that the case might be slipping away, sent an email to Sheetz and Fina on November 3, with the subject line "Grand Jury sentiment," saying:

This young man was released from Geissinger [sic] Danville Pediatric unit prematurely. They had to lock the unit down because there were so many security problems. . . . A Centre Daily Times reporter knocked on the family's front door last night asking pointed questions about Sandusky molesting him. The mother denied any knowledge but this keeps percolating and I am worried about this boy.

Can we please meet Thursday about this? It's "critical timing" for this case and this kid.¹¹⁷

According to Eshbach, she believed that in terms of finding new victims the investigation was "dead in the water," and she sent the email with the hope that she could persuade her supervisors to allow the case to proceed based on A.F. as the sole victim. The requested meeting never took place, however, chiefly because the next day investigators received a tip about Penn State assistant football coach Michael McQueary, and the course of the investigation changed dramatically.

D. Phase Four: McQueary Tip (November 2010) through the Filing of Charges (November 2011)

On November 3, 2010, Centre County District Attorney Stacy Parks Miller received the following email:

Ms Miller,

I am contacting you regarding the Jerry Sandusky investigation. If you have not yet done so, you need to contact and interview Penn State football assistant coach Mike McQueary. He may have witnessed something involving Jerry Sandusky and a child that would be pertinent to the investigation.

Signed,

A Concerned Citizen¹¹⁸

After Miller forwarded the email to Tpr. Rossman the next day, Rossman and Agent Sassano reached out to McQueary, meeting with him on November 10 and interviewing him on November 22 at the office of his attorney.¹¹⁹

¹¹⁷ Email from Jonelle H. Eshbach, Senior Deputy Attorney Gen., Pa. Office of Attorney Gen., to Frank G. Fina, Chief Deputy Attorney Gen., Pa. Office of Attorney Gen., and Richard A. Sheetz, Executive Deputy Attorney Gen., Pa. Office of Attorney Gen. (Nov. 03, 2010, 10:51 AM) (emphasis in original) (attached as Appendix I).

¹¹⁸ Email to Stacy Parks Miller, District Attorney, Centre County District Attorney's Office (Nov. 03, 2010, 10:35 PM) (attached as Appendix J). According to the author of the email, he had recently heard rumors that Sandusky was being investigated for child abuse and assumed that any such investigation would involve the Centre County District Attorney's Office. In addition, he had recently heard from a member of Michael McQueary's family that McQueary had first-hand information about Sandusky that would be relevant to such an investigation.

EXHIBIT E



Update: Special prosecutor to investigate secrecy issues in Penn State grand jury

The Associated Press By The Associated Press

on February 27, 2013 at 2:58 PM, updated February 27, 2013 at 8:10 PM

HARRISBURG, Pa. (AP) — A Pennsylvania judge has named a special prosecutor to examine whether secrecy rules were violated in relation to the **grand jury that investigated Jerry Sandusky** and three former Penn State administrators who are currently facing criminal charges.

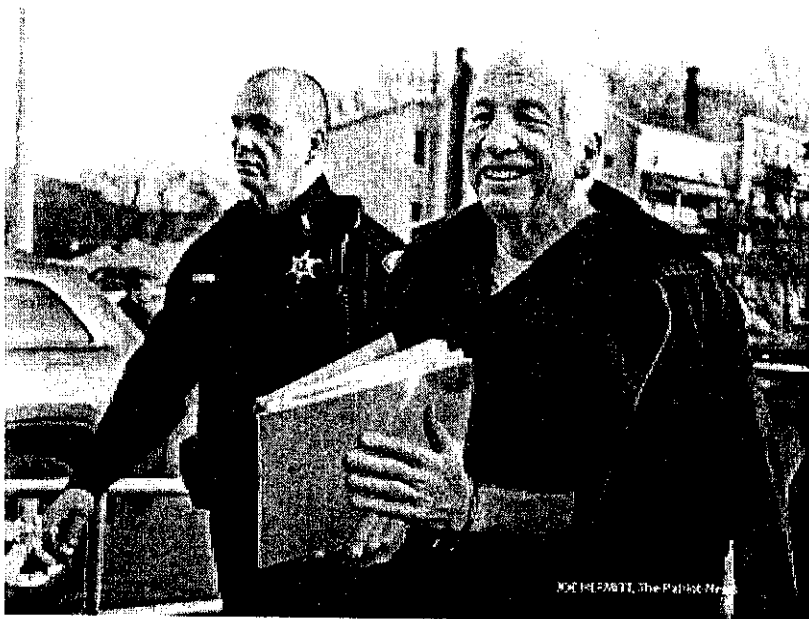
The Associated Press on Wednesday obtained the Feb. 8 order in which Judge Barry Feudale appointed attorney James M. Reeder, giving him six months to look into the matter.

The order relates to the 33rd Statewide Investigating Grand Jury, which issued reports in 2011 and 2012 that led to **molestation charges against Sandusky** and perjury charges against former Penn State president Graham Spanier, former athletic director Tim Curley and retired vice president Gary Schultz.

Pennsylvania investigative grand juries often work on more than one matter, and it was unclear from the document whether the possible secrecy violations were related the Penn State cases or other cases before the panel.

But Feudale has recently been trying to sort out a legal dispute involving whether former Penn State lawyer Cynthia Baldwin should have been present at a grand jury proceeding, and his order made specific reference to a section of the state's criminal procedure rule titled "Who May Be Present During Session of an Investigating Grand Jury."

That section reads:



Jerry Sandusky is escorted into Centre County Courthouse for his appeals hearing before Judge John M. Cleland Jr. Sandusky was convicted last June for sexually abusing 10 boys and received a sentence of 30 to 60 years. JOE HERMITT, The Patriot-News

"All persons who are to be present while the grand jury is in session shall be identified in the record, shall be sworn to secrecy as provided in these rules, and shall not disclose any information pertaining to the grand jury except as provided by law."

Feudale also charged Reeder with looking into potential violations of another section, titled "Disclosure of Testimony Before Investigating Grand Jury." He also asked that the inquiry examine a law that criminalizes disclosure of grand jury proceedings by anyone but witnesses and another law that makes it a crime to obstruct the administration of law or other governmental functions.

In relation to the obstruction law, Feudale highlighted a portion that said it applied to "breach of official duty or other unlawful act."

Reeder has been an employee of the attorney general's office. A spokeswoman for the office could not immediately confirm whether he remains on the staff, and offered no immediate comment about the court order.

Lawyers for Spanier, Curley and Schultz have maintained their clients' right to legal counsel was violated by Baldwin's actions when the men testified before the grand jury in early 2011. Their request to have her barred from testifying at their preliminary hearing on charges filed in November is currently before Feudale.

The three are accused of what former Attorney General Linda Kelly said was a conspiracy to conceal reports that Sandusky was behaving inappropriately with boys.

Sandusky, the school's former assistant football coach, was convicted last year of 45 counts of child sexual abuse and is serving a decades-long state prison sentence. He maintains his innocence and is pursuing appeals.

Baldwin is a former state Supreme Court justice and former Penn State trustee. Her lawyer, Charles De Monaco, has said she "at all times fulfilled her obligations to the university and its agents."

Schultz, Curley and Spanier face charges of perjury, obstruction, conspiracy, endangering the welfare of children and failure to properly report suspected abuse. They all dispute the allegations.

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EXHIBIT F



Jerry Sandusky case: Second investigator named to assist with review of alleged grand jury leaks

Charles Thompson | cthompson@pennlive.com By Charles Thompson | cthompson@pennlive.com

Email the author | Follow on Twitter

on April 05, 2013 at 5:46 PM, updated April 06, 2013 at 7:19 AM

A judge assigned to supervise statewide grand juries has named a second special prosecutor to examine alleged leaks and other problems in the operations of two statewide and one Dauphin County grand jury.



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Grand juries have been used for a number of high profile cases in Pennsylvania recently, like that resulting in still-pending charges against former Penn State University President Graham Spanier. Now, special prosecutors have been asked to explore leaks in the system. JOE HERMITT, The Patriot-News

In an order released today, Judge Barry Feudale named Kenneth Brown, a former senior deputy attorney general who recently joined the state's Office of Inspector General, to assist James Reeder with the review.

Brown had prosecuted a number of the capitol corruption cases in recent years before leaving with the end of the Linda Kelly administration. Reeder, also a former deputy attorney general, is an assistant district attorney in Lancaster County.

Feudale has charged the duo with looking for "past, present and future violations of secrecy" relevant to statewide grand juries empaneled in 2009 and 2011 that investigated, among other things, **the Jerry Sandusky child sex abuse scandal** and **patterns of corruption at the Pennsylvania Turnpike**.

The special prosecutors will also look back at the leaks from a Dauphin County grand jury that investigated perjury allegations against a businessman seeking a license for one of Pennsylvania's new casinos.

Analysts who spoke with PennLive about Feudale's original appointment of Reeder **say they believe this investigation will be more focused on the broader issue of grand jury leaks** than the actual criminal cases that came out of the panels - most of which are still pending.

Laws governing state and county grand juries in Pennsylvania prohibit prosecutors and other court personnel, and jury members themselves, from disclosing any information about the closed-door proceedings where they hear testimony and receive other evidence in pending criminal investigations.

Reeder and Brown have been given the ability to bring charges against persons they believe breached those rules, but they could also simply wind up producing a set of recommendations designed to correct the

11/12/2015

Jerry Sandusky case: Second investigator named to assist with review of alleged grand jury leaks

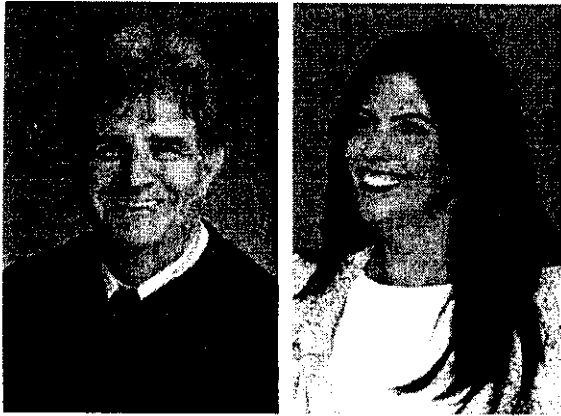
problems.

Brown's appointment was filed today in an order entered in Dauphin County court.

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EXHIBIT G

Kathleen Kane's feud with Barry Feudale: 7 takeaways



Judge Barry Feudale and Attorney General Kane. (File photos)



[\[http://connect.pennlive.com/staff/wmckelvey/index.html\]](http://connect.pennlive.com/staff/wmckelvey/index.html) By Wallace McKelvey | WMckelvey@pennlive.com

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on November 05, 2015 at 7:22 PM, updated November 06, 2015 at 8:19 PM

Attorney General Kathleen Kane's long-simmering conflict with a grand jury judge became very public this week.

Last week, Kane accused Northumberland County Senior Judge Barry Feudale of leaking sealed material to the press and intimated that he may have leaked information from other cases. Feudale, a fellow Democrat, then made public an allegation that Kane or her staffers broke into his office 2013.

That volley came after a complaint by Kane resulted in Feudale's removal in 2013 as supervising judge of a statewide grand jury.

Kane's statements prompted Judge John Cleland — the judge presiding over convicted child molester Jerry Sandusky's appeal — to order the attorney general to present evidence in closed session Thursday. A day before that appearance, Feudale sent state and federal authorities an 18-page letter and supporting documents outlining a series of allegations against Kane.

Here are several takeaways from the fallout:

1. One of Feudale's key allegations is that Kane's office **shielded former State Sen. Vincent J. Fumo** [\[http://mobile.philly.com/beta?wss=/philly/news/politics&id=340552241\]](http://mobile.philly.com/beta?wss=/philly/news/politics&id=340552241) from prosecution in the Pennsylvania Turnpike Commission's pay-to-play case. Feudale, who also presided over that grand jury probe, said Fumo was the first person named in the

proposed presentment, but his name had been removed by the time Feudale was presented

STATE EMAIL INVESTIGATION

Supreme Court Justice Eakin calls for porn inquiry to move to disciplinary court
[\[http://www.pennlive.com/news/2\]](http://www.pennlive.com/news/2)

AG Kathleen Kane not required to release porn emails, appeals court rules
[\[http://www.pennlive.com/news/2\]](http://www.pennlive.com/news/2)

Senate candidate McGinty calls upon Justice Eakin to step down
[\[http://www.pennlive.com/news/2\]](http://www.pennlive.com/news/2)

Kathleen Kane's deputies testify before Senate panel: Recap
[\[http://www.pennlive.com/news/2\]](http://www.pennlive.com/news/2)

AG Kathleen Kane's top deputies to testify at Senate hearing
[\[http://www.pennlive.com/news/2\]](http://www.pennlive.com/news/2)

All Stories

with the final recommendation of charges. That **document**

[<http://topics.pennlive.com/tag/state-email-investigation/posts.html>]

[http://www.repvereb.com/Display/SiteFiles/83/OtherDocuments/Turnpike_Grand_Jury_Presentment.pdf] refers frequently to a "Senator No. 6."

Laurel Brandstetter, the prosecutor who oversaw the Turnpike investigation at the time, said in a written message that Feudale's complaint "raises significant and alarming allegations." Citing grand jury secrecy laws, she said she could not discuss specifics of the case.

"Attorney Generals (Linda) Kelly and Kane made the investigation and prosecution of the Pennsylvania Turnpike cases extremely difficult," she wrote. "That being said, I would never have knowingly participated in an effort to improperly manipulate criminal charges."

In 2013, Kane denied that there had been any changes to the Turnpike presentment. "I agreed that everyone who was presented to me should be charged," she told PennLive, at the time.

Dennis Cogan, Fumo's attorney, did not respond to a request for comment Thursday.

Kane spokesman Chuck Ardo said prosecutors make decisions about which cases to pursue every day.

"Not every investigator or deputy may agree with those decisions, but they're not the ones that have to make them," he said.

2. A copy of the original Turnpike presentment was one of the documents Feudale alleges was removed from his chambers inside the Attorney General's Office **during a break-in** [<http://triblive.com/politics/politicalheadlines/9339831-74/kane-feudale-office>] that occurred in 2013. Due to the deteriorating relationship between Feudale and Kane's staff, the judge had changed the locks on his door before attending his son's graduation. When he returned, he has alleged, the items he had specifically placed on his desk were missing.

3. Feudale released a few emails of his own on Wednesday. One reportedly came from James Reeder, one of the investigators initially tasked with **looking into whether there were leaks from the Sandusky grand jury** [http://www.pennlive.com/midstate/index.ssf/2013/04/second_investigator_named_to_a.html]. He wrote in June 2013 that he and Ken Brown "are feeling somewhat adrift." In the email, Reeder said that Kane's Attorney General's Office wasn't cooperating with requests for material and that he and Brown had not been paid for their work. Neither investigator could be reached for comment Thursday. Ardo said he didn't know anything about the complaint.

4. Feudale made a number of allegations. Some were based on his first-hand knowledge or documentation, such as emails. For others, the claims were largely based on other people's accounts.

5. The attorney general has generally dismissed all of the allegations made in Feudale's lengthy complaint. Spokesman Chuck Ardo said the judge had made a "laundry list of allegations" without providing proof. "The attorney general categorically denies virtually everything Mr. Feudale has said," Ardo said.

6. Feudale wants Kane removed by any means necessary. The statement released Wednesday was sent to a wide range of state officials, including Gov. Wolf, select lawmakers, Supreme Court justices, the State Ethics Commission, the FBI and the State Police. "I ask you to end this legal and institutional nightmare by removing her from office as soon as possible," he wrote.

7. Despite the ongoing feud, it became clear Thursday that Kane had no direct evidence that Feudale leaked grand jury material from the Sandusky case. In Cleland's order denying a discovery request in the Sandusky appeal, the judge wrote, "(Kane) testified that she is aware of no information . . . that either prove to her, or persuade her, that Judge Feudale and/or any attorney for the Office of Attorney General orchestrated, facilitated, cooperated in, or arranged for the disclosure of otherwise secret grand jury information in this case."

Kane also testified that she did not intend to give that impression in the original press release. "I certainly think that particular statement in the release could have certainly been more artfully crafted," Ardo said.

Staff writer Charles Thompson contributed to this report.

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IN THE COURT OF COMMON PLEAS OF
CENTRE COUNTY, PENNSYLVANIA
CRIMINAL DIVISION

COMMONWEALTH OF PENNSYLVANIA	:	CP-14-CR-2421-2011
	:	CP-14-CR-2422-2011
	:	
v.	:	
	:	HONORABLE SENIOR JUDGE
GERALD A. SANDUSKY,	:	NORMAN A. KRUMENAKER
	:	SUPERVISING GRAND JURY
PETITIONER.	:	JUDGE

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the ____ day of November, 2015 he caused an exact copy of the foregoing Petition to be served, in the manner specified, upon the following:

Via Hand Delivery

Honorable Senior Judge Norman A. Krumenaker - Supervising Grand Jury Judge
Cambria County Courthouse
200 South Center Street
Ebensburg, Pennsylvania 15931

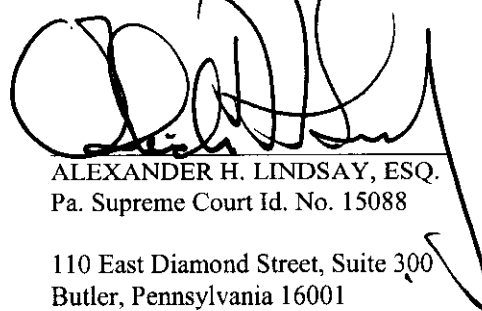
Via Hand Delivery and Fax Delivery

Honorable John M. Cleland, Sr. Judge c/o Office of the Court Administrator, and
Office of the Clerk of Courts of Centre County and
Centre County Courthouse
102 South Allegheny Street
Bellefonte, Pennsylvania 16823

Via Fax and First Class United States Mail

Assistant Attorney General Jennifer Peterson
Office of the Attorney General - Criminal Prosecutions Section
16th Floor Strawberry Square
Harrisburg, Pennsylvania 17120

Respectfully submitted,
THE LINDSAY LAW FIRM



ALEXANDER H. LINDSAY, ESQ.
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November __, 2015

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