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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.	:	
	:	
GERALD A. SANDUSKY,	:	
	:	
PETITIONER.	:	

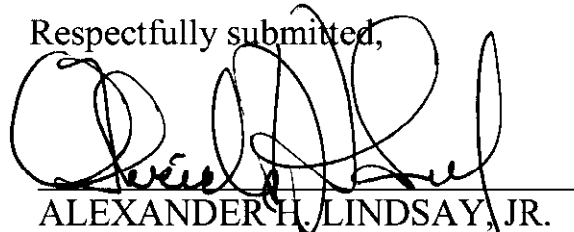
Response to November 15, 2016 Order

AND NOW COMES, Petitioner, Gerald A. Sandusky, by and through his counsel, Alexander H. Lindsay, Jr., Esq., and J. Andrew Salemme, Esq., and the Lindsay Law Firm, P.C., and files this Response to the Court's November 15, 2016 Order.

1. On November 15, 2016, the PCRA court issued an Order stating that, "counsel for the defendant shall either notify me of their intent to call me as a material witness regarding a meeting at the Hilton Garden Inn the evening before the defendant's preliminary hearing, or formally withdraw footnote 9 on page 26 and any argument related thereto."
2. This Order provided counsel until 10 a.m. on November 17, 2016, to respond, but did not specify that the response be filed. Accordingly, a draft of this Response was provided to the Court and the Office of Attorney General via e-mail prior to that time to comply with the Order. Because that response was not of record, this Response was sent for filing.
3. Counsel formally provides notice that they will not withdraw footnote 9 on page 26 and the argument forwarded therein, as that could be construed as waiving the recusal issue for purposes of appeal.


4. Further, Pa.R.E. 605 precludes counsel from calling as a witness a judge in a proceeding over which the Court is presiding. That Rule provides, “The presiding judge may not testify as a witness at the trial or other proceeding.” Pa.R.E. 605.
5. Hence, so long as the PCRA court continues to preside over the PCRA proceeding, Mr. Lindsay and Mr. Salemmme are precluded from calling this Honorable Court as a witness.
6. By way of further response, the issue is not solely whether PCRA counsel would be able to call this Honorable Court as a witness, but whether the Court is in fact a witness. This is because the Court is required to make findings of fact, credibility determinations, and conclusions of law based on an event for which it was a witness—and there is the possibility that such determinations would not necessarily be based exclusively on the evidence of record, but on an independent recollection of the event. *Cf. Brannam v. Reedy*, 906 A.2d 635, 640 (Pa. Cmwlth. 2006) (“it was error for the trial court to base facts upon the judge's personal experience rather than upon the testimony of witnesses.”). When a judge begins to defend or explain conduct on a factual basis, an objection and recusal motion must be raised. *See id.* at 642.

Respectfully submitted,



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ALEXANDER H. LINDSAY, JR.  
Pa. Id. No. 15088



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J. ANDREW SALEMME  
Pa. Id. No. 208257

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

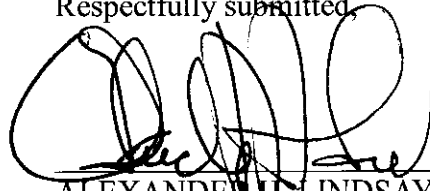
CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 16<sup>th</sup> day of November, 2016 he caused an exact copy of the foregoing document to be served in the manner specified, upon the following:

Via Federal Express

Assistant Attorney General Jennifer Peterson  
Office of the Attorney General – Criminal Prosecutions Section  
16<sup>th</sup> Floor Strawberry Square  
Harrisburg, PA 17120

Respectfully submitted,



ALEXANDER H. LINDSAY JR., ESQ.

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