

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

3 COMMONWEALTH OF PENNSYLVANIA :
4 VS. : CP-14-CR-2421-2011
5 GERALD A. SANDUSKY : CP-14-CR-2422-2011
6

7 TRANSCRIPT OF PROCEEDINGS

8 Before: THE HONORABLE JOHN M. CLELAND, Senior Judge,
9 Specially Presiding

10 Date: November 5, 2015, 12:58 p.m.

11 Place: Pennsylvania Judicial Center
12 601 Commonwealth Avenue
13 Judicial Council Conference Room
14 Conference Room A, #1201
15 Harrisburg, Pennsylvania

16 APPEARANCES:

17 FOR THE COMMONWEALTH:
18 Jennifer A. Peterson, Esquire
19 Deputy Attorney General

20 FOR THE DEFENDANT:
21 Alexander H. Lindsay, Jr., Esquire

22 ALSO PRESENT:
23 Kathleen G. Kane, Attorney General of the
24 Commonwealth of Pennsylvania

25 NOTES BY: Rebecca Toner, RPR
Official Court Reporter
Commonwealth Court of Pennsylvania
Pennsylvania Judicial Center
601 Commonwealth Avenue, Suite 2200
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DEBRA L. HINEY
PROBATION CLERK
CENTRE COUNTY, PA

2015 NOV 10 PM 2:37

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1 (Whereupon, Alexander H. Lindsay, Jr., Esquire, and
2 Rebecca Toner, the court reporter, were sworn to grand jury
3 secrecy.)

4 THE COURT: I'd like to begin by making a couple
5 introductory comments; first of all, to identify for the
6 record the presence of the Attorney General of Pennsylvania,
7 Ms. Peterson on behalf of the Commonwealth, and Mr. Lindsay
8 on behalf of the defendant.

9 I have sworn to grand jury secrecy the court
10 reporter and Mr. Lindsay.

11 Madam Attorney General, I appreciate your
12 attendance here today.

13 ATTORNEY GENERAL KANE: Absolutely, Judge.

14 THE COURT: I'm aware from your statement yesterday
15 and otherwise that your law license is in a state of
16 suspension.

17 ATTORNEY GENERAL KANE: Uh-huh.

18 THE COURT: The intricacies and the implications of
19 that in limbo status allude me --

20 ATTORNEY GENERAL KANE: Me as well, Judge.

21 THE COURT: -- and are certainly problematic.

22 But nevertheless, I assume that you continue to be
23 an officer of the court at least by virtue of your position
24 as Attorney General of Pennsylvania. And I appreciate your
25 willingness to appear and provide information today. Thank

1 you.

2 ATTORNEY GENERAL KANE: I appreciate being here.

3 Thank you.

4 THE COURT: Just a word of explanation about why
5 this hearing is being held here. I happen to be here at a
6 juvenile justice conference this week. It seemed to be a
7 convenient place to do it because your office is here, Ms.
8 Peterson is here; and I'm sorry to inconvenience you,
9 Mr. Lindsay, to come across the state.

10 MR. LINDSAY: It's very exciting for me to be here.

11 THE COURT: The responses to my October 29th order
12 were directed to be filed under seal. The purpose of that
13 seal was to assure that there was not any inadvertent release
14 of grand jury information. Depending on how this proceeding
15 goes today, I may release that seal either in whole or in
16 part because that was the only reason to do that.

17 By way of process, what I plan to do is to place
18 you under oath to ask you some questions framed by the scope
19 of last week's order. I'll permit Mr. Lindsay to ask some
20 questions, but I may limit the scope and subject of your
21 questions because this hearing does have a focused purpose.

22 I will order that a transcript be prepared, that it
23 be furnished to me, Ms. Peterson, Mr. Lindsay, you, if you
24 would like a copy --

25 ATTORNEY GENERAL KANE: Thank you.

1 THE COURT: -- and order it filed under seal in the
2 Centre County Prothonotary's Office.

3 Madam Attorney General, would you please stand and
4 raise your right hand?

5 You do solemnly swear the testimony you're about to
6 give will be the truth, the whole truth, and nothing but the
7 truth, so help you God?

8 ATTORNEY GENERAL KANE: Yes.

9 THE COURT: Thank you.

10 The concern -- or my concern began here because of
11 a press release issued last Wednesday, October 28th, in which
12 you indicated, Make no mistake, Judge Feudale's overriding
13 concern was how to leak sealed documents without getting
14 caught, and then continued, The seriousness of this reckless
15 breach of sealed Supreme Court documents orchestrated by the
16 presiding judge of the state investigating grand jury with
17 attorneys and the very reporters who have covered some of
18 Sandusky, Computergate, and Bonusgate cases cannot be
19 overstated. The Office of Attorney General is currently
20 litigating post-convictions motions involving those cases.

21 And attached to that statement, there were e-mails
22 of July 8th, 2013, at 9:57 a.m.; July 8th, 2013, at
23 4:17 p.m.; and July 14th at 3:15 p.m. sent by Judge Feudale
24 or -- and then some of those were forwarded to Mr. Fina.

25 I'm wondering if you could show me in those e-mails

1 where in your view there was an actual breach of any sealed
2 grand jury or Supreme Court testimony, either by delivering
3 documents or communicating the substance of the documents.

4 ATTORNEY GENERAL KANE: And, Judge --

5 MR. LINDSAY: Judge, I'm loath to interrupt, but I
6 never had received a copy of that press release.

7 And you said you have one or --

8 ATTORNEY GENERAL KANE: They're trying to find it
9 now. Yes.

10 MR. LINDSAY: Very well. That's all.

11 ATTORNEY GENERAL KANE: And, Judge, to -- so by way
12 of response --

13 MR. LINDSAY: I'm sorry for the interruption.

14 THE COURT: It's all right.

15 ATTORNEY GENERAL KANE: In those -- in my press
16 statement that hopefully will get here before the end of the
17 day, I never, ever said that he leaked sealed -- sealed grand
18 jury documents, never. In fact, in my response in the second
19 paragraph, "The statement is strictly limited to the Judge's
20 involvement in leaking sealed 'Supreme Court documents,'" and
21 I made sure that that was always "Supreme Court documents."

22 It goes on to say the portion of that statement
23 which I -- which I found it in, and that statement is from
24 Judge Feudale's e-mail to The Inquirer dated July 8th, 2013,
25 which pertains to his consideration of giving, quote, an

1 order initially removing me and the order denying
2 reconsideration with the explanation why I was removed.
3 "Since you and Angela seem to be aware of the content of
4 such," and in parentheses, "I believe you said it, or parts
5 of it was read to you and or parts of the Application for the
6 Writ of Prohibition," which was the sealed Supreme Court
7 document, "it seems to not in the interest of transparency
8 and completeness to not, quote, confirm what was said in the
9 order. My problem is that," and then he says again, "the
10 application for a writ was sealed, as are all King's Bench
11 matters," obviously before the Supreme Court, "so I need both
12 your assurance it will only be used as background and you
13 will not reveal me as a source of such."

14 I also then went on to quote from another statement
15 in another e-mail of Judge Feudale's from the -- to the
16 Inquirer dated July 14th, and I'll get right to the part. He
17 indicates, "I suspect her strategy is to wait for the
18 article, then claim I'm a knife wielding disgruntled former
19 Grand Jury Judge who has violated secrecy of Grand Jury
20 proceedings as well as ignoring an unclear sealing of
21 Application for writ and various responses. I have been
22 advised by more than one to keep my mouth shut. While I know
23 I did not violate secrecy she will claim such. Secrecy is
24 something she will use or abuse as it suits her purpose. As
25 to the sealing of the Writ, etc., I am less clear. Bottom

1 line, I will not be intimidated by anyone. The price, even
2 if it means I am done working as A Judge, of silence is too
3 high."

4 So never in my press release did I ever mention or
5 infer or imply that Judge Feudale and/or any prosecutors were
6 involved in the sealing of grand jury information. I did
7 conclude, though, that -- through Judge Feudale's own words
8 that he was involved in the leaking of a sealed Supreme Court
9 writ of prohibition.

10 THE COURT: Okay. Are you aware of any other
11 e-mails from or to Judge Feudale evidencing a breach of grand
12 jury secrecy in the Sandusky case?

13 ATTORNEY GENERAL KANE: I am not aware. I will
14 tell you we had -- there were thirty -- about 3300 -- don't
15 quote me on the number; it's over 3,000 -- of Judge Feudale's
16 e-mails that were on OAG servers. I, myself, did not look
17 through all of them. The ones that I saw did not indicate
18 that he was any part of a leak of grand jury information from
19 the Sandusky grand jury. And I would assume that anyone else
20 who had looked at them would have immediately notified me if
21 they had seen such.

22 THE COURT: Okay.

23 ATTORNEY GENERAL KANE: But in the interest of
24 transparency, Judge, if you would like, we have them on a
25 flash drive; I'll be happy to provide them to the Court.

1 THE COURT: No. You're testifying under oath as an
2 officer of the court, and I will accept that.

3 ATTORNEY GENERAL KANE: Okay.

4 THE COURT: Are you aware of any e-mails to or from
5 any attorneys of the Office of Attorney General evidencing a
6 breach of grand jury secrecy in the Sandusky case?

7 ATTORNEY GENERAL KANE: I personally have not seen
8 any, but I also have not looked. The task of the Sandusky
9 investigation of the investigation, as it's been called, was
10 tasked to Jeff Moulton. Jeff Moulton went through, I
11 believe, at least hundreds of thousands of e-mails. And I
12 believe it was his conclusion that he did not see any leaks
13 between any attorneys in OAG or the judge. But I, myself,
14 did not look at them, and I, myself, have no personal
15 knowledge.

16 THE COURT: Okay.

17 THE COURT REPORTER: Do you have the spelling of
18 Jeff Moulton for me?

19 ATTORNEY GENERAL KANE: M-O-U-L-T-O-N.

20 THE COURT REPORTER: Thank you, ma'am.

21 THE COURT: Are you aware of any other
22 communications, either oral or written, from or to Judge
23 Feudale evidencing a breach of grand jury secrecy --

24 ATTORNEY GENERAL KANE: I am not.

25 THE COURT: -- in the Sandusky case?

1 ATTORNEY GENERAL KANE: I am not.

2 THE COURT: Are you aware of any --

3 ATTORNEY GENERAL KANE: I'm sorry, Judge. Can you
4 ask your question again?

5 THE COURT: Sure. I referred to the e-mails, and
6 now I was referring to other communications, either oral or
7 written, letters, phone messages, anything that would -- that
8 would evidence a breach of grand jury secrecy by Judge
9 Feudale in the Sandusky case.

10 ATTORNEY GENERAL KANE: Not by Judge Feudale. But
11 I did see e-mails where Judge Feudale was concerned about
12 secrecy breaches in the Sandusky grand jury and, in fact,
13 then had taken some steps to look into it.

14 THE COURT: Are you aware of what steps Judge
15 Feudale took?

16 ATTORNEY GENERAL KANE: I am. Only by his own
17 writings.

18 THE COURT: Okay.

19 ATTORNEY GENERAL KANE: Would you like --

20 THE COURT: Can you tell us what you're aware that
21 he did?

22 ATTORNEY GENERAL KANE: I believe that he was
23 appointing a special prosecutor, and I believe that special
24 prosecutor was going to be assigned to the OAG statewide
25 grand jury. And I believe that the judge also cut an order

1 appointing the two special prosecutors. One was Reeder, and
2 I can't remember the other one. And then I don't know what
3 happened to it after that. I don't believe anything really
4 came of it.

5 THE COURT REPORTER: Do you have the spelling of
6 Reeder? I'm sorry to interrupt.

7 ATTORNEY GENERAL KANE: That's okay. R-E-E-D-E-R.

8 THE COURT REPORTER: Thank you.

9 ATTORNEY GENERAL KANE: My best friend is a court
10 reporter.

11 THE COURT REPORTER: All right. Thanks.

12 THE COURT: Are you aware of any communications,
13 oral or written, from or to any of the attorneys of the
14 Office of the Attorney General that may have breached grand
15 jury secrecy in the Sandusky case?

16 ATTORNEY GENERAL KANE: I am not aware of any, but
17 I also have not looked.

18 THE COURT: Would that have been included in the
19 Moulton report and part of his investigation?

20 ATTORNEY GENERAL KANE: It is possible. His
21 investigation was limited. I can give you a copy of his
22 entire report where he lays out his scope, who he spoke with,
23 and the materials that he looked at. And that may be of some
24 help to the Court.

25 THE COURT: But you're not aware personally of any?

1 ATTORNEY GENERAL KANE: I'm not.

2 THE COURT: Okay. In your response of yesterday --
3 filed yesterday but dated the 3rd, November 3rd, you said
4 regarding disclosure of secret grand jury materials in this
5 case, "Therefore, I have no knowledge at this time of any
6 e-mail that proves such leak(s)."

7 Do you have any knowledge of any e-mails to or from
8 Judge Feudale or any attorney of the Office of the Attorney
9 General that lead you to believe if not prove that they were
10 involved in such leaks?

11 ATTORNEY GENERAL KANE: I don't believe so. So --
12 so we're clear, I have no conclusion, just -- you know, so I
13 can make -- oh, thank you.

14 So I can make that clear with my answer. When I --
15 I said I made no conclusion, I really did not make a
16 conclusion. And if I did, I probably would have reported it
17 to the appropriate authorities.

18 And so your question, as I understand it, is, do I
19 have any reason to have any suspicions that there were
20 between OAG and the judge?

21 THE COURT: Yes.

22 ATTORNEY GENERAL KANE: No.

23 (Handing.)

24 MR. LINDSAY: Thank you.

25 ATTORNEY GENERAL KANE: Judge, this is a copy of

1 the press release.

2 THE COURT: Thank you.

3 ATTORNEY GENERAL KANE: You're welcome.

4 THE COURT: Then -- I just asked about e-mails that
5 led you to believe if not prove that there were leaks. Do
6 you have knowledge of any documents or other communications,
7 verbal or written, that lead you to believe if not conclude
8 that there were leaks, any that give rise to suspicions?

9 ATTORNEY GENERAL KANE: I -- I do not have any
10 knowledge of e-mails or communications of any kind that lead
11 me to conclude that there were leaks between Judge Feudale
12 and the Office of Attorney General. The only thing I have
13 seen is that Judge Feudale himself was concerned about the
14 leaks in the grand jury. So I guess the -- the answer is I
15 don't have any e-mails or communications that conclude that
16 there was anything going on between Judge Feudale and OAG
17 attorneys. I do have an e-mail, as stated before, where
18 Judge Feudale himself said there was a leak from the grand
19 jury and that he -- he was also concerned about it as well as
20 Justice Castille.

21 THE COURT: Okay. The reason I'm asking these
22 questions is that there was a story reported, I believe, by
23 the Associated Press on September 30th -- it was reprinted
24 various places -- responding to Mr. Lindsay's assertion that
25 -- that because of grand jury leaks, the stalled grand jury

1 was jump-started and other victims came forward. And I
2 believe your press spokesman said that you had a strong
3 suspicion -- at least this is as quoted by the AP --

4 ATTORNEY GENERAL KANE: Yes.

5 THE COURT: -- that you had a strong suspicion that
6 leaks came from people associated with this office, that the
7 Attorney General herself is not convinced that the leaks did
8 not emanate from the Office of AG and will comply with any
9 subpoenas seeking information about e-mail traffic between
10 this office and the judge.

11 So I guess my question is, do you still remain not
12 convinced that the source of the leaks emanated from the
13 Office of Attorney General?

14 ATTORNEY GENERAL KANE: Well, Judge, those were the
15 words of Chuck Ardo. Those weren't my words.

16 THE COURT: Okay.

17 ATTORNEY GENERAL KANE: They weren't even my words
18 directed to him to give to the press.

19 THE COURT: Okay.

20 ATTORNEY GENERAL KANE: Those were impressions that
21 were given by him without authorization from me. So I
22 really -- I can't speak for why he said that or what his
23 thinking was or what his rationale in stating that. But
24 rather than mince words, I get the spirit of your question
25 is, is do I -- am I not convinced that they didn't not come

1 from the Attorney General.

2 THE COURT: Let me rephrase the question. Are you
3 convinced the leaks did not emanate from the Office of
4 Attorney General?

5 ATTORNEY GENERAL KANE: Am I convinced the leaks
6 did not emanate? I didn't look into them, so I can't make a
7 judgment one way or another. It's possible it did. It's
8 possible it came from, you know, the defense. It's possible
9 it came from whoever had access to it. But there's a lot of
10 possibilities. I think probably when Chuck did the double
11 negative, it was like it could be somebody from the AG but we
12 have no idea. And I wasn't tasked with looking into it.

13 THE COURT: Okay. So do you have an opinion at
14 this point whether or not the source of leaks emanated from
15 Judge Feudale?

16 ATTORNEY GENERAL KANE: I'm going to have to -- am
17 I going to be held to proving my opinion, because it's -- I
18 mean, everybody has opinions. Is there some legal
19 ramification, because I also have been through quite a bit
20 and I need to protect myself obviously.

21 THE COURT: I don't mean -- I don't mean to trick
22 you or to lay a trap.

23 ATTORNEY GENERAL KANE: No, I'm sure you don't.

24 THE COURT: I guess -- what I'm trying to get at is
25 if you have a belief that either Judge Feudale or an attorney

1 from the Office of Attorney General was involved in a leak,
2 I'd like to know what the basis of that belief is, whether
3 it's an e-mail, a communication, a conversation.

4 ATTORNEY GENERAL KANE: I don't have any opinion,
5 quite honestly. What I have seen of Judge Feudale's e-mails,
6 what I have seen, the limited portion, I have no reason to
7 believe that he had any involvement in a leak.

8 THE COURT: Okay.

9 ATTORNEY GENERAL KANE: I haven't seen any other
10 attorneys' e-mails from our office, so I really have no
11 opinion.

12 THE COURT: Okay.

13 ATTORNEY GENERAL KANE: One way or the other.

14 And when I say any other attorneys', I mean with
15 regard to -- because I have seen other attorneys' e-mails but
16 not with regard to this.

17 THE COURT: With regard to the Sandusky case?

18 ATTORNEY GENERAL KANE: With regard to the Sandusky
19 case, yes.

20 THE COURT: Okay. And, again, I don't mean to
21 parse words, but I want to be -- I want to be accurate --

22 ATTORNEY GENERAL KANE: I appreciate that.

23 THE COURT: -- and complete.

24 In the last sentence of your response, you say,
25 "The order was directed to me personally as to whether I am

1 aware of any e-mails pertaining to leaks from the Sandusky
2 grand jury that directly implicate the judge and/or
3 prosecutors."

4 But to be clear, my order wasn't limited to
5 e-mails. It was limited to any information.

6 ATTORNEY GENERAL KANE: Okay.

7 THE COURT: So do I understand that your testimony
8 today is that you're aware of no information that either
9 proves or persuades you that Judge Feudale or any attorney of
10 the Office of Attorney General in any way orchestrated,
11 facilitated, cooperated in, or arranged for disclosure of
12 otherwise secret grand jury information?

13 That's a long question. Do you want me to repeat
14 that?

15 ATTORNEY GENERAL KANE: No. That's quite all
16 right.

17 I believed your order to be regarding the statement
18 of October 28th, this statement, and whereas I -- as I read
19 it, that some -- it was interpreted to read that I concluded
20 that there was some nefarious conduct between the judge and
21 the prosecutors in the Sandusky grand jury. And my answer
22 was that I did not conclude that. I didn't mean to imply it
23 either. It dealt strictly with the writ, with the Supreme
24 Court document.

25 But to answer your question, I don't -- I am not

1 aware of any e-mails or communications, any of the likes,
2 that would -- that pertain to leaks between the judge and the
3 prosecutors. I'm not personally aware of those. I'm not
4 saying that we don't have them because I'm not the attorney
5 of record. I haven't gone through the discovery. I didn't
6 even know about your hearing last week, so it's -- it's not
7 anything that I am deeply involved in.

8 THE COURT: Okay.

9 ATTORNEY GENERAL KANE: So I'm not saying we don't.
10 All I'm saying is that I personally don't have anything. And
11 I certainly did not mean for the October 28th press release
12 to even imply that there was a relationship -- not a
13 relationship but a conduct between them whereby they were
14 leaking and I knew about it.

15 THE COURT: Okay. So -- so if I'm -- if I'm
16 correct then, you're saying that you are aware -- that you
17 personally are aware of no information that either proves or
18 disproves the involvement of Judge Feudale or the attorneys
19 of your office in any kind of leak or breach of secrecy?

20 ATTORNEY GENERAL KANE: Correct.

21 THE COURT: Okay.

22 Mr. Lindsay?

23 MR. LINDSAY: May I inquire?

24 I want to follow up on some of the questions that
25 the Judge asked. I'd like to refer specifically to the AP

1 story dated September 30th, 2015. And here is what is
2 written: "Ardo provided conflicting statements about the
3 source of leaks in the Sandusky investigation Wednesday. He
4 first said there was no evidence leaks came from anyone
5 associated with the prosecutors' office but hours later said
6 Attorney General Kathleen Kane has strong suspicions that the
7 leaks came from people associated with this office."

8 That's -- you agree that's what's in this story, if
9 you know?

10 ATTORNEY GENERAL KANE: I agree that's what --
11 what's written.

12 MR. LINDSAY: And my question is, I take it from
13 your prior testimony, you're saying that you don't know where
14 Mr. Ardo came up with that?

15 ATTORNEY GENERAL KANE: I don't. I actually don't
16 read the newspapers. So the first I became aware of it was
17 through your -- through your response. And I did not
18 authorize Chuck; I don't recall us ever having a conversation
19 of that. You know, Chuck is the spokesperson for the office,
20 and you'd have to ask him about his wording or his
21 interpretation or -- or whatever that is.

22 MR. LINDSAY: Then my follow-up question, do you
23 have strong suspicions or just suspicions that the leaks came
24 from the people associated with your office?

25 ATTORNEY GENERAL KANE: I've been a prosecutor for

1 15 years. I don't discount anyone until you can discount
2 them. And I don't -- I don't blame anyone until you have
3 evidence to blame them. So I have -- it could be the
4 prosecutors' office. It could be the defense attorneys. It
5 could be Penn State. From what I understand, it could have
6 been Sandusky himself. So I don't include anyone, and I
7 don't exclude anyone. It could have been any one of those
8 entities. And I have no opinion as to -- I don't feel
9 stronger about one entity than another.

10 MR. LINDSAY: Let me ask you this: In March of, I
11 think, 2011, there was apparently a grand jury leak,
12 according to the Moulton report. You're aware of that,
13 correct?

14 ATTORNEY GENERAL KANE: Correct.

15 MR. LINDSAY: And it was a leak that resulted in a
16 story, I believe, in the Harrisburg -- I think it's called
17 the Patriot?

18 ATTORNEY GENERAL KANE: Correct.

19 MR. LINDSAY: The Patriot-News --

20 ATTORNEY GENERAL KANE: Yes.

21 MR. LINDSAY: -- something like that, involving --
22 written by Sara Ganim which apparently had secret grand jury
23 information released. Is that correct?

24 ATTORNEY GENERAL KANE: Yes.

25 MR. LINDSAY: All right. You indicated that you,

1 in the course of your investigation, encountered some, I
2 guess, e-mail traffic that Judge Feudale was concerned about
3 a leak. Is that correct?

4 ATTORNEY GENERAL KANE: Correct.

5 MR. LINDSAY: Was it this leak, the leak we're
6 talking about, the March --

7 ATTORNEY GENERAL KANE: He didn't specify.

8 MR. LINDSAY: Do you recall whether it was timed so
9 that it would appear it was with regard to this leak?

10 ATTORNEY GENERAL KANE: No. He -- the e-mail that
11 I saw where he was concerned about the leak wasn't until
12 2013, the date of the e-mail.

13 MR. LINDSAY: I see. Was there any indication that
14 there was any concern by Judge Feudale about the leak at or
15 near the time the leak occurred in 2011, March of 2011?

16 ATTORNEY GENERAL KANE: I don't know. I didn't
17 look at all of Judge -- there were over 3,000. I didn't look
18 at all of them, so I don't know.

19 MR. LINDSAY: In the course of your work as
20 Attorney General, are you aware of any investigation done by
21 Judge Feudale or your office or anyone else about that leak
22 which occurred in March of 2013?

23 ATTORNEY GENERAL KANE: As I stated before, the
24 only knowledge that I have of it is that Judge Feudale
25 appointed Mr. Reeder and another gentleman to look into what

1 -- the Sandusky leak. He cut an order. It was supposed to
2 have been before the statewide grand jury. There was some
3 talk about how much they were going to be paid, and then I
4 saw nothing after that.

5 MR. LINDSAY: Do you recall when Mr. Reeder was
6 appointed, roughly?

7 ATTORNEY GENERAL KANE: Roughly?

8 MR. LINDSAY: I'm not asking for the specific --

9 ATTORNEY GENERAL KANE: Well, I was in office. I
10 believe he was appointed either right when I came into office
11 or right before. And that was -- I was -- came into office
12 in January of 2013.

13 MR. LINDSAY: All right. First of all, who was
14 this other attorney, other than James Reeder, who was
15 appointed?

16 ATTORNEY GENERAL KANE: I can't remember his name.
17 We didn't have any input in the selection process.

18 MR. LINDSAY: Was Mr. Reeder appointed to
19 investigate the March 2013 leak?

20 ATTORNEY GENERAL KANE: It didn't say. All it said
21 was the Sandusky leak.

22 MR. LINDSAY: My question obviously is what I've
23 been asking, what happened with Mr. Reeder's investigation?

24 ATTORNEY GENERAL KANE: Your guess is as good as
25 mine, sir. I don't know.

1 MR. LINDSAY: Did anybody in your office ask what
2 happened?

3 ATTORNEY GENERAL KANE: I don't know.

4 MR. LINDSAY: You don't know; you haven't done a
5 personal investigation, I take it, in these matters, correct?

6 ATTORNEY GENERAL KANE: Correct.

7 MR. LINDSAY: Is there someone in your office who
8 knows the specific facts concerning this leak or allegation
9 of a leak or the investigation of a leak? Who would know?

10 ATTORNEY GENERAL KANE: It's possible someone
11 knows. I don't have a name for you. And I can tell you that
12 Mr. Reeder was appointed as a special counsel which means
13 that he was not appointed by my office. We did not choose
14 him. We did not supervise him. We had nothing to do with it
15 at that point, to my knowledge. It was he was appointed by
16 Judge Feudale. And that almost takes it to a -- almost a
17 separate, you know -- he's not a part -- a part of our office
18 at that time.

19 MR. LINDSAY: When did you find out about the
20 March 2011 leak?

21 ATTORNEY GENERAL KANE: Oh, I have no idea. I
22 don't know whether I read it in March 2011 or I found out,
23 you know, months later. I have no idea.

24 MR. LINDSAY: Did you, as the Attorney General who
25 was using these grand juries, have a concern about the effect

1 of that leak on the process?

2 ATTORNEY GENERAL KANE: I always have concerns
3 about effects of leaks on the process. I mean, there's no
4 doubt about it. The rules are in there for a reason. And
5 anytime there is a leak, it -- I have concerns; no doubt.
6 But don't -- don't forget, that was not in my administration.
7 That -- we've been through three administrations in the
8 Sandusky case. I'm the third. And Judge Feudale seemed to
9 be taking care of investigating that look -- leak, and he
10 would be as the grand jury judge.

11 MR. LINDSAY: In the response that was filed in
12 this case, there was an indication at least in a footnote
13 that there was an internal investigation done concerning the
14 leak. According -- and it's stated here at -- oh, let me
15 see. I'm -- I have the -- the document, I believe, is the
16 brief that was filed by the Commonwealth, the Attorney
17 General's Office in response to our documents filed
18 requesting discovery. It's footnote 11.

19 "Although not authorized" -- and here's what the
20 footnote says: "Although not authorized to conduct an
21 official grand jury investigation into the leak, the OAG did
22 conduct an internal investigation to determine whether anyone
23 within law enforcement had violated their grand jury secrecy
24 obligations. According to the Moulton Report, the efforts
25 were unsuccessful."

1 Are you familiar with that?

2 ATTORNEY GENERAL KANE: I'm not familiar with that
3 document. I'm not the attorney of record. I do not read
4 every document that comes in and out of the office. It's
5 impossible, quite honestly.

6 MR. LINDSAY: Do you know anything about this
7 internal investigation referenced in paragraph 11?

8 ATTORNEY GENERAL KANE: I have no personal
9 knowledge of that. You're probably best directing it towards
10 the attorney of record.

11 MR. LINDSAY: I don't know that I can. I would
12 like to, but -- all right. I have a few more questions.

13 ATTORNEY GENERAL KANE: Not to throw you under the
14 bus.

15 MR. LINDSAY: Oh, if we look at your response --
16 and -- and forgive me, I am not the brightest light on the
17 planet. So I have certain questions about what you filed
18 yesterday morning.

19 If you look at page 2, if we go down to, I believe
20 it's the fourth full paragraph, if I can read that paragraph
21 into the record. It says, The final paragraph of the
22 10/28/15 release speaks of the obvious seriousness of this
23 reckless breach of sealed Supreme Court documents in that
24 those involved in the e-mail chain were also involved in the
25 prosecution and/or reporting of Sandusky and other high

1 profile cases. The credibility of the judge which will
2 surely be called into question from his admitted exposure of
3 sealed Supreme Court documents will undoubtedly come into
4 play, whether successful or not, in the post-conviction --
5 conviction litigation presently before Your Honor and other
6 courts. His statements, via -- via e-mail, bring about the
7 very questions raised by the defense counsel in this case.

8 What did that paragraph mean? I can't quite figure
9 it out.

10 ATTORNEY GENERAL KANE: It was a long paragraph.

11 MR. LINDSAY: Should we --

12 ATTORNEY GENERAL KANE: I'll start from the
13 beginning.

14 MR. LINDSAY: Would it be easier if we break it --

15 ATTORNEY GENERAL KANE: Yeah.

16 MR. LINDSAY: Yeah.

17 ATTORNEY GENERAL KANE: Let me start from the
18 beginning.

19 When we say about the "seriousness of the reckless
20 breach of sealed" -- and, again, I make it clear it's Supreme
21 Court documents, not grand jury documents -- "in that those
22 involved in the e-mail chain were also involved in the
23 prosecution," in the documents that were provided to the
24 Philadelphia Inquirer, not by our office, but a couple of
25 days before my press release, those -- the people involved

1 were the same people involved in the prosecution. It was
2 Mr. Fina, and it was Judge Feudale. And also then the
3 "reporting of Sandusky and other high profile cases." Angela
4 Coulombis and Craig McCoy have reported on Sandusky.
5 They've reported on Bonusgate, and they've reported on
6 Computergate. Is that what the other one was called? So --
7 I think it was Computergate. So that's -- when I talk about
8 the people involved, it's Judge Feudale, it's Mr. Fina, and
9 it's the reporters that are now presently covering the
10 matters today and that have covered some of the before.

11 "The credibility of the judge which will surely be
12 called into question" is -- I'm assuming that's why you filed
13 your motion and that's why we're here today -- is coming into
14 play. "Whether successful or not," I put that because that's
15 not up to me; that's up to the parties involved. "In the
16 post-conviction litigation presently before Your Honor and
17 other courts." We have post-conviction motions in other
18 matters, the other high profile matters as well, not just
19 Sandusky.

20 MR. LINDSAY: And, "His statements via e-mail bring
21 about the very questions raised by the defense counsel in
22 this case" --

23 ATTORNEY GENERAL KANE: Right.

24 MR. LINDSAY: -- what exactly do you mean by that?

25 ATTORNEY GENERAL KANE: Well, what I thought that

1 you meant in your motions was that there's some improper
2 communications and/or relationships between the parties.

3 MR. LINDSAY: Do you believe that there was an
4 improper relationship between the parties, representatives of
5 your office and Judge Feudale?

6 THE COURT: Insofar as the Sandusky litigation?

7 MR. LINDSAY: Yes.

8 THE COURT: Yes.

9 ATTORNEY GENERAL KANE: Insofar as the Sandusky
10 litigation during -- can you give me a time frame? During
11 the Sandusky litigation?

12 MR. LINDSAY: Yes. Well, during the grand jury
13 investigation particularly.

14 ATTORNEY GENERAL KANE: You know, I will -- I don't
15 know the answer to that. I try as much as I can to put
16 things, you know, in perspective, whether it's the Rules of
17 Professional Conduct or the Judicial Canons. And where I see
18 breaches, I send it to the JCB or I send it to the D Board.
19 But I'm not the expert on it. So I can't tell you whether
20 there is an improper relationship or I can't tell you whether
21 there isn't an improper relationship.

22 I can tell you that there are -- we have sent some
23 e-mails of Judge Feudale to the Judicial Conduct Board. But
24 that, of course, is confidential proceedings, and they don't
25 have to report back to me as to what happens or what doesn't.

1 And it's not my business, quite honestly.

2 MR. LINDSAY: The -- the e-mail -- the first e-mail
3 that you have attached, I guess, to your press release which
4 is dated July 14th, 2013 --

5 ATTORNEY GENERAL KANE: The 14th?

6 MR. LINDSAY: Did I say July 14, 2013?

7 ATTORNEY GENERAL KANE: Yes.

8 MR. LINDSAY: All right.

9 And I'll quote this. The last line on page 1 where
10 it states, Again, the, quote, slow walk is, and then it has
11 in caps, patent political bullshit, end of quote. It's about
12 the, I guess, victimized by a sexual predator who will
13 probably die in jail. It's about how three men allegedly had
14 information about the sexual abuse of kids and committed
15 alleged criminal acts of commission and omission -- or
16 omission and turned deaf eyes and ears to such a horrible
17 thing, just like some in the Catholic Church and Boy Scouts.
18 When, quote, good, end of quote, men do nothing, our system
19 fails the vulnerable we are empowered to protect.

20 And then later, if you go down a couple paragraphs,
21 he says, "I will not abandon those kids. I, Fina," and then
22 in parentheses, "who in my mind is a great man of courage and
23 perseverance, Eshbach, and many agents and State Police
24 witnessed the pain and shame in the faces of the many kids
25 who at times," in parentheses, "with reluctance testified

1 about the, quote, horrors committed upon them. I will not
2 join such a conspiracy of silence."

3 There are two things I -- I would ask you about.
4 The first, would you agree that it appears that the author of
5 this e-mail has a very strong bias against Mr. Sandusky and
6 also the other three individuals who --

7 THE COURT: I'm going to cut off that question.
8 The scope of this proceeding this afternoon is confined to
9 the issue of improper leaks or disclosures by Judge Feudale
10 and/or attorneys of the Office of Attorney General.

11 MR. LINDSAY: You're the boss. So I --

12 THE COURT: That's right.

13 MR. LINDSAY: All right. Concerning the, I guess,
14 breach -- I'm trying to get the -- you're suggesting that
15 there was -- I think in your -- in your press release, unless
16 I've got it wrong, that there was an exposure of sealed
17 Supreme Court documents by Judge Feudale. Is that correct?

18 ATTORNEY GENERAL KANE: That's correct.

19 MR. LINDSAY: Would that involve criminal behavior?

20 THE COURT: Wait a minute. The purpose of this
21 hearing was to explore whether or not the Attorney General
22 has information to support what I had thought to be an
23 assertion in the press release that there had been a
24 violation of grand jury secrecy orchestrated or facilitated
25 in some way by Judge Feudale and/or offices of the --

1 attorneys of the Office of Attorney General. This is not a
2 general kind of discovery proceeding, and I'm going to keep
3 it focused on that question.

4 I understand that your request for this discovery
5 is still pending and I have yet to rule on it, but we're not
6 going to deal with it before I rule on it.

7 MR. LINDSAY: Fair enough.

8 Obviously I'm trying to get as much information as
9 I can, Your Honor.

10 THE COURT: Yes. I understand the strategy.

11 ATTORNEY GENERAL KANE: We appreciate your efforts.

12 MR. LINDSAY: Let me ask you this, general.
13 Obviously we're concerned with trying to determine whether
14 the prosecution, someone connected with the grand jury
15 investigation, or the judge was involved in disclosing
16 matters particularly in March of 2011. And I think -- can we
17 agree that from your testimony, you really have little
18 knowledge about those subjects; correct?

19 ATTORNEY GENERAL KANE: From my testimony, I have
20 indicated -- and maybe I'm too literal and too in the box,
21 and I have been accused of that before. But I've indicated
22 that my response that was the subject of the order, was it
23 October 28th, did not conclude that it was either Judge
24 Feudale or -- and/or the prosecutors having leaked any grand
25 jury secrecy information. My response was that this press

1 release dealt with the -- Judge Feudale's own admittance of
2 giving out sealed -- sealed Supreme Court documents.

3 And the rest of the questions then went on, do I --
4 regardless of what, you know, the order was and what my
5 statement is, do -- am I aware of any information, whether
6 e-mail, communications, written or oral, that would in any
7 way connect the judge and the prosecutors to leaking the
8 sealed grand jury information; is that the question?

9 THE COURT: Yes.

10 ATTORNEY GENERAL KANE: Okay. Great.

11 THE COURT: And your answer is no, I --

12 ATTORNEY GENERAL KANE: My answer is no. Yes, my
13 answer is no.

14 MR. LINDSAY: At the risk of indulging in
15 discovery, who in your office would know?

16 THE COURT: You're right; that's discovery.

17 MR. LINDSAY: I take it your objection is
18 sustained. All right.

19 THE COURT: Okay.

20 MR. LINDSAY: I -- I think based on the Court's
21 ruling, I really don't have any other questions.

22 THE COURT: Ms. Peterson, do you have any questions
23 you'd like to ask, anything you want to clarify or expand on
24 relating to the Attorney General's testimony?

25 MS. PETERSON: No, Your Honor. The only thing I

1 would note is the name of the second individual that was
2 appointed as a special prosecutor was Kenneth Brown.

3 THE COURT: It does not appear to me, although I
4 have not been privy to any grand jury materials except as
5 were disclosed during the trial, that there's been any
6 disclosure of grand jury material in this proceeding today.

7 Ms. Peterson, you're in a better position to judge
8 that. Do you have any concerns?

9 MS. PETERSON: No, Your Honor.

10 THE COURT: Okay. Then it would be my view that
11 there's no reason to continue the seal.

12 Do you want to be heard on that, Mr. Lindsay?

13 MR. LINDSAY: I don't think so.

14 THE COURT: Okay.

15 Ms. Peterson?

16 MS. PETERSON: No, Your Honor.

17 THE COURT: Madam Attorney General?

18 ATTORNEY GENERAL KANE: No, Your Honor.

19 THE COURT: Okay. All right. Then I will conclude
20 this with the appreciation to the Attorney General for
21 appearing and offering her testimony.

22 Ms. Peterson and Mr. Lindsay, thank you.

23 ATTORNEY GENERAL KANE: Thank you, Judge.

24 MS. PETERSON: Thank you, Your Honor.

25 MR. LINDSAY: Thank you, Your Honor.

1 ATTORNEY GENERAL KANE: Judge, just for my own so I
2 can get through the day without having to worry because I
3 have so many other things, are we okay that I did not in any
4 way violate your order and I -- I tried to comply with as
5 best I could?

6 THE COURT: No, I have no concern. You've
7 clarified --

8 ATTORNEY GENERAL KANE: Okay. Thank you.

9 THE COURT: You've clarified. I think we all need
10 to be cautious and careful.

11 ATTORNEY GENERAL KANE: Absolutely.

12 THE COURT: And I just wanted to make sure that
13 there weren't any loose ends.

14 ATTORNEY GENERAL KANE: Yes. And you know what, I
15 appreciate you going right to the horse's mouth.

16 THE COURT: I think we can close the record at this
17 point.

18 MR. LINDSAY: Could we have a discussion
19 afterwards, though? It doesn't have to be on the record. I
20 just --

21 THE COURT: With Ms. Peterson --

22 MR. LINDSAY: Yes.

23 THE COURT: Yes, we could do that.

24 (Whereupon, the proceedings concluded at 1:43 p.m.)

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C E R T I F I C A T E

I hereby certify that the proceedings and evidence are contained fully and accurately in the notes taken by me on the proceedings of the above cause and that this copy is a correct transcript of the same.

11/09/2015



Date

Rebecca Toner, RPR
Official Court Reporter

APPROVAL OF COURT

The foregoing record of the proceedings had upon the hearing in the within case, upon review and approval of counsel, is hereby approved and directed to be filed.

11/9/15



Date

John M. Cleland, Senior Judge
Specially Presiding