

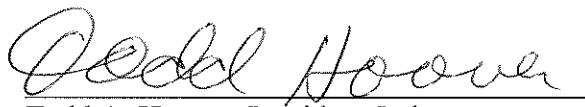
ORIGINAL

COMMONWEALTH OF PENNSYLVANIA : IN THE COURT OF COMMON PLEAS  
 : DAUPHIN COUNTY, PENNSYLVANIA  
 :  
 vs. : NO.: CP-22-CR-0005164-2011  
 :  
 GARY CHARLES SCHULTZ : CHARGE(S): Perjury; Penalties for Failure  
 : to Report or to Refer

**ORDER OF COURT**

AND NOW, this 9 day of August, 2012, upon consideration of the Defendant's  
 Petition for Subpoena Under the Uniform Act, the petition is hereby **GRANTED** and we will  
 issue a separate Certificate of the Superior Court of the District of Columbia with the subpoena  
 attached. **IT IS SO ORDERED.**

BY THE COURT:

  
 Todd A. Hoover, President Judge

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 2012 AUG 10 AM 11:20  
 DAUPHIN COUNTY  
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**Distribution:** 8-10-12 @ 11:30

Bruce R. Beemer, Esquire – Chief to Staff, Office of PA Attorney General,  
 Criminal Law Division, 16<sup>th</sup> Floor-Strawberry Square, Harrisburg, Pa 17120

Thomas J. Farrell, Esquire

David H. Cook, Esquire – *Farrell & Reisinger*, 436 7<sup>th</sup> Avenue, Suite 200,  
 Pittsburgh, Pa 15219 (*Atty. for Schultz*)

George H. Matangos, Esquire – *Costopoulos, Foster & Fields*, 831 Market Street, P.O. Box 222,  
 Lemoyne, PA 17043-0222 (*Atty. for Schultz*)

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mail

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

COMMONWEALTH OF PENNSYLVANIA, :  
 :  
 v. :  
 : No. CP-22-CR-5164-2011  
 GARY C. SCHULTZ, :  
 :  
 Defendant. :

**CERTIFICATE TO THE SUPERIOR COURT OF THE DISTRICT OF  
COLUMBIA OF MATERIALITY, NECESSITY AND NEED FOR A WITNESS  
AND DOCUMENTS IN ITS CUSTODY, FOR THE PURPOSE OF A CRIMINAL  
PROCEEDING IN THE COURT OF COMMON PLEAS OF DAUPHIN COUNTY,  
IN THE COMMONWEALTH OF PENNSYLVANIA**

To A Judge of the Superior Court for the District of Columbia:

Pursuant to the Uniform Act to Secure the Attendance of Witnesses from Without a State in Criminal Cases, adopted in Pennsylvania at 42 Pa. C.S.A. § 5961, *et seq.*, and in the District of Columbia at DC Code § 23-1502, the Dauphin County, Pennsylvania Court of Common Pleas hereby and herein certifies, under seal of this Court, the following:

1. That there is presently pending a criminal prosecution brought by the Office of the Attorney General of Pennsylvania, venued in the Dauphin County, Pennsylvania Court of Common Pleas, Criminal Division, Case No. CP-22-CR-5164-2011, for felony and related charges against Gary C. Schultz. Should Mr. Schultz be convicted, he would be subject to a maximum sentence of incarceration in excess of seven years in length.

2. That Freeh Sporkin and Sullivan, LLP ("FSS"), is an entity located in the District of Columbia, registered with the District of Columbia District of Columbia Department of Consumer & Regulatory Affairs' Corporations Division as a domestic entity, with a registered agent also located in the District of Columbia.
3. That FSS is in physical possession of certain materials, enumerated in the attached (and incorporated hereto) subpoena *duces tecum* issued by this Court, returnable by or before September 1, 2012.
4. That because of its possession of the aforesaid certain materials, FSS is a material and necessary witness to the aforementioned criminal prosecution of Mr. Schultz, for the reasons set forth (and adopted by this Court in their entirety) in the attached (and incorporated hereto) pleading, Defendant Gary C. Schultz's Petition For Subpoena Under The Uniform Act To Secure The Attendance Of Witnesses From Within Or Without A State In Criminal Cases ("Defendant's Petition").
5. That, notwithstanding FSS's believed physical possession of the materials identified in the aforementioned subpoena *duces tecum*, for the reasons set forth in the Defendant's Petition (and adopted by this Court in their entirety), those materials were created for, paid for, and belong to the Board of Trustees of the Pennsylvania State University, a domestic entity located within the Commonwealth Pennsylvania. And to the extent that members or employees of FSS created any of the sought materials, this was accomplished in the courts of FSS

staffing the Special Investigative Counsel to the Special Investigations Task Force of the Board of Trustees of the Pennsylvania State University – rendering the Special Investigative Counsel an entirely Pennsylvania-specific entity, and an agent of the Board of Trustees of the Pennsylvania State University.

6. That FSS's presence, along with the responsive materials referenced in the aforementioned subpoena *duces tecum*, are required before this Court on September 1, 2012, absent prior production of the responsive materials to counsel for Mr. Schultz, along with a sworn statement as to the creation, custody and authentication of the responsive materials.

WHEREFORE, PREMISES CONSIDERED, this Court:

1. Affixes the Seal of the Court of Common Pleas of Dauphin County, Pennsylvania to this certificate;
2. Urges the Superior Court of the District of Columbia, in the interests of comity, adopt the conclusions of this Court and issue a summons – in the form of a subpoena, order, or other notice requiring the appearance (per DC Code § 23-1501(c)) – with a copy of this Certificate attached, directing FSS to attend proceedings before this Court on September 1, 2012, and to produce, sponsor and authenticate the materials responsive to the aforementioned subpoena *duces tecum*, or to provide the same to counsel for Mr.

Schultz prior to that date.

8/9/12  
Date

Todd Hoover  
Todd A. Hoover, President Judge  
Court of Common Pleas of  
Dauphin County, Pennsylvania

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

COMMONWEALTH OF PENNSYLVANIA, :

v. :

GARY C. SCHULTZ, :

Defendant ~~COURT ADMINISTRATOR~~  
OFFICE  
DAUPHIN COUNTY

RECEIVED

No. CP-22-CR-5164-201

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CLERK OF COURTS

**DEFENDANT GARY C. SCHULTZ'S PETITION FOR SUBPOENA UNDER THE  
UNIFORM ACT TO SECURE THE ATTENDANCE OF WITNESSES FROM  
WITHIN OR WITHOUT A STATE IN CRIMINAL CASES**

TO THE HONORABLE TODD A. HOOVER, PRESIDENT JUDGE OF SAID  
COURT:

Defendant Gary C. Schultz respectfully petitions this Honorable Court to issue a Certificate pursuant to the Uniform Act To Secure The Attendance Of Witnesses From Within Or Without A State In Criminal Cases, 42 Pa. C.S.A. § 5961, *et seq.* directing Freeh Sporkin & Sullivan, LLP ("FSS") to produce certain documents in its possession pursuant to a subpoena *duces tecum*. A copy of the subpoena is attached as Exhibit A.

FSS is a is an entity located in the District of Columbia, registered with the District of Columbia Department of Consumer & Regulatory Affairs' Corporations Division as a domestic entity, with a registered agent also located in the District of Columbia.<sup>1</sup> The District of Columbia also recognizes the Uniform Act. *See* DC Code § 23-1502.

<sup>1</sup> FSS's office is located at 2445 M Street NW, Washington, DC. FSS's Corporations Division entity identification number is 2918674, and its registered agent is C T Corporation System, located at 1015 15<sup>th</sup> Street NW, Washington, DC.

Mr. Schultz is the former Senior Vice President for Finance and Business at the Pennsylvania State University ("University"). On November 4, 2011, Mr. Schultz was indicted for perjury (18 Pa. C.S.A. § 4902) and failure to report (23 Pa. C.S.A. § 6319). Perjury under Pennsylvania law is a felony carrying a sentence of imprisonment for up to seven years. 18 Pa. C.S.A. § 4902. In 2002, when the alleged incident occurred, the failure to report under was a summary offense. These allegations are related to the purported actions and failures of the University surrounding child sexual abuse committed by its former employee, Gerald A. Sandusky.

Mr. Schultz seeks the production of the certain documents and materials in the possession of FSS that were gathered or created in the course of FSS serving as Special Investigative Counsel to the Special Investigations Task Force of the Board of Trustees of the Pennsylvania State University ("Task Force"). The Task Force directed the Special Investigative Counsel to conduct an investigation of the alleged failure of Pennsylvania State University personnel, including Gary Schultz, to respond to, and report to the appropriate authorities, the sexual abuse of children by Mr. Sandusky, a former Penn State University football coach. After conducting its investigation, the Special Investigative Counsel issued its findings on July 12, 2012, in a document titled, "Report of the Special Investigative Counsel Regarding the Actions of The Pennsylvania State University Related to the Child Sexual Abuse Committed by Gerald A. Sandusky," which has come to be known as the "Freeh Report."

Because members or employees of FSS staffed the Special Investigative

Counsel, FSS is believed to be in possession of the materials responsive to that which is sought in the attached subpoena.

In conducting its investigation and documenting its results, the Special Investigative Counsel claims it had conducted 430 interviews of key University personnel and other knowledgeable individuals, and analyzed over 3.5 million pieces of pertinent electronic data and documents. The Freeh Report quotes extensively from interview notes throughout, including interviews of individuals who are potential witnesses in this case. *See, e.g.*, interviews of Stephen G. Shelow, Ronald Schreffler, John Miller, Jerry Lauro, John Seasock, counsel for the Second Mile, Graham Spanier, Cynthia Baldwin, "Janitor B," and other unnamed individuals.

A significant amount of information contained in the Freeh Report refers to Mr. Schultz. It contains numerous allegations of fact suggesting Mr. Schultz failed to report suspected child abuse and challenged the veracity of Mr. Schultz's testimony before a Grand Jury on January 12, 2011 – central tenets in the criminal allegations against him. It also includes other information and documentary evidence related to Gerald Sandusky's sexual abuse of children that are material to Mr. Schultz's pending criminal case, including information about: University police personnel who investigated the 1998 incident; "Janitor B," who witnessed Gerald Sandusky abusing a child; the Second Mile, which was Gerald Sandusky's charity; Cynthia Baldwin, the University's former General Counsel; Graham Spanier, the University's former President to whom Mr. Schultz reported information; the role and actions of assistant football



coach Michael McQueary in this matter; and others.

Just weeks after its release, FSS already has admitted that the Freeh Report contains factual inaccuracies, including a severely prejudicial one about Mr. Schultz, directly related to the veracity of Mr. Schultz's statements when recalling previous investigations of Gerald A. Sandusky. Specifically, prior to FSS's production of an *errata* sheet, the Freeh Report stated that Mr. Schultz told former Penn State University outside legal counsel, Wendell Courtney, via email that he did not know of any police investigation into sexual abuse allegations in 1998. This highly prejudicial account, FSS has now conceded, was untrue. In fact, according to the *errata*, it was Mr. Courtney who had been unaware of the 1998 investigation, not Mr. Schultz.

An error of that magnitude notwithstanding, the Freeh Report nonetheless has maintained grievous and potentially inaccurate information related to Mr. Schultz, reviewing in great detail his purported actions, and alleging a conspiracy among the top administrators of the University to cover up reports of sexual abuse within its football program. By way of example, the report states,

Four of the most powerful men at The Pennsylvania State University [including] ... Gary C. Schultz ... concealed Sandusky's activities from the Board of Trustees, the University community and the authorities[.] ... They exhibited a striking lack of empathy for Sandusky's victims, and ... [they] empowered Sandusky to attract potential victims to the campus and football events by allowing him to have continued, unrestricted and unsupervised access to the University's facilities and affiliation with the University's prominent football program.

Freeh Report, pp.13-14.

Given the incredible exposure and media coverage the Freeh Report has received both within the state, nationally and internationally, and its concomitant threat to poison Mr. Schultz's jury pool, it is of vital importance that Mr. Schultz have access to certain of its underlying documents in order to prepare his defense, including but not limited to his right to participate in the selection of an unbiased, not pre-disposed jury. Mr. Schultz must have access to the documents and materials that led to the production of the Freeh Report and its underlying documents and interview notes in order to learn of other possible inaccuracies, and to determine if any exculpatory information exists that was excluded from the final version of the report. The compulsory process and confrontation clauses of the Sixth Amendment to the United States Constitution and Article One, Section Nine of the Pennsylvania Constitution guarantees that Mr. Schultz be availed every opportunity to mount a full and effective defense against these charges. U.S. Const., Amend. VI; Pa. Const. art I, § 9. Moreover, Pennsylvania criminal discovery law permits the accused to petition the Court to exercise its subpoena power to assure that third parties provide information that might aid in his defense or lead to evidence that might aid in his defense. *Commonwealth v. Lloyd*, 567 A.2d 1357, 1359 (Pa. 1989) (holding that the right to inspect third parties records is mandated by compulsory process clause and a trial court's denial of that right required a new trial).

Finally, while FSS – which is located in the District of Columbia – currently possesses the materials sought by this subpoena, there are

numerous grounds to conclude that, as a matter of both fact and law, the materials rightfully are owned and controlled by, and were in fact *created* and paid-for by entirely Pennsylvania-centric agencies, and most appropriately belong in and to the Commonwealth. That is, FSS is merely their custodian.

First, the investigation and the report it led to were commissioned and paid for by a Pennsylvania entity -- the Special Investigation Task Force of the Board of Trustees of The Pennsylvania State University.<sup>2</sup> Freeh Report, pp. 8, 13. Accordingly, for all purposes related to the Freeh Report, FSS was an agent of a party based exclusively in the Commonwealth.

Additionally, it is a misnomer in many respects to say that FSS (or any Washington, DC, entity) conducted the investigation or created the report. That is, the Freeh Report was prepared by the "Special Investigative Counsel," a body that the Task Force engaged FSS to staff. *E.g.*, Freeh Report, at Cover Page, *and* at 13-14. The Special Investigative Counsel was created and existed for a singular reason, to conduct this one investigation, and it is fair to conclude that the Special Investigative Counsel, like its owner (the Task Force), is a wholly Pennsylvanian entity. For these reasons, FSS is most rightly viewed simply as a caretaker of the materials sought.

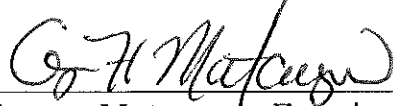
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<sup>2</sup> According to its website, "The Board of Trustees of The Pennsylvania State University is the corporate body established by the charter with complete responsibility for the government and welfare of the University and all the interests pertaining thereto including students, faculty, staff and alumni." <http://www.psu.edu/trustees/>. *Ex officio* members are the Governor of Pennsylvania, the Commonwealth's Secretary of Education, its Secretary of Agriculture, its Secretary of Environmental Resources, and the President of the University. <http://www.psu.edu/trustees/pdf/charter.pdf>. The Board is headquartered in University Park, PA. <http://www.psu.edu/trustees/contact.html>.

Therefore, Gary C. Schultz submits that this Court issue a Certificate to permit his DC counsel, Joel D. Schwartz, Esquire (a member of the Bar of the District of Columbia), to obtain documentary evidence from Freeh Sporkin & Sullivan LLP.

Respectfully submitted,

Dated: 7/30/12

By:   
George Matangos, Esquire  
Pa. I.D. No. 70297  
Costopolous, Foster & Fields  
831 Market Street  
Lemoyne, PA 17043  
(717) 761-2121  
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[DCook@FarrellReisinger.com](mailto:DCook@FarrellReisinger.com)

Attorneys for Defendant, Gary C. Schultz

# Exhibit A



COMMONWEALTH OF PENNSYLVANIA

V.S.

GARY C. SCHULTZ

DOCKET NUMBER(S)

CP-22-CR-5164-2011

**SUBPOENA** DUCESTECUM

To: FREEM, SPORKIN & SULLIVAN, LLP; c/o  
2445 M STREET, NW, THIRD FLOOR  
WASHINGTON, D.C. 20037

YOU ARE HEREBY ORDERED to appear at the Dauphin County Court House, Front and Market Streets, Harrisburg, Pennsylvania, and give testimony in the above case on SEPTEMBER 1, 2012 at 9:00 A.M./P.M.,

And remain until excused, and bring the following: SUBPOENA MAY BE SATISFIED BY DELIVERING THE DOCUMENTS REQUESTED IN THE ATTACHMENT

TO DAVID COOK AT 436 7th AVE, SUITE 200, PITTSBURGH, PA 15219, OR TO GEORGE H. MATANGOS AT THE ADDRESS BELOW:

Failure to appear as directed may result in the issuance of a warrant for your arrest.

This subpoena is issued upon application of:

GEORGE H. MATANGOS, ESQ.  
COSTOPOULOS FOSTER & FIELDS  
831 MARKET ST., LEMOYNE, PA 17043  
Telephone No. (717) 761-2121

**IMPORTANT**

Upon receipt of this subpoena You should contact the applicant For more details including the Location of the courtroom Where the case is to be heard.

DATE: 7/30/2012 (SEAL)

BY THE COURT:

Dale E. Klein

Clerk of the Court

ATTACHMENT

**To:** Freeh Sporkin & Sullivan, LLP  
3711 Kennett Pike, Suite 130  
Wilmington, DE 19807

1. Any interview memoranda, notes, reports, emails or any other documents relating to interviews of Former Director of the University Police Department Stephen G. Shelow, including but not limited to, the 2-1-12 and 2-20-12 interviews referenced in the Freeh Report at n.29.
2. The version of PSU Policy AD 39 in effect in February 2001.
3. Any interview memoranda, notes, reports, emails or any other documents relating to interviews of Ronald Schreffler, John Miller, and Jerry Lauro including, but not limited to, the 1-27-12, 4-11-12, and 4-26-12 interviews referenced in the Freeh Report at nn.86, 95-99, 109-110, 143, 174.
4. Any interview memoranda, notes, reports, emails or any other documents relating to interviews of John Seasock, including but not limited to, the 4-26-12 interview referenced in the Freeh Report at n. 112.
5. The report of John Seasock from the 1998 investigation.
6. The 5-31-12 email relating to payments to John Seasock which are referenced in the Freeh Report at nn.120-121.
7. Any interview memoranda, notes, reports, emails or any other documents relating to interviews of the Second Mile Counsel including, but not limited to, the 3-5-12 interview referenced in the Freeh Report at n. 122.
8. Any interview memoranda, notes, reports, emails or any other documents relating to interviews of the "senior administrator of a local victim resource center" including, but not limited to, the 4-18-12 interview, referenced in the Freeh Report at n.133.
9. Any memoranda, notes, reports, emails or other documents relating to the 2-2-12 interview of a "senior OHR official" referenced in the Freeh Report at nn.157-158.
10. Any memoranda, notes, reports, emails or other documents relating to any interviews of Graham Spanler including, but not limited to, the 7-6-12 interview referenced in the Freeh Report at n.180.
11. Any memoranda, notes, reports, emails or other documents relating to any interviews of Cynthia Baldwin including, but not limited to, the 7-9-12 interview referenced in the Freeh Report at n.180, the 11-23-11 interview referenced in the Freeh Report at n.387, the 11-25-11 interview referenced at nn.469-70 in the Freeh Report, and the 2-

- 29-12 interview referenced in the Freeh Report at n.398, and the 7-6-12 interview referenced at n.472 in the Freeh Report.
12. Any memoranda, notes, reports, emails or other documents created, reviewed or maintained by former General Counsel Cynthia Baldwin relating to the 3-22-11 grand jury appearance of Graham Spanier and the 1-12-11 grand jury appearances of Timothy Curley and Gary Schultz.
  13. Any memoranda, notes, reports, emails or other documents relating to any interviews of "Janitor B" including, but not limited to, the 7-2-12 interview referenced in the Freeh Report at n.237, 239-250.
  14. Any memoranda, notes, reports, emails or other documents relating to any interviews of Mr. Schultz' assistant including, but not limited to, the 1-12-12 and 4-12-12 interviews referenced in the Freeh Report at n.288.
  15. Subpoena 109, 191, 183, 185, 671 (Freeh Report at nn.377, 457-59).
  16. The PSU staffer notes regarding Subpoena 671 referenced in Freeh Report at nn.382, 385, 387-92.
  17. Cynthia Baldwin's Notes from a December 28, 2010, conversation with the OAG referenced in Freeh Report at n.385.
  18. Document Control Number 09327800.
  19. Cynthia Baldwin's notes concerning her January 3, 2011, conference with Joe Paterno, referenced in the Freeh report at nn.395-97.
  20. Any memoranda, notes, reports, emails or other documents relating to Cynthia Baldwin's 2-15-11 meeting with assistant football coaches to interview them about Jerry Sandusky including, but not limited to, Control Numbers 06533947, 00045093, 09405967.
  21. Document Control Number 0039079 (n.471).
  22. Any memoranda, notes, reports, emails or other documents relating to interviews of the football staff regarding Jerry Sandusky's use of the Lasch Building including, but not limited to, interviews conducted on 12-5-11, 12-7-11, 12-12-11, 12-16-11, and 2-15-12, as reflected in Freeh Report at n.578.
  23. Document Control Numbers 00555509 and 04122803 (nn.621, 622).
  24. Any memoranda, notes, reports, emails or other documents relating to PSU's procedures for Clery Act compliance including, but not limited to, interviews of the University Police Crime Prevention Officer and Steve Shelow on 1-13-12, 1-15-12, and 2-1-12, as reflected in Freeh Report at nn.630-41 and Document Control Number 08036801.
  25. Any memoranda, notes, reports, emails or other documents relating to interviews of the University Police regarding reporting of the February 2001 incident including, but not limited to, 6-1-12 interview reflected in Freeh Report at n.662.



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

COMMONWEALTH OF PENNSYLVANIA, :  
 :  
 v. :  
 : No. CP-22-CR-5164-2011  
 GARY C. SCHULTZ, :  
 :  
 Defendant. :  
 :

**CERTIFICATE OF SERVICE**


I, George H. Matangos, Esquire, hereby certify that on this 30th day of July, 2012, a true and correct copy of the foregoing *Defendant Gary C. Schultz's Petition for Subpoena Under the Uniform Act* was served upon all counsel of record by:

- Hand Delivery
- First Class Mail, Postage Pre-Paid
- Certified Mail, Return Receipt Requested
- Fax Transmission
- Overnight Mail

at the following address(es) and/or number(s):

Bruce R. Beemer, Deputy Attorney General  
Office of PA Attorney General  
Criminal Law Division  
16<sup>th</sup> Floor-Strawberry Square  
Harrisburg, PA 17120

COSTOPOULOS, FOSTER & FIELDS

  
George H. Matangos, Esquire