

REPORT TO THE BOARD OF TRUSTEES OF THE
PENNSYLVANIA STATE UNIVERSITY

ON THE FREEH REPORT'S FLAWED
METHODOLOGY & CONCLUSIONS

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Trustees of The Pennsylvania State
University Duly Elected by Its
Alumni

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A. Executive Summary

Background

Following the indictment of Jerry Sandusky for allegations of child sex abuse in November, 2011, Louis Freeh was hired by The Pennsylvania State University to conduct an independent investigation into alleged failures of University personnel to report Sandusky's abuse. The report from this investigation ("the Freeh Report") concluded that "(f)our of the most powerful people at The Pennsylvania State University—President Graham B. Spanier, Senior Vice President-Finance and Business Gary C. Schultz, Athletic Director Timothy M. Curley and Head Football Coach Joseph V. Paterno—failed to protect against a child sexual predator harming children for over a decade." The Freeh Report cited as a causal factor for this failure the University's "culture of reverence for the football program that is ingrained at all levels of the campus community."

Since the release of the Freeh Report, many credible criticisms have emerged, noting that the Report's conclusions were poorly supported by material within the Report itself. We wondered why the documentary support was so sparse, and why the Report made no mention of any contradictory findings.

Documents made public have revealed that: the NCAA was closely involved with the Freeh investigation; the NCAA knew that their own rules prevented them from punishing Penn State; and the NCAA decided to punish Penn State in order to enhance its own reputation. We believed it was important to understand the degree of cooperation between the Freeh investigation and the NCAA.

Penn State President Barron committed to review the Freeh Report Source Materials himself, saying, "the contents of the Report have led to questions by some in the Penn State community. I do not want people to believe that Penn State is hiding something." We applauded his commitment to transparency, but are disappointed that, three years later, there has been no review.

A recently released report from a Federal High Security Clearance investigation of former President Graham Spanier, conducted at the same time as the Freeh investigation, concluded that Spanier had committed no wrongdoing in connection with the Sandusky matter. The Federal investigator called the Freeh Report "an embarrassment to law enforcement" and "a political hit job." We believed it imperative that the University's Trustees come to an understanding about the discrepancies between the findings from the two investigations.

The Penn State Board of Trustees has never voted to accept or reject the Freeh Report. Rather, the Board adopted a "Don't ask, don't look and don't tell" policy. This policy led to a tacit acceptance of the Report and resulted in profound reputational harm to our University, along with \$300 million in costs thus far. We believe the Board's inaction on this matter constitutes a fiduciary breach, and decided to conduct our own review in execution of our fiduciary responsibilities. Over the objection of the University, we obtained court-ordered access to the Source Material upon which the Freeh Report was purportedly based.

Findings from our review

We found no support for the Freeh Report's conclusion that Joe Paterno, Graham Spanier, Tim Curley, or Gary Schultz knew that Sandusky had harmed children.

We found no support for the Freeh Report's conclusion that Penn State's culture was responsible for allowing Sandusky to harm children.

The independence of the Freeh Report appears to have been fatally compromised by Louis Freeh's collaboration with three interested parties -- the NCAA, Governor Corbett and his Office of Attorney General, and members of the Penn State Board of Trustees.

The NCAA, Governor Corbett, and the Penn State Board of Trustees appear to have had their own conflicts of interest that influenced the unsupported conclusions of the Freeh Report.

The Freeh Report was rife with investigative and reporting flaws. The investigation used unreliable methods for conducting and analyzing interviews; failed to interview most of the individuals with direct knowledge of the events under investigation; supplied motivations and causal factors supported only by speculation and conjecture; supported its major conclusions by

selective misrepresentation of the investigative data, and by ignoring and withholding the vast majority of investigative findings, which were contrary to the Report's conclusions. The Freeh Report's minimal standard of "more reasonable to conclude" – which requires the majority of the information to be supportive – was not met.

Conclusions from our review

We believe that Louis Freeh did not fulfill his obligation to conduct an independent and comprehensive investigation.

We repudiate the conclusions of the Freeh Report as unsupported by the investigative data.

We believe that our University, as a major center for research, scholarship, and teaching, has an obligation to come to an honest understanding of the responses to Sandusky's actions, and to use that understanding to promote educational efforts to prevent future abuse.

B. Reasons for Undertaking the Review of Freeh Source Documents

B.1. Board of Trustees breach of fiduciary duty resulting in harm to the University

We believe the Board of Trustees breached its fiduciary duty by failing to formally review or evaluate the Freeh Report, and by failing to vote to accept or reject the Report. This inaction by the board has allowed others to conclude the Board's tacit acceptance of the Report's conclusions, and has resulted in grievous harm to the University.

- Our University, historically known as a highly ethical institution, has suffered profound reputational damage.
- Plaintiffs' cases against the University have been strengthened by the Board's tacit acceptance of the Report's conclusions.
- Costs to the University from the University's tacit acceptance of the Report's conclusions are currently more than \$300 million and still rising.
- By tacitly accepting the conclusions of the Freeh Report, the University has callously attributed unsubstantiated culpability to respected and longstanding servants of the institution, resulting in irrecoverable damage to those individuals, their families, and the entire University community.
- By not probing deeply into the circumstances surrounding Sandusky's actions, we fail in our obligation to victims of sexual assault to learn the true lessons from this situation. As a major center of research and scholarship, we have a moral duty to come to the best possible understanding of this tragic episode so that we can educate others in ways to prevent future victimization of children.

B.2. Penn State President Eric Barron's decision to review the Freeh Report

Early in his first year as president, Eric Barron committed to conducting his own "thorough" review of the Freeh Report and its Source Materials, explaining that "the contents of the report have led to questions by some in the Penn State community. I do not want people to believe that Penn State is hiding something. I feel strongly about this." We supported this plan, as we have always believed that coming to a resolution of the open questions is the best way for the University to move forward. However, we are disappointed that, despite promising the Board that he would "move with all deliberate speed," to date – more than 3 years later – President Barron has not delivered his review. Thus, we have undertaken the review ourselves and have urged our fellow Trustees to join us in examining the Source Materials.¹

B.3. Federal high security clearance investigation of former Penn State President Graham Spanier determines Spanier's innocence in Sandusky matter

During the same time period as the Freeh investigation, a parallel investigation was conducted by the U.S. Federal Investigative Services for purposes of reviewing Spanier's high security clearance. Unlike the Freeh investigation, the Federal investigation involved interviews of Gary Schultz and Tim Curley, with Spanier interviewed under oath. Special Investigator John Snedden did not find evidence of wrongdoing and renewed Spanier's security clearance, writing in his report: "The circumstances surrounding [Spanier's] departure from his position as PSU President do not cast doubt on [Spanier's] current reliability, trustworthiness or good judgment and do not cast doubt on his ability to properly safeguard national security information." Snedden subsequently described the Freeh Report as "an embarrassment to law enforcement."²

The report from this Federal investigation was made public in the spring of 2017. The findings of this highly credible report – based on an investigation conducted with true independence, by a Federal agency charged with ensuring the good character of Graham Spanier in the context of the Sandusky matter – raise serious questions about the validity of the conclusions of the Freeh Report. We believe that any conscientious trustee would want to understand the reasons behind the discrepant findings of the two reports.

B.4. Challenges to the Freeh Report

The imperative to conduct a review of the Source Materials used in the Freeh Report is heightened by the many credible critiques of the report over the past 5 years.

A member of the Freeh investigation team spoke anonymously with a reporter: This individual expressed concern that the use of the Freeh Report by the NCAA was inappropriate because, due to limitations in the investigation (such as not interviewing most of the principals), the findings were circumstantial. “‘The sanctions against Penn State were really overwhelming, and no one imagined the report being used to do that,’ this person said. ‘People thought it would help others draw conclusions about what happened and provide a guide for leaders to be able to identify minefields and navigate through them. Instead, Emmert took the report and used Penn State’s own resources to do them in,’ the person said. ‘The institution is made of people, too. And they don’t deserve this.’”³

Former Commonwealth of PA Governor and U.S. Attorney General Dick Thornburgh: Thornburg conducted an extensive analysis of the Freeh Report and concluded that “there is no credible support provided in the Freeh Report for what, if anything, Mr. Paterno was aware of” concerning the Sandusky matter. He also states that “Mr. Freeh did not supply any other evidence ... to support the proposition that Mr. Paterno was involved in or aware of the decision [not to report to authorities the 2001 shower incident].” He also challenges the Freeh Report claim of a “complete” investigation because the Freeh Group “did not speak to virtually any of the persons who had the most important and relevant information. Three of the most crucial individuals—Messrs. Paterno, Schultz and Curley—were never interviewed. Michael McQueary, the sole witness to the 2001 incident, was also not interviewed.”⁴

Past Chairs of The Pennsylvania State University Faculty Senate: This body stated that the Freeh Report “fails badly” regarding evidence, facts, and logical argument. “On a foundation of scant evidence, the report adds layers of conjecture and supposition to create a portrait of fault, complicity, and malfeasance that could well be at odds with the truth. ... [A]s scientists and scholars, we can say with conviction that the Freeh Report fails on its own merits as the

indictment of the University that some have taken it to be. Evidence that would compel such an indictment is simply not there.”⁵

Penn Staters for Responsible Stewardship: This group, which advocates for governance reform at the University, noted the following: “substantial deficiencies in the [Freeh] Report:” failure to disclose the fact that the Freeh Group was hired by the Board of Trustees’ Special Investigations Task Force, not the University (and hence faces a potential conflict of interest); failure to interview nearly every critical witness before rendering the Report; failure to properly address the facts and circumstances associated with investigation of the 1998 Incident by government agencies; failure to consider the role of The Second Mile Foundation; failure to consider testimony that casts serious doubt on the credibility of Mike McQueary; and several other concerns.”⁶

Kenneth Frazier, CEO of Merck, Former Penn State Trustee and Chair of the Special Investigation Task Force, stated in deposition that: “I just don’t think [Freeh’s inferences in the Freeh Report] are as clear and irrefutable as some people seem to think they are.”⁷

Eric Barron, President of the Pennsylvania State University, stated that: The Freeh Report was not useful and created an “absurd” and “unwarranted” portrait of the University. “I have to say, I’m not a fan of the report. There’s no doubt in my mind, Freeh steered everything as if he were a prosecutor trying to convince a court to take the case.”⁷

Alvin Clemens, Penn State Trustee for 18 years, read a statement to the Board when he resigned: “On November 9th, 2011, I and my fellow Trustees, voted to fire Joe Paterno in a hastily called meeting. We had little advance notice or opportunity to discuss and consider the complex issues we faced. After 61 years of exemplary service, Coach Paterno was given no chance to respond. That was a mistake. I will always regret that my name is attached to that rush to injustice. Hiring Louis Freeh and the tacit acceptance of his questionable conclusions, without review, along with his broad criticism of our Penn State culture was yet another mistake. ... Over the past two years, concerned Alumni have spoken clearly and forcefully. They have replaced six incumbents with reform-minded Trustees determined to acknowledge and redress errors of judgment with positive actions. Those who believe we can move on without due process for all who have been damaged by unsupported accusations are not acting in Penn

State's best interest. ... We have the opportunity to move forward united in our commitment to truth. I urge all who love Penn State's name to fight on."⁸ In an interview, Clemens urged the board to reject the conclusions of the Freeh Report.⁹

Commonwealth of PA Senate Majority Leader Jake Corman: "Clearly the more we dig into this, the more troubling it gets. There clearly is a significant amount of communication between Freeh and the NCAA that goes way beyond merely providing information. I'd call it coordination. ... Clearly, Freeh went way past his mandate. He was the enforcement person for the NCAA. That's what it looks like. I don't know how you can look at it any other way. It's almost like the NCAA hired him to do their enforcement investigation on Penn State. At a minimum, it is inappropriate. At a maximum, these were two parties working together to get an outcome that was predetermined."¹⁰

Bob Costas, national sports reporter: "Louis Freeh...assigned motivations to people, including Paterno, which at best were unknowable, and at worst might have been irresponsible."¹¹

PA Commonwealth Senator John Yudichak: "The Freeh Report is incomplete at best and, at worst, fundamentally flawed."¹²

Attorney Michael L. Bangs wrote a legal opinion identifying factual errors in the Freeh Report: The "use of this remarkably incorrect statistic by the Freeh Report, which was then relied upon to form the basis for a number of its other conclusions, calls into question the accuracy and veracity of the entire report."¹³

Jay Bilas, sports analyst for ESPN and attorney: The idea that Penn State's "culture of football" enabled Sandusky was "ridiculous." He stated that a legacy of Penn State's handling of the matter is that no University will ever again undertake such an investigation because "the NCAA used the Freeh Report against Penn State as a weapon to do whatever it chose ... that was outside of its rules."¹⁴

C. Background and History

C.1. Louis Freeh hired to conduct an independent investigation following indictment of Jerry Sandusky

The Penn State Board of Trustees Special Investigations Task Force signed a Letter of Engagement with Freeh, Sporkin, & Sullivan (FSS), LLC, on December 2, 2011.¹⁵ FSS was “engaged to represent the Task Force” and this condition potentially introduces a conflict of interest; i.e., FSS was not an agent of Penn State University and therefore potentially held a conflict of interest if members of the Task Force, to whom FSS had a legal agency relationship, intended to deflect their own culpability regarding roles with The Second Mile or the firing of Joe Paterno.

FSS was engaged to “perform an independent, full and complete investigation of the recently publicized allegation of sexual abuse at the facilities and the alleged failure of The Pennsylvania State University (“PSU”) personnel to report such sexual abuse to appropriate police and government authorities.” FSS was to provide a written report that would contain findings concerning: “i) failures that occurred in the reporting process; ii) the cause for those failures; iii) who had knowledge of the allegations of sexual abuse; and iv) how those allegations were handled by the Trustees, PSU administrators, coaches and other staff.” FSS was also engaged to “provide recommendations to the Task Force and Trustees for actions to be taken to attempt to ensure that those and similar failures do not occur again.” The terms of the engagement letter suggested conclusions by assuming that there were “failures” even before the FSS investigation began and before Sandusky went to trial.

Findings. The report states that “(t)he Special Investigative Counsel operated with total independence as it conducted this investigation.” The report concludes that “(f)our of the most powerful people at The Pennsylvania State University—President Graham B. Spanier, Senior Vice President-Finance and Business Gary C. Schultz, Athletic Director Timothy M. Curley and Head Football Coach Joseph V. Paterno—failed to protect against a child sexual predator harming children for over a decade. These men concealed Sandusky’s activities from the Board of Trustees, the University community and authorities. They exhibited a striking lack of

empathy for Sandusky's victims by failing to inquire as to their safety and well-being." The report supplied motivations for these actions as including the desire to avoid the consequences of bad publicity, and criticized the University for its "culture of reverence for the football program that is ingrained at all levels of the campus community."¹⁶

C.2. Freeh Report used by NCAA

Less than two weeks after the release of the Freeh Report, Mark Emmert, NCAA President, and Rodney Erickson, then Penn State President, signed the "Consent Decree" that imposed sanctions on the Penn State football program.¹⁷ The sanctions, so harsh that they were described as "unprecedented," included a \$60 million fine, post-season ban, vacated wins, and loss of scholarships. Critics immediately questioned the NCAA's authority to levy such sanctions in a criminal matter and accused the NCAA of capitalizing on an opportunity to enhance its own reputation at the expense of a member institution historically known for exceptional ethical conduct.¹⁸

The Consent Decree justified the NCAA's use of the Freeh Report in lieu of its own investigative procedures by stating that "The University" had commissioned "the independent FSS investigation," and stated that it could rely on "the findings of a Criminal Jury and the Freeh Report (as a)...factual basis from which the NCAA concludes that Penn State breached the standards expected by and articulated in the NCAA Constitution and Bylaws." The Consent Decree further stated that it could rely on the Freeh Report "(i)n light of...the University's willingness, for purposes of this resolution, to accept the Freeh Report."

C.3. Paterno family commissioned expert review of Freeh Report

The Paterno family engaged a team of respected experts to review the Freeh Report in 2013. Former U.S. Attorney General Dick Thornburgh concluded that there was no factual basis for the Report's "inaccurate and unfounded findings," citing investigative and reporting weaknesses. James Clemente, former FBI expert on child sex victimization, faulted the Report for failing to consider the likely possibility that Sandusky was a "skilled and masterful manipulator, who groomed an entire community to obscure the signs of child abuse, using a variety of proven techniques."¹⁹

C.4. Commonwealth of PA Senate Majority Leader Jake Corman suit resulted in early removal of NCAA sanctions

In 2013, Commonwealth of PA Senator Jake Corman and then Treasurer Rob McCord filed a lawsuit against the NCAA to keep the Consent Decree fine proceeds in Pennsylvania.²⁰ Two years later, the suit was settled resulting in a new agreement where the remaining sanctions were reduced, and the fine money was to remain in Pennsylvania.²¹

These proceedings resulted in the release of many documents and deposition transcripts that showed, among other things, that members of the NCAA Executive Committee had not read the Freeh Report before approving sanctions, and that there was likely NCAA collusion with the Freeh Group in drafting the findings of the Freeh Report.^{22 23 24}

C.5. Alumni response

The Board's management of the Sandusky crisis was widely derided as "disastrous."²⁵ Dissatisfied with the Board's actions and alarmed by the ensuing reputational damage to their alma mater, alumni advocated for governance reform. Some collaborated with then-Auditor General Jack Wagner's investigation yielding an extensive set of recommendations for change to Board structures and processes.²⁶

Immediately following the dismissal of Paterno and Spanier, Penn Staters for Responsible Stewardship organized efforts to elect reform candidates to the Board, successfully replacing all 9 incumbent alumni-elected Trustees over a three-year period, the shortest possible time frame for accomplishing a complete changeover. Since then, candidates dedicated to governance reform and to addressing the damaging fallout of the Sandusky crisis have held the 9 seats elected by alumni, despite facing challengers advocating that the University "move on."²⁷

C.6. Alumni-elected Trustees accessed Freeh Source Materials

Concerned about the many criticisms of the Freeh Report, 7 alumni-elected Trustees (“Plaintiff Trustees”) formally demanded access to inspect the Report’s Source Materials (the “Source Materials”) and were denied by the University.²⁸ The University’s denial was in direct violation of Pennsylvania law governing charitable nonprofit organizations, which affords access to records to permit a Trustee to perform her/his fiduciary duty.^{29 30} As a result, the Plaintiff Trustees pursued, and subsequently won, a lawsuit to obtain statutorily-protected access to corporate records and reimbursement of legal fees.^{31 32}

D. Methodology for our Review

The documents that were provided to us were of three different types: (1) notes reflecting interviews of 438 individuals (some of whom were interviewed multiple times); (2) documents that were used by the Freeh Group in conducting their investigation ($n = 3,514,464$); (3) documents generated by the Freeh Group during their investigation ($n = 195,471$). We may not have received all documents, as some items cited in the Freeh Report were not found in our search of the Source Materials.

D.1. Interviews

Notes from interviews were subjected to analysis using established qualitative research methodology for narrative material. Categories were created to reflect general themes identified in interview materials. Interview information was coded into these categories and cross-checked for reliability. We report raw numbers and percentages of respondents providing information within each category. Full details of our findings are reported in Appendix 2. The interview findings are referenced throughout our report. In addition to the findings from this summary analysis, we occasionally include references to individual interviews. Detailed information about the analytical approach used in our review of interviews is described in Appendix 1.

It is important to emphasize that interviewees were never promised confidentiality, as indicated by material at the beginning of each interviewee's summary notes that definitively states confidentiality was not guaranteed (commonly known as the Upjohn Warning). We interpreted interview material within the context of each interviewee's position in regard to the relevant questions, in order to ascertain whether that individual could be reasonably expected to provide credible information. Out of respect for the sensitivity of this information, we did not include interviewee names in the report, with very few exceptions: individuals who were in singular positions to provide significant insight into important matters, and who also held positions of authority inside or outside of the University. For interviewees whose names were not identified in our report, we included information about positions held by individuals in order to demonstrate the relative weight and credibility of their knowledge. We made every attempt to be sure this information was general enough that the identity of interviewees was not disclosed.

D.2. Documents reviewed by the Freeh Group

A wide range of documents was provided to the Freeh Group for their review. We conducted our analysis using search terms generated from a list of questions designed to identify both confirmatory and disconfirmatory information pertaining to the major conclusions of the Freeh Report. All documents that we reference in the report are cited.

D.3. Documents generated by the Freeh investigation

The Freeh investigative team communicated frequently by email, which enabled us to gain an understanding of their developing thought process regarding the investigation. The team (most likely the investigative team co-leader Kathleen McChesney) kept a diary that summarized twice daily briefings and other noted highlights from the ongoing investigation, and this document was enlightening. Other documents reflecting organization of investigative material were discovered and reviewed. We also reviewed drafts of the report as it was developed, sometimes with handwritten margin notes; this permitted us to gain insight into the thinking behind decisions regarding information included in, or deleted from, the final report. These documents were analyzed using search terms based on questions intended to identify both confirmatory and disconfirmatory information related to the major conclusions of the Freeh Report. We cite these documents where referenced in the report.

D.4. Contextual reports

A complete understanding of the matters investigated by the Freeh Group requires understanding of relevant contexts. Accordingly, we include a series of contextual reports in Appendix 3. All information contained in these reports comes from the public domain; some were written specifically for our report, and others are media reports. The intent is for these to serve as small White Papers on a range of topics to enhance the understanding of the main points of our report.

E. Critiques of Freeh Investigative and Reporting Methodology

The American Bar Association states: "For an educational institution, the fact-finding investigation of sexual and gender-based harassment and interpersonal violence is one of the most sensitive and difficult tasks in the institutional response. Our experience has taught us that an effective investigation demands scrupulous rigor in fact-gathering by individuals with appropriate training or experience, a toolkit designed to access relevant and material information, and precise reconciliation and documentation of available information to support reliable decisions. The investigation and evaluation of credibility also require special expertise to identify relevant sources of information, including peripheral and corroborative evidence; synthesize all available information and reasonable inferences; and evaluate the unique and complex factors at play in each investigation."³³

Several critical analyses of the Freeh Report have been conducted that indicate that the Freeh Group's investigation and reporting methodology do not meet the ABA standards, resulting in significant challenges to the validity of the Report's conclusions.^{34 35 36} Because these are available in the public domain, we will not repeat those findings here, other than to note a consensus that the Rreport's primary conclusions are supported by scant evidence as provided within the Report. Instead, we will focus on the deficiencies we identified through our review of the source documents.

E.1. Interviews: Flawed investigative, analytic, and reporting methodology

Use of FBI "302 reporting" methodology

This statement appears before interview notes for each interviewee: "These notes are prepared at the specific direction of legal counsel as part of an internal investigation for The Pennsylvania State University Board of Trustees, Special Investigations Task Force. The notes are not intended as a verbatim transcription of the meeting, but rather as a capture of major ideas discussed. Quotes reflect an effort to capture words used during the meeting, but are not intended as verbatim transcription. These notes also contain mental impressions and observations of legal counsel to the Special Investigations Task Force."

A notation dated 12/15/11 in the Freeh Group diary reflects planning for interview methodology: "Interviews: From interviewers notes -- Not recorded or in statement form."³⁷

This indicates that the Freeh investigators conducted interviews using the standard FBI "302 reporting" methodology, involving a pair of investigators, one to conduct the interview and the second to take handwritten notes. No tape recording is done and the resulting interview notes, instead of being a transcript, are expected to capture the essence of the interviewee's responses.³⁸

The "302 reporting" methodology has come under criticism by legal experts. A 9-year study of law enforcement across the nation concluded that the very common failure of memory to accurately reflect interview statements makes no-recording interviews extremely prone to error.³⁹ Deliberate or unconscious bias can affect interpretation of subjects' statements, resulting in inaccurate summaries. Worse, this practice permits the use of coercive interview tactics, which not only are abusive of interview subjects, but tend to produce false testimony.⁴⁰ Accordingly, the FBI discontinued this practice in 2014 and replaced it with a policy to record all interviews.⁴¹

Inaccuracy of interview summaries

The possibility that the Freeh Group's interview notes could be inaccurate is not merely hypothetical. In our review, we saw multiple drafts of interview notes for some interviewees, with substantive revisions made between the original and the final versions. The examples that follow are not exhaustive, but are illustrative of the problems we discovered.

The initial interview notes for one subject contained multiple comments from an interviewer stating she could not recall responses provided by the subject.⁴²

One Plaintiff Trustee was interviewed by the Freeh Group and reviewed the notes of his interview. He found the information in the notes incomplete, cherry-picked, and the resultant summary out of context, creating an inaccurate impression of what he believes he communicated.

Graham Spanier's interview was discussed among the Freeh Group during a daily briefing, and notes from that briefing were recorded in the daily diary the day following his interview.⁴³

When compared to the final interview notes for Spanier, some important and meaningful information was omitted.⁴⁴ The details recorded in the diary, but not appearing in the interview summary, include: (1) Spanier explained that the reason he thought counseling was appropriate for Sandusky was because Sandusky didn't know he shouldn't shower with boys, not because Spanier suspected molestation was occurring; (2) Curley told Spanier he had explained to Sandusky that most people wouldn't be comfortable with the idea of his showering with youth; (3) when Spanier informed Curley and Schultz that he was stepping down, each independently responded that Spanier was being wronged because they never told him of abuse; (4) Spanier described a conflict between himself and Governor Corbett that could be a factor in Corbett's actions: board members told Spanier in 2010 that Corbett wanted him out because Spanier had hosted the Governor's opponent at the University; Corbett then cut the PSU budget by 52%; Board Vice Chair John Surma hosted Corbett and Spanier at a lunch in Pittsburgh in an attempt to resolve the conflict; (5) Spanier spoke about intercollegiate athletic integrity, including the history that only Stanford and Penn State had never been cited for a major NCAA violation, and that Spanier personally held meetings with football players about compliance with NCAA rules; (6) Spanier's government security clearance renewal involved a polygraph. Given that the omitted material could be exculpatory, this is a strong indication of bias, with troubling implications for the validity of Freeh Report conclusions.

We observed instances where Source Materials did not accurately correspond to portions of the Freeh Report. Quotes attributed to Spanier in the Report⁴⁵ were not contained in the notes from his interview,⁴⁶ prompting questions about what source material was used in the writing of the Report. Also, the Freeh Report describes Spanier reporting in his interview that he informed four Trustees about the Sandusky investigation prior to the May 12, 2011 board meeting, and states that the Freeh Group re-interviewed the four Trustees and that all stated they did not remember being informed. However, our search of the source documents produced re-interviews with only two of those four Trustees. We were unable to ascertain, in either of these two instances, whether these discordances were a result of sloppy handling of investigative material, or instead may have been intentional misrepresentations. Neither possibility increases confidence in the validity of the Report.

Use of coercion

Multiple individuals have approached us privately to tell us they were subjected to coercive tactics when interviewed by Freeh investigators. Interviewers shouted, were insulting, and demanded that interviewees give them specific information (e.g., "Tell me that Joe Paterno knew Sandusky was abusing kids!"). Some interviewees were told they could not leave until they provided the information interviewers wanted, even when interviewees protested that this would require them to lie. Some individuals were called back for multiple interviews where the same questions were repeated; some were told they were being "uncooperative" for refusing to untruthfully agree with interviewers' statements. Those who were currently employed by the University had been told their cooperation was a requirement for keeping their jobs, and therefore being called uncooperative was perceived as a threat against their employment. One individual indicated that he was fired for failing to tell the interviewers what they wanted to hear; this is confirmed by a notation in the Freeh Group diary of an interviewee contemporaneously reporting his firing to the investigators.⁴⁷ An entry in the diary indicated that "coaches are scared for their jobs."⁴⁸ It is deeply disturbing that members of our community were allegedly subjected to harassment and mistreatment at the hands of Freeh investigators. Further, the use of coercion indicates a lack of neutrality on the part of investigators, and, as previously noted, increases the likelihood of inaccuracy.

Failure to interview principals

The Freeh Group did not interview individuals with direct knowledge of the events under investigation, including Jerry Sandusky, Gary Schultz, Tim Curley, Joe Paterno, University outside legal counsel Wendell Courtney, Penn State Director of Public Safety Thomas Harmon, former coach Michael McQueary, McQueary's father John McQueary, and John McQueary's boss, Dr. Jonathan Dranov.

The Freeh Report states: "Although the information these individuals could have provided would have been pertinent to the investigation, the findings contained in this report represent a fair, objective and comprehensive analysis of facts."⁴⁹ It is surprising that an investigator as experienced as Freeh could think it possible to render a fair and comprehensive account of a complex set of events without hearing from the individuals directly involved. Indeed, Freeh

railed against another investigation for failing to interview “the critical players,” calling it a “glaring investigative lapse” to rely solely upon “the paper record” and insisting, “facts matter.”⁵⁰

The major fault of the Freeh Group was not that they did not interview “the critical players” – most of whom declined on advice of counsel, or at the request of the PA Office of the Attorney General – but that they failed to qualify their conclusions accordingly. The investigation yielded some information about the actions of Penn State officials, but had no sound way of making conclusions about the officials’ understanding of events or the intentions behind their actions. It is striking that information from the only one of the four officials who was interviewed – Spanier – was summarily discounted, without any justification. During the writing of the Report, several of the Freeh Group voiced reservations about inferring motivations of the primary parties, noting that this would involve speculation because they recognized that “only the principals know.”⁵¹ Their public relations firm likewise cautioned against engaging in any speculation.⁵² These concerns were apparently overruled, as the Freeh Report conclusions are assertively stated as unqualified fact, and include inferences about motivations that are weakly supported even within the Report itself.

Failure to conduct a systematic analytic review of interviews

The Freeh Report states that 430 interviews were conducted. Surprisingly, only 25% of interviewees are cited. What information was gained from the remaining hundreds of interviewees? It is inconceivable that every last shred of information gained from 430 interviews was entirely consistent with the Report’s conclusions, yet only confirmatory information was reported from the interviews. This gives rise to the possibility that information contrary to the Report’s conclusions was disregarded. A “fair, objective and comprehensive analysis of facts”⁵³ must surely incorporate the broadest range of information available, along with an explanation of how discrepant material was resolved.

Reporting flaws

When interview material is cited in the Freeh Report, information about the individual's position is vague or absent. It is understandable that the identity of interviewees was protected, but it is problematic to fail to provide information that pertains to the credibility of the material. For example, the Freeh Report states, "A senior Penn State official referred to Curley as Paterno's 'errand boy.'"⁵⁴ To evaluate this statement, it is necessary to understand whether the official was in a position to have direct knowledge of the working relationship between Curley and Paterno. Our review revealed that the source of this statement was then University President Rodney Erickson,⁵⁵ who as provost for the previous 12 years would have had no regular direct contact with football staff, and whose opinion therefore would most likely have been based on rumors or other indirect knowledge – and, consequently, of low credibility. Much of the interview material included in the Freeh Report lacks the appropriate context for the reader to effectively evaluate its credibility and thus weakens the existing basis for the Report's conclusions.

E.2. Independence of the investigation: *COMPROMISED*

"None of the Special Investigative Counsel's attorneys or investigators attended The Pennsylvania State University or had any past or present relationship with the University." (Freeh Report, p. 11)

When Frazier called Freeh to hire him for the independent investigation, he asked Freeh to confirm that he had no conflicts of interest. Frazier said Freeh responded "that he has no conflicts (or connections with PSU, the Board, Second Mile, etc.)."⁵⁶ Shortly after the hiring, the *Philadelphia Inquirer* reported that Freeh had spent 5 years as a vice chairman at MBNA Corp., which had a "lucrative relationship" with Penn State, promoting its credit card to students and alumni.⁵⁷ Freeh's associate at MBNA, Ric Struthers, is a Penn State alumnus who was responsible for this business. The closeness of their association is demonstrated by Freeh's 2005 appearance as a featured speaker at a Penn State event where Struthers, a prominent donor, was the guest of honor. In addition to Struthers' close connections with Penn State, the article described him as "the most prominent national business figure on the board of the Second Mile Foundation, the charity started and formerly run by coach Sandusky."

Conflicts of interest can be effectively managed; this is accomplished in part through full disclosure. The *Philadelphia Inquirer* article reports that Freeh's tenure at MBNA was not mentioned in Penn State's announcement of his hiring, although other aspects of his professional resume were described. Why would Freeh fail to disclose his associations with Penn State and The Second Mile through his employment at MBNA and his close connection with Struthers?

In fact, it appears that Struthers was instrumental in helping Freeh get the Penn State job. In an email to his associates,⁵⁸ Freeh wrote: "Spoke to Ric and we'll try to meet this week. He will call the PS Board Chair recommend that we do the internal investigation." Eleven days later, Freeh was hired.

In summary: Freeh did not disclose that he had a close relationship with a Penn State alumnus who had influence with the Board Chair and was also a Director on the Board of The Second Mile.

"No party interfered with, or attempted to influence, the findings in this report."
(Freeh Report, p. 12)

Our review revealed active influence, knowingly accepted by the Freeh Group, by several parties: The Pennsylvania Office of the Attorney General and Federal investigators; the NCAA; and several high level Penn State officials.

PA Office of the Attorney General and Federal Investigators. Our review of documents indicates that the Freeh Group spoke regularly with Sandusky prosecutors Frank Fina, Randy Feathers, and Anthony Sassano, as well as Federal investigators Gordon Zubrod (U.S. Attorney's Office) and George Venizelos (FBI). These communications were occasionally by email, but primarily in person or by telephone, and the information discussed was memorialized in emails among the Freeh Group or in entries in the daily diary of the Freeh Group.

Approval for collaboration between the investigators and the OAG was granted by Governor Corbett even before Freeh was hired; in an email,⁵⁹ Tomalis informed Frazier, "I talked with the Governor this afternoon re: the Attorney General and our approach about having the outside firm talk directly with that office. He strongly agreed with the approach, and added that he had

already discussed the role of the committee with her. He suggested that you still reach out to her early next week.”

There are abundant indications that law enforcement officials shared information with the Freeh Group and that the intent was to steer the Freeh investigation in a direction that was consistent with the prosecution’s case against Sandusky.

The OAG prosecutors provided information that disparaged individuals interviewed by the Freeh Group:

1. Very early in the investigation, two of the Freeh Group emailed about a telephone conversation where Feathers spoke with one of them about a report the OAG had received about Spanier being “involved in a problem in a day care center and the PSU PD covered the issue up.”⁶⁰ Feathers promised to keep them informed on this matter and suggested “a ‘get together meeting’ after the holidays.” The investigator who spoke with Feathers commented, “Spanier may be a concern for our group to watch/develop.”
2. On at least 10 separate occasions, beginning in March 2012, OAG informed the Freeh Group that Graham Spanier would soon be arrested.^{61 62 63 64} Fina suggested questions for the Freeh Group to ask Spanier.⁶⁵
3. Cynthia Baldwin, PSU General Counsel, was vigorously criticized. OAG told Freeh Group investigators that Baldwin interfered with their investigation;⁶⁶ was “deeper in the mix than they expected;”⁶⁷ that the Grand Jury judge was unhappy with Baldwin’s inconsistent statements;⁶⁸ that they looked forward to a day when Baldwin would be “led away in cuffs.”⁶⁹ Even after the Freeh Group investigation was complete, the OAG continued contact. In October 2012, Fina bragged about threatening Baldwin: “the ever colorful Fina said yesterday that he has told Baldwin’s counsel that he was comfortable putting ‘12 people in the box’ and being able to convict her. He also said she was ‘looking at a bullet’ and ‘facing the Big Megila.’”⁷⁰
4. Kim Belcher, secretary for Gary Schultz, was repeatedly described by OAG as a liar: Fina told Freeh Group investigators that she lied to Freeh Group about “everything she said;”⁷¹ she “got kicked out of police office as she was lying;”⁷² she “is still lying to them [OAG] and they’re planning to charge her with obstruction of justice.”⁷³ Fina also said

Belcher “got rid of stuff when Schultz left”⁷⁴ and suggested she may have been sleeping with Schultz.⁷⁵ Details from OAG interviews with Belcher were shared with the Freeh Group.⁷⁶

5. Fina discussed the Gary Schultz notes on the 1998 and 2001 incidents and speculated that Schultz may have provided them to OAG to get immunity and added that Schultz’s actions in regard to the two incidents were “inappropriate at least, at most criminal conduct.”⁷⁷
6. Fina described the report by John Seasock of Department of Public Welfare – which concluded that Sandusky’s actions in 1998 did not appear to be consistent with sexual abuse or grooming – as “overly definitive” and commented that the process by which Seasock became involved in the case “suggests there is something wrong.”⁷⁸
7. Apparently referring to Spanier, Schultz, Curley, and Paterno, Fina said “the four of them (including Wendell Courtney) are really in the mix.”⁷⁹

There were multiple additional incidents where OAG improperly shared information with the Freeh Group:

1. Fina said he would provide the Freeh Group with copies of transcripts from the Grand Jury.⁸⁰
2. Sassano described documents obtained from Sandusky’s house, which included names of Second Mile children with asterisks, and said that when those children were interviewed, “most admitted they had been assaulted” by Sandusky.⁸¹
3. Sassano sent information on a former Penn State administrator who subsequently worked at The Second Mile so that the Freeh Group could interview him.⁸²
4. Sassano disclosed information about the OAG interview of a PSU Trustee’s son, who was said to have information about Sandusky showering with boys.⁸³
5. OAG reported to the Freeh Group in April of 2012 that they had nothing more on Joe Paterno beyond the information already obtained by the Freeh Group.⁸⁴ Feathers provided the name of an assistant coach whom they considered to be “the key to Paterno” and said they planned to put additional pressure on this coach;⁸⁵ Fina later disclosed details from their interview with him, including that this coach and others knew about the

McQueary incident.⁸⁶ Fina told the Freeh Group that “Jay Paterno said his father knew about 1998.”⁸⁷

6. Our document review produced a copy of the OAG interview by Feathers of Joseph V. Paterno, on letterhead for Office of Attorney General, Commonwealth of Pennsylvania, dated 10/24/11.⁸⁸
7. Fina provided the Freeh Group with updates during Sandusky’s trial and said that “the feedback he received from jurors was that they want someone to take a ‘fire hose’ to Penn State and rinse away the bad that happened there.”⁸⁹
8. After the Freeh Report was released, Fina contacted the Freeh Group to tell them that Lisa Powers, from PSU Communications office, was under investigation for withholding information.⁹⁰
9. In October of 2012, well after the completion of the Freeh investigation, Fina contacted the Freeh Group to inform them of the imminent arrest of Spanier, and re-arrest of Curley and Schultz, on charges of obstruction of justice; in an email with subject line, “CLOSE HOLD -- Important,” he noted, “Spanier does not know this information yet, and his lawyers will be advised about an hour before the charges are announced tomorrow.” Fina thanked the Freeh Group for their help and said they were “instrumental” in bringing this about.⁹¹

The Freeh Group appeared to welcome this cozy relationship with OAG prosecutors:

1. From the outset, Freeh investigators collaborated extensively with the OAG by sharing information, including providing interview summary notes, even for individuals who were not suspected of criminal actions, when requested by Fina.⁹² A member of the Freeh Group spoke with Jonelle Eshbach, identified as the lead lawyer in the Sandusky investigation, and said the Freeh Group “expected to cooperate with her in every way we can.”⁹³
2. Very early in their investigation (February of 2012), Freeh emailed his team after they were informed that Penn State had received a new Grand Jury subpoena, saying, “We should try to make sure the GJ is not onto something new ... which totally ‘scoops’ us. Not sure how to do that btw.”⁹⁴ A few days later, one of the Freeh Group investigators emailed to others: “We should make certain that we determine the utility of looking into

all the same areas of interest raised by the AG in subpoenas, to ensure we do not get 'scooped' (borrowing Louie's term used in connection with the recent federal subpoena).⁹⁵

3. The Freeh Group carefully reviewed documents forwarded by Fina that detailed the charges against Curley and Schultz.⁹⁶
4. A Freeh investigator told others in the group that he had heard a rumor that Spanier would soon be charged and said he would ask Fina to confirm.⁹⁷
5. A Freeh investigator told others in the group that Fina had offered to review their report: "He also said that he was willing to sit with us and talk to the extent he can before the report is released if we wished for any feedback."⁹⁸
6. In an email exchange among the Freeh Group discussing the request of an interviewee to review the summary notes of his interview, one investigator comments, "I definitely don't want to get cross with the AG by even appearing to help a possible target."⁹⁹

Contacts between the Freeh Group and Federal investigators were less frequent and less detailed than those with PA OAG. Federal investigators provided updates on their investigation of The Second Mile,¹⁰⁰ complained about "obstruction" by Penn State,¹⁰¹ speculated about plea bargains being considered by Sandusky and Schultz,¹⁰² disclosed their interest in the 2001 emails,¹⁰³ disclosed that they were considering subpoena of the PSU Task Force,¹⁰⁴ indicated their primary focus was on The Second Mile and Trustees,¹⁰⁵ shared information from their interviews,¹⁰⁶ expressed their belief that there were "50 more Sandusky victims,"¹⁰⁷ commented on implications for OAG case presented by statute of limitations,¹⁰⁸ reported that they were working closely with OAG,¹⁰⁹ and passed along Fina's expectation of proceeding with charging documents against Spanier.¹¹⁰ In April of 2012, Venizelos told a Freeh Group investigator that he had learned Spanier had contracted to work with a national security agency; Venizelos contacted a colleague in the FBI to say that Spanier – whom he apparently had decided was guilty of some form of wrongdoing – should not be working with the Bureau, and promised to share with the Freeh Group his emails exchanged on this matter.¹¹¹

The independence of the Freeh Group investigation came under question in March of 2013 after Ryan Bagwell (who obtained documents through the Freedom of Information Act) publicized several emails between the Freeh Group and OAG. The Freeh Group discussed their response

via emails and Louis Freeh agreed to this statement: "Our communication with these offices in no way impacted the independence of our work or the conclusions contained in our report."¹¹² To the contrary, our close examination of the ongoing contacts between the Freeh Group and OAG (and, to a lesser extent, Federal investigators) provides compelling indications that the Freeh Group was influenced by the OAG to craft a report that was consistent with the OAG case against Sandusky and implicated Penn State leaders as enabling Sandusky's victimization of children.

NCAA. Early in the investigation, Frazier, chair of the Special Investigative Task Force, informed Mark Emmert, President of the NCAA, that the Freeh Group had "complete independence in carrying out the investigation."¹¹³ Frazier then told Freeh that Emmert "would like to speak with you in order to assess the situation further."¹¹⁴ A few days later, a member of the Freeh Group reported back on his conversation with Emmert and recommended to Frazier that the Freeh Group share information with the NCAA and the Big Ten to avoid duplicate investigations,¹¹⁵ and Frazier recommended this to the Task Force.¹¹⁶

After a phone conversation with NCAA General Counsel Donald Remy, a member of the Freeh Group briefed Frazier and Freeh on the arrangements with the NCAA,¹¹⁷ explaining that the NCAA would provide a list of what they wanted to learn, and would be invited to provide on-site education to the Freeh Group "to ensure that the SIC has a solid understanding of the NCAA's standards for determining loss of institutional control and ethical misconduct." It was also reported that Remy had agreed to a plan where "the SIC will provide the NCAA an advance review of any SIC interim and final recommendations and any portions of the SIC report which relate to the NCAA's areas of concern." They agreed to weekly calls with the NCAA to provide updates. Remy said he saw the NCAA's role as "monitoring an internal investigation."

The NCAA's training of the Freeh Group occurred on January 6, 2012 via conference call, presented by Julie Roe Lach, head of enforcement for the NCAA, using a PowerPoint presentation titled, "Institutional Control and Unethical Conduct."¹¹⁸ The training materials also included a document titled "Principles of Institutional Control as Prepared by the NCAA Committee on Infractions."¹¹⁹ A list of 34 search terms was provided, including: whistle-blower, cash cow, power coach, blind eye, retaliation, and CYA (believed to be an abbreviation for

Cover Your Ass, an expression conveying a defensive posture). Also provided was a list of categories of individuals to be interviewed, including those with former and current affiliations with Penn State athletics and football, and a list of 32 questions to be asked; the Freeh Group incorporated all this into their investigative plan.¹²⁰ These materials provide insight into the mindset of the NCAA leadership even before the investigation commenced, suggesting an interest in documenting lack of institutional control by demonstrating volitional wrongdoing involving the “power coach” who operated a “cash cow” program. In fact, Jay Paterno (a member of the football coaching staff) was interviewed by Freeh investigators very early in the investigation and was surprised that most of the questions involved “power relationships” among Coach Joe Paterno, Curley, and Spanier; in his book he recalls his realization that the investigation would lead to conclusions allowing an NCAA finding of lack of institutional control.¹²¹

Under the best possible circumstances, how could an interested party (the NCAA), who expects to use the outcome of an investigation, be fairly and objectively involved in “monitoring” an independent investigation without influencing the process? Does this constitute a conflict of interest? The answer likely depends on whether clear lines were respected in the relative roles of the NCAA and the Freeh Group. An example that suggests some line-crossing involves an email exchange between Remy and a member of the Freeh Group in December, 2011, where Remy requests and receives editing on a letter from the NCAA to Penn State establishing the proposed terms of the NCAA’s involvement with the investigation.¹²² Arguably, to preserve the independence of the investigation, Remy should have negotiated the ground rules directly with the University. It appears that Remy was trying to have it both ways – claiming in a January email to the Freeh Group that “at this time the NCAA does not have an open enforcement inquiry or investigation into the issues at Penn State”¹²³ while simultaneously maintaining an open conduit for regular updates and advance access to the findings from the Freeh investigation. Certainly, it was the understanding of the Freeh Group that they were conducting an investigation incorporating questions from the NCAA and the Big Ten “in lieu of them doing a joint investigation with us.”¹²⁴

Based on documents produced during discovery for the Corman litigation, the public now knows that these were not “the best possible circumstances” due to the biased intentions of the NCAA.

We will elaborate further on this, and will provide a summary of information from our review that indicates reasons for the Freeh Group's willingness to work closely with the NCAA, in Section G, Sources of Bias.

Interference by Penn State leaders, Example #1: Keith Masser, Vice Chair of Penn State Board of Trustees. During the Sandusky trial, Masser inexplicably gave an interview to the Associated Press, saying that he had come to believe that Penn State officials had covered up for Sandusky.¹²⁵ It is difficult to fathom any constructive reason for making such a statement in the midst of a criminal trial, and just a month before Freeh's Report would be released. Are we to believe that Masser acted unilaterally, due to a momentary lapse of judgment? Or did he take this step with the full knowledge and consent of Board leadership? Masser issued an apology a few days later for his "inappropriate comments." The only public reaction from the Board was a comment from a fellow Trustee, effusively praising Masser's character and saying he had the "utmost respect" for the Board's Vice Chair.¹²⁶ If the Board lost confidence in Masser over this incident, it was not apparent. Six months later, Masser was elected to the chairmanship of the Board.¹²⁷

Freeh readily accepted the suggestion of his employers, as conveyed by the Board Vice Chair through the AP article. After receiving the article from one of his investigators in an email with the message, "Masser's comments are interesting,"¹²⁸ Freeh responded to the team: "Interesting and tends to raise the expectations that 'we' will uncover a 'cover up!' ... This goes to our major 'headline' and key findings and recommendations – exactly what the Grand Jury first noted – the motivation by the most senior PSU officials (and perhaps the 'coach') to move these 'bad things off campus,' ignore the sufferings of the child victims, and 'help' a friend because it seemed like the 'humane' thing to do. Right now I believe this is our main 'message.'"¹²⁹

Interference by Penn State leaders, Example #2: Frank Guadagnino, outside PSU attorney. As the investigation was winding down, Guadagnino sent an email to the Freeh Group pointing out a *Deadspin* article on a story from *Esquire*, focusing on whether Paterno knew about the 1998 investigation of Sandusky;¹³⁰ he suggested the investigators follow up these leads and examine Paterno's calendar.¹³¹ This task was then assigned to one of the investigators. (It is worth noting that *Deadspin* is scarcely a source of unbiased and responsible journalistic integrity,

for example, having previously published an article with a headline of, “Joe Paterno is Full of Shit.”¹³²) As outside counsel, Guadagnino would have been working under the direction of high level Penn State administrators (General Counsel Cynthia Baldwin, President Rodney Erickson) and/or Board leadership. Certainly, as an attorney, he should have understood that providing investigative direction to the Freeh Group constituted interference with an “independent” investigation. Was Guadagnino directed by Penn State leaders to make this recommendation to the Freeh Group?

Interference by Penn State leaders, Example #3: Trustee Ken Frazier, Chair of PSU Board Special Investigation Task Force. In June of 2012, with the Freeh Report being drafted, Frazier forwarded an article¹³³ exploring the question of why Sandusky was not stopped earlier; the article concluded, “Sandusky was allowed to exist because no one dared challenge the power of Penn State or Paterno, no one wanted to threaten the legacy of the football powerhouse and the great man himself.” Frazier commented in the email, “I happen to find this ESPN piece by Howard Bryant well written and well reasoned. It focuses on the larger lessons to be learned from excessive respect for ‘icons’ (Coach Paterno and PS football).”¹³⁴

Freeh wrote to his team, “Follows on nicely to our discussion yesterday and tends to answer why protecting the children was always the second thought.”¹³⁵ One of the Freeh investigators wrote the others, “The below Howard Bryant article that Ken Frazier passed along over the weekend is indeed interesting, in that it shows that undoubtedly many people (in and outside of the University) are expecting our report to state that the “why” for the failure to report was the desire to protect Paterno and the fb program.” However, he adds that since they had no opportunity to interview the principals, they should avoid speculation and focus only on the facts.¹³⁶ Another member of the team agreed, saying that they could explain the WHAT and the HOW but not the WHY, “since only the principals truly know.”¹³⁷ Freeh responded, “I understand – there is a stronger case to be made for ‘protecting the university’ than JP or the ‘FB program’ – which is never really articulated in any evidence I have seen”¹³⁸ (emphasis added).

And yet, the Freeh Report included motivation – to protect the University from bad publicity – and paired that with a list of causal factors, including a condemnation of Penn State’s “culture of reverence for the football program.”¹³⁹

This was the single instance we identified of Frazier sending an article, with his own commentary, to the Freeh Group. As chair of the Special Investigative Task Force, which hired Freeh and oversaw the investigation, his perspective certainly carried immense weight. What could have been Frazier's purpose in sending this communication, if not to influence the content of the Freeh Report? Despite the misgivings of investigators, including Freeh's own acknowledgement that they had not found evidence that Sandusky was purposely ignored to protect Paterno and the football program, Frazier's perspective found its way into the Report.

"The work product was not shared with anyone who was not part of the Special Investigative Counsel's team." (Freeh Report, p. 12)

Our review indicates that information gathered in the investigation was regularly shared with individuals outside the Freeh Group.

Pennsylvania Office of the Attorney General and Federal Investigators. The Freeh Group openly and regularly shared information with OAG and Federal investigators throughout the investigation.¹⁴⁰

NCAA and Big Ten. Entries in the Freeh Group diary¹⁴¹ indicated that a standing call was set up in early January 2012 to brief the NCAA and Big Ten each Friday, and that regular updates were provided throughout the investigation. Both NCAA and Big Ten requested specific information as the investigation progressed, and the Freeh Group appears to have provided that information.

Penn State leaders. Regular updates were provided to the Penn State Special Investigative Task Force, primarily with Task Force leaders Ken Frazier and Ronald Tomalis.¹⁴² One diary entry reflects Freeh reminding the group that Frazier had asked for updates when new information arose, and a plan was made for one of the team to call Frazier to apprise him of the latest findings.¹⁴³ On May 2, as the investigation was close to complete, the full Task Force was briefed. Notes in the Freeh Group diary reflect the discussion; the Trustees were told the "report will impact more on Schultz and Curley" and Trustees expressed that the Board was "concerned about conspiracy."¹⁴⁴ In early June, a briefing was provided via conference call to the entire Task Force, the Board's Executive Committee, and President Rodney Erickson.¹⁴⁵ The focus

was primarily on the implementation of compliance recommendations; Board chair Karen Peetz wanted to be able to “sync up recommendations with proactive changes” already made by the Board. There was also extensive discussion of the plan for releasing the Report.

The full Board was briefed on the status of the investigation on April 9 via conference call.¹⁴⁶ The information session was led by Frazier and Tomalis, who were prepared by Freeh. An email¹⁴⁷ between Freeh and a lead investigator laid out the points for Frazier and Tomalis. The primary focus was the discovery of “certain critical and extremely sensitive emails between key parties involving what appears to be the McQueary Shower Incident.” Briefing points also included: “The parties to the emails consciously decided not to report the matter to the authorities, and appreciated and accepted the risk of not reporting” despite apparently seeming to “believe that Sandusky’s conduct was severe enough (as opposed to mere ‘horse-play’) as to decide to offer Sandusky assistance in getting ‘professional help.’” Another bullet point noted, “Joe Paterno was consulted by one of the parties before making a final suggestion regarding the course of action.” The email with the briefing agenda included a note suggesting that, “One additional statement Ken may want to make is that there is a possibility that one of the parties to the emails who has not yet been indicted may be” [apparently a reference to Spanier].

A briefing was provided to a group of Penn State’s attorneys midway through the investigation, focused particularly on the emails and a discussion of the implications raised by the emails.¹⁴⁸

“The Special Investigative Counsel revealed this report and the findings herein to the Board of Trustees and the general public at the same time. No advance copy was provided to the Board or to any other person outside of the Special Investigative Counsel’s team.”
(Freeh Report, p. 12)

Our review demonstrates that advance copies of the Report were to be provided to the NCAA, the Big Ten, and to Frazier and Tomalis, leaders of the Task Force. Guadagnino also appears to have been briefed regarding the Report’s findings.

NCAA and Big Ten. The original arrangements with the NCAA, as described above, included “an advance review of any SIC interim and final recommendations and any portions of the SIC report which relate to the NCAA’s areas of concern.”¹⁴⁹ In keeping with that arrangement, Freeh Group diary entries reflect repeated reminders to fulfill that plan by providing an advance copy

of the Report to the NCAA and the Big Ten no later than 24 hours prior to the formal Report release.¹⁵⁰

Penn State leaders. The Freeh Group diary shows plans for providing a final draft of the Report to Frazier and Tomalis, who wanted the opportunity to “provide constructive feedback.”¹⁵¹ In May, a diary entry describes a request from Guadagnino, who asked for “a discussion about what the report is going to say,” a subsequent entry documents a date set for that conversation.¹⁵²

E.3. Report release

Freeh press conference

Freeh’s press conference, held in concert with the release of the Report, was more of a media circus than a sober, professional communication of findings from an investigation. (See Appendix 3.1: Freeh press conference: Media Circus.) This was perhaps not surprising given that Freeh was hired over another candidate because Frazier believed he was “more at ease with the media side of things.”¹⁵³ The press conference was planned by Kekst, a public relations firm hired specifically for this purpose, and Freeh was carefully prepared by the PR team.¹⁵⁴

The press conference appears to have been designed to produce the greatest media impact and to reduce the ability of reporters to fully vet the 267-page Report:

- The date was a slow news day for sports reporters, just following the MLB All-Star Game.
- The chosen date was shortly before the Olympics, and reporters would soon be traveling to London, and be distracted from conducting a close review of the Report.
- The location of the press conference was not University Park, but Philadelphia, allowing greater access for reporters.
- The Report was to be released on a website at 9 am. Leaked documents, published by an online news source almost 8 hours before the press conference, predicted an “unexpected” website crash that prevented the release of the Report until Penn State did a mass emailing at 9:10 am.¹⁵⁵ From the leaked document: “9:05 -- Thank you for bearing with us. Apparently there have been some difficulties with the website. We are

working to email the Report as soon as we can. Please bear with us a bit longer. Meanwhile we have copies of Mr. Freeh's statement." The predicted website crash did, in fact, occur on schedule, and Freeh's statement¹⁵⁶ was distributed to reporters, who used that information as their only source and quickly sent out their initial reports.

- One of the leaked documents was a set of responses for Q & A, providing advance knowledge that Freeh would justify the firings of Spanier and Paterno, along with his opinion that Paterno did not do "all he should have" to report the allegations of abuse.
- Freeh took the podium to respond to reporters' questions at 10 am, before it was possible for them to fully review the Report.

To reiterate: A phony website crash appears to have been engineered to prevent reporters from having access to the Report, forcing them to rely on his written statement, which was filled with inflammatory versions of the Report's findings. (See Appendix 3.2: Freeh press conference statements: Errors.) Were Penn State leaders complicit?

Penn State leaders' response

A few hours after Freeh's press conference, Penn State President Rodney Erickson, Board of Trustees Chairman Karen Peetz and Task Force chair Ken Frazier held their own press conference. Peetz spoke on behalf of the Board, accepting "full responsibility for the failures that occurred." Frazier said, "We are deeply ashamed."¹⁵⁷

Statements by Penn State and by Freeh affirmed that no one outside the Freeh Group was given information in advance of the 9 am release on the day of the press conference. Did Penn State leaders get advance copies of the Report, as was reflected in the planning notes of the Freeh Group? Or, instead, did they receive the Report at the same time as the public – and then make statements accepting the Freeh Report conclusions before they could have had sufficient time to review and consider the Report? Either possibility has troubling implications.

E.4. Summary and conclusions

Our review indicates that the investigative and reporting methodology used in the Freeh Report were seriously flawed.

1. The Freeh Group used interview methodology that was prone to error, subject to conscious and unconscious bias of investigators, and involved coercion of interviewees.
2. Independence of the Freeh investigation was compromised by influence from:
 - a. Pennsylvania Office of Attorney General and Federal investigators
 - b. NCAA and Big Ten
 - c. Penn State leaders
3. Contrary to their own statements, the Freeh Group regularly provided information about the ongoing investigation to:
 - a. Pennsylvania Office of Attorney General and Federal investigators
 - b. NCAA and Big Ten
 - c. Penn State leaders
4. Contrary to their own statements, the Freeh Group shared their conclusions in advance of the Report release with:
 - a. NCAA and Big Ten
 - b. Penn State leaders
5. The release of the Report was designed to prevent thoughtful analysis by reporters so that Freeh's inflammatory statements would predominate in media coverage.

F. Documentary Evidence Regarding Major Conclusions of Freeh Report

In this section, we review the information and interpretations used in the Freeh Report to support the major conclusions, and provide material from the investigation Source Materials that is contrary to the major conclusions.

The Freeh Report provides explanations from Spanier, Schultz, Paterno, and Curley for the “reasons for taking no action to identify the February 9, 2001 child victim and for not reporting Sandusky to the authorities:

- Through counsel, Curley and Schultz stated that the ‘humane’ thing to do in 2001 was to carefully and responsibly assess the best way to handle vague but troubling allegations. According to their counsel, these men were good people trying to do their best to make the right decisions.
- Paterno told a reporter that ‘I didn’t know how to handle it and I was afraid to do something that might jeopardize what the university procedure was. So I backed away and turned it over to some other people, people I thought would have a little more experience than I did. It didn’t work out that way.’
- Spanier said, in his interview with the Special Investigative Counsel, that he never heard a report from anyone that Sandusky was engaged in any sexual abuse of children. He also said that if he had known or suspected that Sandusky was abusing children, he would have been the first to intervene.”¹⁵⁸

The Freeh Report continues, “Taking into account the available witness statements and evidence, the Special Investigative Counsel finds that it is more reasonable to conclude that, in order to avoid the consequences of bad publicity, the most powerful leaders at the University – Spanier, Schultz, Paterno and Curley – repeatedly concealed critical facts relating to Sandusky’s child abuse from the authorities, the University’s Board of Trustees, the Penn State community, and the public at large.”¹⁵⁹

The Freeh Report details a list of “causes” for this, including “a striking lack of empathy for child abuse victims by the most senior leaders of the University;”¹⁶⁰ “a decision by Spanier,

Schultz, Paterno, and Curley to allow Sandusky to retire in 1999, not as a suspected child predator, but as a valued member of the Penn State football legacy ... essentially granting him license to bring boys to campus facilities for 'grooming' as targets for his assaults;"¹⁶¹ "a culture of reverence for the football program that is ingrained at all levels of the campus community."¹⁶²

F.1. *"Spanier, Schultz, Paterno and Curley repeatedly concealed critical facts relating to Sandusky's child abuse"*

"From the authorities:" Supporting information/interpretations

The Freeh Report relies primarily on a sequence of emails to suggest that an initial action plan (to inform Sandusky he could not bring children to the football facilities, to inform the director of The Second Mile about this decision, and to report to the Department of Public Welfare -- DPW)¹⁶³ was subsequently changed to not contact DPW unless Sandusky was uncooperative with the other elements of the plan.¹⁶⁴ An intervening event between the two emails was Curley "giving it more thought and talking it over with Joe;"¹⁶⁵ the Freeh Report includes references to information gained from interviews indicating that Curley was subservient to Paterno and making the inference that Paterno may have pressured Curley to change the plan and not report to DPW.¹⁶⁶

Spanier agreed to the proposed change in plan, adding, "The only downside for us is if the message isn't 'heard' and acted upon, and we then become vulnerable for not having reported it. But that can be assessed down the road. The approach you outline is humane and a reasonable way to proceed."¹⁶⁷ The Freeh Report interprets this as an indication that Spanier, Schultz, and Curley decided to report Sandusky's conduct to The Second Mile but not to DPW.¹⁶⁸

Schultz also agreed to the change in plan, with a qualification: "I can support this approach, with the understanding that we will inform his organization, with or without his cooperation (I think that's what Tim proposed). We can play it by ear to decide about the other organization."¹⁶⁹ The Freeh Report infers that "the other organization" is DPW.¹⁷⁰

The Freeh Report states that documents in Schultz's office "had been withheld from the Special Investigative Counsel."¹⁷¹ There is no mention of who withheld these materials but the implication appears to be that Schultz was attempting to conceal them.

"From the authorities:" Contrary information/interpretations

Interpretation of emails. The emails discussing planned responses to the 2001 report of Sandusky showering with a child were not definitive in terms of demonstrating what exactly Penn State officials understood about the incident. Freeh investigators acknowledged this; in an entry in the work diary, they ask, "What evidence that they knew it was more than horseplay?"¹⁷²

Certainly, the Freeh Group should have fully considered all relevant information before coming to any conclusions about the accurate meaning contained in the emails.

Spanier interview. In his interview with the Freeh Group, Spanier said he had not been told about anything of a sexual nature in Sandusky's conduct with the youth in the shower, and given his own background (having been abused as a child) he believed he would have taken action had he known that Sandusky's actions crossed the line; he believed the idea of counseling for Sandusky was to address Sandusky's failure to recognize that showering with kids was inappropriate, not because he thought Sandusky was molesting children; the "only downside" in the email referred to Curley's concern that Sandusky did not work for Penn State and they could not dictate to him and therefore he might not comply with the request to stop bringing Second Mile kids to campus, which would require them to revisit the situation later.^{173 174}

Spanier stated that Wendell Courtney, PSU outside counsel, told him that Schultz had consulted Courtney on child abuse reporting laws and that Spanier was not present at that meeting; Courtney told Spanier that if he (Courtney) had believed Sandusky's conduct had constituted abuse, Courtney would have informed Spanier directly at the time.

Spanier also disclosed that after he informed Schultz and Curley that he was stepping down from his position as University president, each independently told him he was being wronged because they never reported to him anything that would constitute abuse.¹⁷⁵

As the Freeh Group discussed their understanding of their interview with Spanier, Freeh asked, "How does this relate to the Why: Spanier says had anyone told him about molesting he would have gotten involved; how consistent with evidence that he must have been told about allegation of sexual conduct? Or, is he telling the truth?"¹⁷⁶ Here we see that the Freeh Group recognized that Spanier's statements were not consistent with their narrative, especially in regard to their

insertion of motivations behind the idea that Penn State officials concealed information that Sandusky was molesting children.

Federal high security clearance investigation of Spanier. Spanier's Federal high security clearance, held since 1995, was temporarily suspended due to events surrounding Penn State's response to Sandusky's arrest,¹⁷⁷ and Spanier was re-investigated by Special Investigator John Snedden from February 6 to May 8, 2012. Spanier informed the Freeh investigators of this report's availability, and the investigators made a note to obtain it,¹⁷⁸ yet no mention of this investigation appears in the Freeh Report. The Federal investigation is notable because: Spanier passed a polygraph and was interviewed under oath; Schultz and Curley were interviewed; findings from the investigation led to a renewal of Spanier's high security clearance, concluding: "The circumstances surrounding [Spanier's] departure from his position as PSU president do not cast doubt on [Spanier's] current reliability, trustworthiness or good judgment and do not cast doubt on his ability to properly safeguard national security information."¹⁷⁹

Using interviews and documentary evidence, Snedden specifically and directly investigated the events surrounding the 2001 incident and the responses of University leaders to this incident and to Sandusky's arrest. Important information in the Federal high security clearance report:

- From Spanier's interview statements on 2001 incident: Curley and Schultz told him Sandusky had been seen showering with a Second Mile kid; Spanier believed at that time that The Second Mile served only adolescents; the unidentified reporter "was not sure what he saw because it was around the corner" and "what he saw was described as 'horse play' or 'horsing around;'" Spanier asked if that was how it was described, and if that was all, and was told yes; all agreed this was inappropriate and that Curley would tell Sandusky and The Second Mile that children from the charity could not be brought to campus; a few days later Curley reported the discussions had taken place; "The issue never came up again. It did not appear very significant at the time."
- In his interview, Schultz stated: McQueary was uncomfortable after seeing Sandusky with a kid "horsing around and wrestling" in the shower and "did not say anything of a sexual nature took place;" Schultz, Spanier, and Curley agreed jointly this was

inappropriate but not criminal; Schultz recalled a decision to report to Department of Public Welfare but was not sure who had made the report.

- Then University President Erickson was interviewed and said he trusted Spanier's judgment and Spanier was responsible and reliable; said "Spanier is collateral damage in all this."
- At the time of Sandusky's arrest, Schultz called Steve Garban, Chair of the Board of Trustees, and told him Spanier did not know of anything beyond "horsing around," according to Garban's interview.
- From his interview, Tom Poole, PSU Vice President for Administration, described being in Spanier's office when Schultz rushed in to relate that McQueary had testified he had told Schultz about sexual activity between Sandusky and the youth in the shower; Schultz was shocked, said McQueary had never told him of anything sexual; Poole "believed it appeared there was a lot of disbelief in the room regarding this information."

In a subsequent news interview, Special Investigator Snedden described Spanier as completely credible and stated, "There was no coverup. There was no conspiracy. There was nothing to cover up."¹⁸⁰

Horseplay: Interview data. Interviews reflect multiple reports of the 2001 incident as consisting of "horseplay" or minor, nonabusive conduct by Sandusky.

Several interviewees spoke about McQueary's report to Paterno, noting that the information shared was vague and nonspecific. A friend said McQueary told him that he (McQueary) told Paterno about seeing Sandusky in the shower with a young boy. From the interview notes: "McQueary told [friend] 'I was a little vague with what I told Joe' and added 'Joe wouldn't understand.' McQueary believed this was because of Paterno's age. McQueary also said the Grand Jury misrepresented what he saw to the general public because he never said 'anal rape.'"¹⁸¹

A former football player believed that Paterno's old-fashioned attitude may have played a role in McQueary's decision about what to report to Paterno, and added, "Joe was as close to being a priest as a priest — especially concerning discussions of girls and sex."¹⁸² A senior administrator

expressed a similar opinion, describing Paterno as a good Catholic who “may not have wanted to go there” and didn’t understand the seriousness of the situation.¹⁸³

A friend of the McQueary family said that Mike knew and respected Sandusky, and would have been “shocked and embarrassed” about disclosing any misconduct to Paterno. He said he believed that “Mike probably didn’t communicate things properly and would have been ‘reluctant to say things to Joe.’”¹⁸⁴

Trustees said that Spanier¹⁸⁵ and Schultz¹⁸⁶ told the Board they had been given reports of “horseplay” or “horsing around.” Another Trustee said that “Spanier was an ethical person with lines you didn’t cross. He thought that Spanier wasn’t aware of the level of the problem with the Sandusky investigation or he interpreted it differently.”¹⁸⁷

The attorney for The Second Mile said Curley had told TSM Director Raykovitz that Sandusky had showered with a youth which was deemed inappropriate but not serious misconduct.¹⁸⁸

A senior administrator with decades of experience at Penn State discounted the idea that Penn State officials were given explicit information about Sandusky’s misconduct: “[He] is of the opinion that the entire public scenario of the Sandusky case makes no sense. The scenario indicates a cover up by Joe Paterno, Tim Curley, and Gary Schultz after McQueary told all of them about the rape of a young boy by Sandusky. The cover up would require all of the officials to make a joint decision to keep the incident quiet to avoid embarrassment and would depend on McQueary not telling anyone else. What does make sense, according to [the administrator], is that McQueary was not clear in describing the incident to Paterno, Curley, or Schultz and [he] is confident that neither Curley nor Schultz would perjure themselves about the situation. [He] said John Dranov disputes McQueary’s statement and Dranov was supposedly present when McQueary told his father of the incident. Dranov claims he asked McQueary three times if he observed sex and McQueary responded that he did not.” He added that he was “confident that if Courtney [PSU attorney] were in the loop on McQueary’s information, he would have advised [Spanier] to report it to authorities. Courtney would not try to protect the University or the football team if he was aware of the incident.”¹⁸⁹

Our thorough and systematic review of interview data did not produce a single instance of anyone reporting having been told by Spanier, Schultz, Curley, or Paterno of any explicit or serious misconduct by Sandusky. In contrast, there are multiple reports of vague, nonspecific descriptions of “horseplay” or other minor acts.

Relevance of 1998 investigation of sex abuse allegations against Sandusky. The Freeh Report cites Jerry Lauro, caseworker for the Department of Public Welfare, as concluding that no sexual assault occurred.¹⁹⁰ Freeh investigators interviewed key individuals involved in the 1998 investigation, as well as law enforcement officials who vouched for the skill and integrity of those who conducted the investigation. Reports from all interviewees consistently supported the conclusion that there was no indication that law enforcement or child services professionals were aware of any illegal misconduct by Sandusky (see Appendix 2.1: Interview Analysis and Summary: 1998 investigation of allegations of sex abuse against Sandusky).

Contemporaneous emails confirm that the understanding in 1998 was that Sandusky’s behavior was not criminal. An email from Penn State’s police chief, Tom Harmon, to Gary Schultz stated: “The DPW investigator and our officer met discreetly with Jerry this morning. ... He was advised since there was no criminal behavior established that the matter was closed as an investigation.”¹⁹¹ Schultz then emailed Curley and copied Spanier and Harmon to relate this news: “They met with Jerry on Monday and concluded there was no criminal behavior and the matter was closed as an investigation. ... I think the matter has been appropriately investigated and I hope it is now behind us.”¹⁹²

Whereas the Freeh Report implies that awareness of the 1998 investigation would suggest “knowledge” that Sandusky was a pedophile, it is also possible that the outcome of that investigation – no charges were filed due to insufficient evidence¹⁹³ -- might reasonably lead to an assumption that Sandusky was NOT a pedophile. The Freeh Group discussed whether knowledge of the 1998 allegations should have led to conclusions that the 2001 incident was indicative of abuse, and agreed that such knowledge was “not probative.”¹⁹⁴

Lanning training to Freeh Group on identification of “pillar of the community” child sex offenders. Kenneth V. Lanning is retired from 30 years with the FBI as their premier expert in child molestation cases and was hired by the Freeh Group to train the team’s investigators in this

specialized area. A full day training was provided on December 13, 2011 (see Appendix 4: Kenneth Lanning, FBI Expert in Child Sex Abuse: Training Provided to Freeh Group, December 13, 2011).

It appears that the Freeh Group completely failed to make use of this training, which contained the following very pertinent information:

1. Lanning provided information consistent with the interpretation that Jerry Sandusky was a “pillar of the community” offender whose stature in the community blinded people to the possibility he could be harming children; this idea was not included in the Freeh Report.
2. Lanning provided information indicating that youth-serving organizations – along with law enforcement, child protective services, and society and the media – are commonly unaware of the ways to recognize acquaintance offenders; the possibility that Penn State officials may have unintentionally failed to understand Sandusky’s actions as abusive is not included in the Freeh Report.
3. Lanning provided information to guide youth-serving organizations in obtaining qualified consultation when creating policies to protect children – emphasizing the need for consultants to be knowledgeable about acquaintance victimization; this was not included in the Freeh Report recommendations.
4. Lanning provided guidelines for conducting investigations of child sex abuse, and emphasized the importance of evaluating information and carefully corroborating reports before making conclusions; the Freeh Report disregards information contrary to the conclusions rather than qualifying the conclusions.
5. Lanning cautioned that media reports on child sex victimization cases are often inaccurate and motivated by competing interests (getting ratings, filling time); the Freeh Group read media reports uncritically and allowed themselves to be influenced by sensationalistic accounts based on questionable findings.

No reports of anyone being asked to suppress knowledge of Sandusky’s actions: Interview data. There was not a single instance of any interviewee reporting having been asked to conceal information about Sandusky engaging in inappropriate conduct with children.

Characters of Spanier, Schultz, Curley, and Paterno: Interview data (see Appendix 2.2: Interview Analysis and Summary: Were the characters of Spanier, Schultz, Curley, and Paterno consistent with covering up to protect a pedophile?). Only 9 of the 132 interviewees commenting on the characters of any of these four men were critical; 93% of respondents conveyed consistent praise for their ethics and commitment to the highest standards of personal and institutional behavior. Trustees described Spanier as “an ethical person with lines you didn’t cross” and “the most morally upstanding man I have ever met.” Schultz was described by Trustees as “a straight arrow who always took the right road” and who was “one of the finest men [he’s] ever been associated with.” Curley was described by a Trustee as “one of the most honest people you could ever find” and a former football player currently working in college sports compared him to other athletic directors saying “no one has a higher level of integrity than Tim Curley.” Paterno’s integrity was praised by Trustees, faculty, colleagues in athletics, and former players: “The ‘Paterno Way’ included ethics, integrity, public service, and academics;” “a true visionary” who held everyone to a high code of conduct; “a tough disciplinarian;” “Paterno would challenge you to do it the right way;” “I challenge anyone to show me a person who has done more for the University or the community than Joe Paterno.”

Interview data compellingly support that Spanier, Schultz, Curley, and Paterno were all men who behaved with the highest integrity in their personal and professional roles.

Paterno met reporting obligations. Paterno was immediately praised for reporting the allegations against Sandusky to his superiors. “Penn State head football coach Joe Paterno did the right thing and reported an eye-witness report of child sex abuse by Jerry Sandusky in the football locker room in 2002,¹ according to the indictment released this morning by the State Attorney General.”¹⁹⁵

Penn State policy in effect in 2001 was written for sexual assault of students, but not of children; the sexual assault policy required consent of the victim for a report to be made, or in the few situations where a report was required even without the victim’s consent, it was required that the victim be informed.¹⁹⁶ This presented a problem, as Paterno did not know the identity of the

¹ Originally, there was confusion over the date of the shower incident observed by Mike McQueary; this was later corrected to be 2001.

victim. A conservative approach was to report the incident to his superior, Curley (the Athletic Director), and to the head of campus police, Schultz.

In a written statement Paterno prepared before being dismissed by the Board, and made public in June of 2012, he described his actions in 2001: "Paterno said that he told McQueary 'he had done the right thing and that I would take the appropriate next step. After consideration, I determined that, given Sandusky's status as a retired employee governed by a retirement package negotiated with the administration, I had no authority to act directly. The next day, in accordance with University policy, I contacted the head of my department and related what was told to me. That was the last time the matter was brought to my attention until this investigation and I assumed that the men I referred it to handled the matter appropriately.'"197

The NCAA changed their reporting policy in 2014 to require *the exact actions taken by Paterno in 2001*. The new policy emphasizes that athletic departments must not become involved in investigations into reports of sexual assault, and instead must "report immediately any suspected sexual violence to appropriate campus offices for investigation and adjudication."¹⁹⁸

Paterno's statement upon his retirement – "With the benefit of hindsight, I wish I had done more" – has been widely misinterpreted as an admission of guilt for having failed in his reporting obligations. Within the context of the full statement, it is apparent this is the compassionate response from a deeply moral man who was sorrowful about Sandusky's victimization of children and who was committed to the best interests of the University: "I am absolutely devastated by the developments in this case. I grieve for the children and their families, and I pray for their comfort and relief. I have come to work every day for the last 61 years with one clear goal in mind: To serve the best interests of this university and the young men who have been entrusted to my care. I have the same goal today. That's why I have decided to announce my retirement effective at the end of this season. At this moment the Board of Trustees should not spend a single minute discussing my status. They have far more important matters to address. I want to make this as easy for them as I possibly can. This is a tragedy. It is one of the great sorrows of my life. With the benefit of hindsight, I wish I had done more."¹⁹⁹

Schultz file: Confidential but not secret. Schultz retired from his position as Senior Vice President for Finance and Business in 2009. The confidential file on Sandusky was left in his office; his successor, Al Horvath, along with several administrative assistants, had access to it.

- If Schultz had participated in a coverup of Sandusky's actions, why would he not have destroyed the file on this matter when he retired, rather than allowing the possibility that his successor could find it?
- In September 2011, Schultz was rehired on an emergency basis until a replacement could be found for Al Horvath. Back in his old office, Schultz had access to the file on the 2001 incident. After testifying before the Grand Jury 9 months before, he was certainly aware that his actions in 2001 might come under scrutiny. If he had indeed been involved in a coverup, why did he not at that time destroy or remove the file documenting the decisions made in 2001?
- Schultz testified before the Grand Jury in January 2011 that he might have kept notes about the 2001 incident. (1) Baldwin was present for his testimony. Why did she not search for the file in order to share it with law enforcement officials? (2) Freeh investigators reviewed Schultz's testimony.²⁰⁰ How could they think he was withholding information about his records when he had testified under oath to the possibility of their existence?

The Freeh Group work diary contains notes on a discussion with OAG prosecutor Fina, who provided an inflammatory account of events involving Schultz's administrative assistant Kim Belcher and the handling of the confidential file on Sandusky. Fina said: (1) Schultz told Belcher the file was "sacrosanct and secret;" (2) Belcher may have been sleeping with Schultz; (3) Schultz (whose attorney provided the file to OAG in April of 2012) "may have presented the papers to get immunity;" (4) "stories are being put together to match each other," apparently a claim that Schultz and Belcher were conspiring; (5) Schultz had "profound control over 98 investigations – inappropriate at least, at most criminal conduct."²⁰¹ The Freeh Group appeared to have accepted Fina's interpretation of events without considering that it was illogical that Schultz would have testified to the possible existence of a file that was accessible to others – a file that he could have destroyed – if, in fact, he had intended to conceal this information.

There is no indication that Schultz concealed the existence of the file.

Was a report made to Children and Youth Services in 2001? Our document review produced notes made by the Freeh Group showing their review of information related to the 2001 allegations.²⁰²

Email from Wendell Courtney (Penn State outside counsel) to Cynthia Baldwin in January 2011: "We don't have any file on the matter you and I discussed yesterday, and my recollection of events is as I stated yesterday. However, I also recall that someone (I don't think this was me, since if it was I would have written documentation of contact) contacted Children and Youth Services to advise of the situation so that they could do whatever they thought was appropriate under the circumstances, while being apprised of what PSU actions were, i.e., advising JS to no longer bring kids to PSU's football locker rooms."

Excerpts from Schultz's Grand Jury testimony:

A: So I believe Tim communicated to Jerry that that type of thing should not be occurring in the future. I also have a recollection that we asked the child protective agency to look into the matter.

Q: It's your testimony that you believed the 2002 incident was reported to the same agency, that child protective services agency, for an investigation as the '98 one had been?

A: That's my recollection, yes. (Preliminary Hearing trans. at 212,215)

Did the Freeh group make any attempt to investigate the independent, and consistent, recollections of Courtney and Schultz that a report to Children and Youth Services was made in 2001? Our review did not produce any indication that they pursued this possibility, nor did we find any information that refutes this possibility.

Psychological evaluation of 1998 alleged victim by John Seasock. As part of the investigation of the 1998 allegations against Sandusky, licensed counselor John Seasock conducted a formal psychological evaluation of the alleged child victim. This evaluation included interviews of the

child, along with a review of police and Children and Youth Services interviews. The report concludes, "It does not appear that a sexual victimization occurred directly between [child] and Jerry Sandusky."²⁰³ Important excerpts from the report:

- "No evidence of threat, intentional manipulation, or force designed to elicit sexual behavior."
- Child "disclosed no discomfort with the situation giving Jerry no opportunity to alter his behavior."
- "The reported wrestling was more indicative of horseplay, consistent with the developmental behavior of a young adolescent."
- Sandusky "did not evident sexual arousal."
- Another coach was present in the locker room, inconsistent with pedophile behavior.
- "The behavior exhibited by Mr. Sandusky is directly consistent with what can be seen as an expected daily routine of being a football coach. This evaluator spoke to various coaches from high school and college football teams and asked about their locker room behavior. Through verbal reports from these coaches it is not uncommon for them to shower with the players. This appears to be a widespread acceptable situation, and it appears that Mr. Sandusky followed through with patterning that he has probably done without thought for many years. I believe the mistake that was made was that Mr. Sandusky did not take into account the pre-adolescent age of this boy and the level of sexual development that he was at."
- No staring, no prolonged touching, which are typical behaviors of pedophiles.
- "Nor does it appear that this young gentleman has been placed in a situation where he is being groomed for future sexual behavior."
- "One must be careful not to quickly assume that a sexual victimization occurred and then set forth to find factual information to support such ideation, but should gather all facts first and then make a determination according to what has been presented."
- Seasock recommended a conversation with Sandusky to help him understand community sensitivities about adults showering with children. "The intent of the conversation with Mr. Sandusky is not to cast dispersion upon his actions but to help him stay out of such gray areas in the future."

The fact that a trained mental health professional could conduct a careful evaluation of the situation and conclude that Sandusky's behavior fell into a "gray area" but was not abusive should have been considered by the Freeh Group as an indication that people who did NOT have this training – Spanier, Schultz, Curley, and Paterno – might similarly have been unable to identify Sandusky as a predator.

Sandusky and The Second Mile

At the time of the 2001 incident, Sandusky was no longer employed by Penn State and was working with his charity, The Second Mile; his activities included fundraising as well as working directly with children. The charity's CEO, Jack Raykovitz, was a licensed psychologist. Why was Raykovitz unable to detect that Sandusky was abusing the charity's child clients? Raykovitz came under criticism by Second Mile Board members for not appropriately informing them about the 2001 incident, as well as about the 2008 Clinton County allegations, which were determined to be valid accusations of abuse by child protection professionals.²⁰⁴ Why did the Freeh Report fail to mention that the licensed psychologist, who was a mandated reporter, failed to perceive that Sandusky was engaged in misconduct with the agency's child clients?

Sandusky's history as a foster and adoptive parent: Repeatedly screened by child services professionals. A news article shortly after Sandusky's arrest described the "very stringent screening process" the Sandusky family would have undergone to become licensed foster and adoptive parents.²⁰⁵ "Long before his arrest this month on 40 charges related to child sex abuse, Sandusky successfully navigated the system's various background checks to become the adoptive father of five sons and a daughter, a foster parent, a host for a half-dozen Fresh Air Fund children from New York City and a congressional honoree as an 'Angel in Adoption.' Court records show Sandusky and his wife, Dottie, were designated to coordinate visits with his grandchildren as recently as last year when one son's marriage began to disintegrate."

Those who knew Sandusky were well aware of his role as an adoptive and foster parent, as he was frequently accompanied by children, and likely recognized that he had been screened by child services professionals on multiple occasions.

“From the University’s Board of Trustees:” Supporting information/interpretations

Supporting information provided in the Freeh Report includes criticism of Spanier for not fully reporting the following to the Board: (1) the 1998 investigation of sex abuse allegations against Sandusky;²⁰⁶ (2) the 2001 sex abuse allegations;²⁰⁷ (3) the Grand Jury proceedings.²⁰⁸

“From the University’s Board of Trustees:” Contrary information/interpretations

1998 and 2001 incidents. The 1998 allegations were investigated and ultimately deemed unfounded; the 2001 incident was judged to involve a gray area of “horseplay” rather than abuse or criminal activity. Given these interpretations of events, it is reasonable that Spanier would not report either incident to the Board.

Cynthia Baldwin, Penn State General Counsel. Baldwin has been faulted for multiple aspects of her conduct in responding to events surrounding Sandusky’s indictment. In an article on legal ethics published by the American Bar Association, Baldwin was criticized for actions indicating confusion regarding who was her client (The University? The University president, Spanier? University employees, Schultz and Curley?). This confusion resulted in a serious conflict of interest that affected not only her subsequent role regarding the criminal prosecution of Schultz and Curley, but also appeared to have influenced her decisions about informing Spanier and the Board about ongoing developments with the Sandusky case, according to the article.²⁰⁹

The Freeh investigators were aware that Baldwin’s mistakes interfered with her duty to properly inform the Board of Trustees. One investigator emailed Freeh and six others after conducting a review of PA Grand Jury secrecy law.²¹⁰ He stated: “Baldwin’s insistence on appearing before the Grand Jury with Schultz, Curley, and Spanier created an unnecessary hindrance to University’s access to information about the Grand Jury. ... The appearance by Baldwin before the Grand Jury as counsel for Penn State is an example of a misstep by Baldwin in this matter.” He noted that if she had obtained outside counsel for Spanier, Schultz, and Curley, she could have debriefed them after their appearances because PA law states that a witness has no secrecy obligation; Baldwin would not have been bound by a secrecy obligation “and then could have conveyed the witness information to her clients so that appropriate planning and decisions could have been made.”

Many Trustees were harsh in their judgments of Baldwin. A former Board Chair said he “blamed” Baldwin for the Board’s problematic decisions following Sandusky’s indictment.²¹¹ Ken Frazier, Chair of the Special Investigative Task Force, described the “breakdown of trust” between Baldwin and the Board.²¹²

In his interview with the Freeh Group, Spanier was clear that he relied on Baldwin for her legal advice in his decisions about informing the Board about the Grand Jury.²¹³ He described Baldwin as “cautious” with the Board and described multiple incidents where he wanted to provide information to the Board but was told by Baldwin he could not. Spanier said he had believed he could be held in contempt of court if he disclosed information concerning the Grand Jury proceedings. Spanier also noted that Baldwin failed to inform him about subpoenas on multiple occasions.

The Freeh Report acknowledges in several instances that Spanier and Baldwin, or Baldwin alone, briefed the Board about the Grand Jury investigations.²¹⁴ It is certainly reasonable that a University president would rely upon his general counsel to provide sound advice. Since Baldwin’s guidance was apparently flawed, and since the Freeh investigators appeared to believe that her conduct was misguided, the most reasonable conclusion is that Spanier was NOT at fault for any failures to fully inform the Board about Grand Jury proceedings.

Governor Corbett’s failure to inform Board. Governor Corbett came under criticism in a news article examining the impact of Grand Jury secrecy rules on his obligation to inform Penn State of the ongoing investigation of Sandusky as an alleged child sex abuser.²¹⁵ Several law school professors were quoted in regard to ways that Corbett could have legally informed the Board; all agreed he could have, and should have, pointed Trustees in the direction of checking into Sandusky. One said, “Corbett had a fiduciary responsibility to the Board. He didn’t have to divulge that Sandusky was even being investigated, only that they should look closer at him.”

A subsequent email exchange between Freeh and his colleague Judge Sullivan reflected on this article and discussed the ethical and legal obligations that were not met when Corbett, as an ex officio Trustee of PSU, failed to notify the University about Sandusky. Sullivan described two potential options for informing Penn State – neither of which Corbett did -- noting, “I would have done 1 or 2 ... I also think you [Freeh] would have done 1 or 2.”²¹⁶ Freeh told his team,

“We will need to investigate and research this as part of our focus on the BOT... Difficult but important questions for us to be asking – and answering.”²¹⁷

Despite Freeh’s recognition that understanding Governor Corbett’s failure to inform the Board was “important,” along with his assessment that Corbett was in the wrong, no mention of this matter was included in the Freeh Report. Instead, full blame for inadequate briefing of the Board was placed on Spanier.

“From the Penn State community:” Supporting information/interpretations

Supporting information in the Freeh Report includes statements that the 1998 incident was not reported to the Penn State Office of Human Resources;²¹⁸ and that no documentation of the 1998 incident was made in Sandusky’s personnel file.²¹⁹

“From the Penn State community:” Contrary information/interpretations

Office of Human Resources policy. The Freeh Report suggests mishandling of this situation by the University, referencing a statement from Ron Schreffler, Detective for the University Police Department, that the Sandusky investigation was not referred to Human Resources, as would be routine.²²⁰ However, the Report does not include Schreffler’s qualifying statement: “He said the referral being made would depend on the circumstance of the incident. Since Sandusky wasn’t arrested there’s a good chance a referral wasn’t done.”²²¹ The Freeh Report notes that no written policy required campus police to notify Human Resources of incidents involving employees.²²² Schreffler also said that “no one from the University Administration or Chief Harmon interfered with the investigation.”²²³

1998 incident. The outcome of the 1998 investigation into allegations of sex abuse by Sandusky resulted in no charges being filed. Penn State officials might reasonably have concluded that Sandusky was cleared.

“From the public at large:” Supporting information/interpretations

Supporting information in the Freeh Report includes statements that no action was taken to determine whether Sandusky’s conduct in 1998 was reportable under the Clery Act,²²⁴ and that “some coaches, administrators and football program staff members ignored the red flags of Sandusky’s behaviors and no one warned the public about him.”²²⁵

“From the public at large:” Contrary information/interpretations

Clery Act policy at Penn State in 1998. Over time, Clery Act reporting requirements have become progressively more stringent. Policy in 2011, the most recent we were able to access, is suggestive that Sandusky’s behavior in the shower with a child in 1998 would not have been reportable; fondling was considered a reportable offense only if the offender’s intent was sexual gratification.²²⁶ This was not determined to be the case, as law enforcement decided no crime was committed. A conservative position on this matter would indicate that the requirements in place in 1998 may not have indicated a need to report a matter that was investigated but not prosecuted due to insufficient evidence.

Rumors about Sandusky: Interview data (see Appendix 2.3: Interview and Analysis and Summary: Were members of the Penn State community aware of rumors about Sandusky?). A wide range of the University community, with a heavy emphasis on current and former employees from the football program and other areas of athletics, was asked if they had heard rumors about Sandusky (a total of 279 individuals). A large majority, 88%, said they had never heard rumors of Sandusky doing anything inappropriate with children. Most of the interviewees reporting rumors were referencing knowledge of public information (either the March 2011 article in the Harrisburg Patriot-News about the ongoing criminal investigation, or the September 2010 incident at Central Mountain High School that resulted in an indicated report by Children and Youth Services). The remaining few (16) interviewees had only vague, hearsay knowledge. Not a single individual reported witnessing, or hearing directly about, improper behavior with children. Notably, many of the interviewees who had heard vague rumors stated unequivocally that they did not believe them, citing Sandusky’s exemplary work helping troubled youth, or his goofy antics, describing him as “a big kid” who may have had “boundary issues.” A member of the football staff said he and his colleagues still had difficulty believing

that Sandusky had molested children, adding, "he fooled the football staff just like he fooled everyone else and no one had any knowledge about what he was doing."

Interview data regarding rumors did not support the opinion that members of the University community had knowledge of Sandusky's abuse of children.

SUMMARY AND CONCLUSIONS

An analysis of all the information gained through the Freeh investigation strongly indicates:

- Spanier, Schultz, Curley and Paterno believed Sandusky was engaged in horseplay, not in any type of serious misconduct, in 2001. They believed that he did not understand that showering with children was inappropriate and they informed him, and his current employer, The Second Mile, that children from TSM were not to be brought onto campus. When Sandusky agreed to this arrangement, they believed the incident was fully and properly addressed.
- There were no indications of any efforts made to conceal Sandusky's actions.
- All information supported the idea that Spanier, Schultz, Curley and Paterno were men of integrity and good character.
- There were no indications that the University community had heard rumors or had any knowledge supporting the idea that Sandusky was a pedophile.
- Sandusky fit the profile of a "pillar of the community offender" who escaped detection because his actions were interpreted within the belief that he had devoted himself to providing services for needy children.

F.2. Motivation: *"To avoid the consequences of bad publicity"*

Supporting information/interpretations

Supporting information provided in the Freeh Report includes: a statement by Spanier that in 2001 "he was concerned with Sandusky because the situation 'doesn't look good, I was concerned with what people will think, the visibility and the public relations aspect of it,'"²²⁷ and a statement attributed to Curley as saying "'to avoid publicity issues,' the University would not permit Sandusky to bring kids on campus."²²⁸

This idea was raised by a Trustee who said he was “not fond of” Spanier and criticized Schultz’s truthfulness, and suggested that “if Schultz, Curley, and Spanier were aware of the allegations against Sandusky, they may have kept the matter quiet to protect Sandusky and to avoid any adverse publicity to the university.”²²⁹

Contrary information/interpretations

Alternative interpretation of information used in Freeh Report to support this conclusion.

Spanier’s statement, provided in the Freeh Report, includes this alternative perspective: “I was not concerned with criminality. There was no suggestion of anything about abuse or sexual contact.”²³⁰

Curley’s statement about avoiding publicity, as reported in the Freeh Report, was third hand, and thus the accuracy may be in question. The Freeh Report states that Curley made this statement to the executive director for The Second Mile in 2001, who repeated it to the counsel for The Second Mile (no time frame given for this, so it could have occurred at any point between 2001 and 2012), who then relayed this information to the Freeh investigators in an interview in 2012.²³¹ The precise wording Curley used is almost certainly not reflected in the statement that appears in the Freeh Report, and any nuance of language used may have been lost and may affect accurate interpretation of Curley’s communication.

Freeh Group decision to include motivations and causal factors. From a review of emails among the Freeh Group, along with notes in the diary, it appears that the Freeh Group began considering causal factors – what they referred to as “the WHY” – after the investigation was completed and as they were writing the report. Their discussions indicate that their investigation did not reveal clear causal factors, as they argued among themselves about the problems of speculating about matters where they did not have hard facts. In one email, they discuss the need for “adding ‘why’ language, including Louie’s ‘the stated reason is ... but the only reasonable explanation is fear of scandal,’”²³² demonstrating that the search for causal factors amounted to a fishing expedition. The Group consulted Kekst, their public relations firm, for guidance: “Kekst response to what do they think about the issue of having to describe the ‘why’ in addition to the ‘how?’ ‘If we have a factual rather than speculative answer, it would be fine. If not, no.’”²³³ In another exchange, one of the Group asked, “As I reviewed my notes from LJF [Freeh] yesterday

he talked about a culture where child victims concerns were not a community value. Is that what you guys heard?" and another investigator disagreed with that idea and responded, "I still maintain that we should not say anything that we can't support."²³⁴

In the search for "why?" factors, the Freeh Group exchanged numerous news articles, actively seeking support for certain conclusions and highlighting relevant passages. One email exchange suggested information from a news article to be used "as we continue to beef up the culture section."²³⁵ Our review indicates that interest in the "why?" factors, and use of media pieces for supporting information of those causal factors, appears to have begun or accelerated after receiving the email from Task Force Chair Ken Frazier with comments indicating his agreement with an ESPN writer's statements that Penn State leaders' failure to report was due to a motivation to protect Paterno, the "iconic coach." (See "Investigative and Reporting Flaws: Interference by Penn State Leaders, Example #3: Trustee Ken Frazier, Chair of PSU Board Special Investigation Task Force.")

SUMMARY AND CONCLUSIONS

Spanier, as president of a major University, and Curley, athletic director of a large athletics program, were certainly not novices in regard to handling negative publicity. Freeh investigators produced no previous history of these administrators having buried bad news. Support for Freeh's idea that "the only reasonable explanation is fear of scandal" was not provided. That Freeh would urge his team to identify causal factors that were speculative, and not based on data, is concerning and possibly indicative of bias.

F.3. Cause: "A striking lack of empathy for child abuse victim"

Supporting information/interpretations

Supporting information provided in the Freeh Report included: lack of urgency in responding to McQueary's report;²³⁶ failure to identify the child who was in the shower with Sandusky;²³⁷ Curley "exposed child to additional harm by alerting Sandusky;"²³⁸ "no indication that Spanier, Schultz, Paterno or Curley had discussions about any other enforceable actions that could have been taken to safeguard children."²³⁹

Contrary information/interpretations

The lack of urgency in taking any action to protect the child seen in the shower with Sandusky is consistent with the belief of Spanier, Schultz, Curley and Paterno that no child abuse had occurred.

Spanier and Schultz both explained that they did not believe it was the University's role to conduct any kind of investigation into the identity of the child or the surrounding events.

Freeh Group notes contain Schultz's Grand Jury testimony: "Again, '98 was investigated. There was an allegation. I have no idea what the conclusion of the investigation was, whether there was any merit to the allegation or not. I did have the impression that it concluded without any charges being filed. The incident in 2002, again, I recall that it was also turned over to that same agency for investigation and it's appropriate for them to do that, not for me to determine the name of the boy." (Preliminary Hearing trans. at 216)²⁴⁰

From the notes for Spanier's interview: "Spanier was asked why he did not authorize an investigation. Spanier said that he never thought of trying to put together the facts, as this was a police and Attorney General issue. He said that he felt like he would have been interfering."²⁴¹

SUMMARY AND CONCLUSIONS

A full and fair analysis indicates that Spanier, Schultz, Curley and Paterno did not believe that Sandusky had harmed the child in the shower. Thus, there was no need for urgency or for actions to protect children.

F.4. Cause: Sandusky's retirement

Supporting information/interpretations

Supporting information is not provided even within the Freeh Report. In fact, all relevant information in the Report unambiguously contradicts the conclusion.

Contrary information/interpretations

Freeh Report says Sandusky's retirement arrangements were not suspicious. Key Findings from Chapter 3, Sandusky's Retirement from the University, state, "The Special Investigative Counsel found no evidence to indicate that Sandusky's retirement was related to the police investigation of him in 1998."²⁴²

Another Key Finding from Chapter 3 implies that the awarding of emeritus status to Sandusky was somehow suspicious.²⁴³ This does not reflect the conclusion from Chapter 3: "While the decision to grant Sandusky emeritus rank was unusual, the Special Investigative Counsel found no evidence to show that the emeritus rank was related to the 1998 events at the Lasch Building."²⁴⁴

Sandusky's retirement: Interview data (see Appendix 2.4: Interview Analysis and Summary: Was Sandusky given a special retirement deal because PSU officials knew he was a pedophile and wanted to get rid of him?). Of the 42 interviewees who provided information about Sandusky's retirement, only 8 provided comments supporting the idea that the timing of Sandusky's retirement may have been suspicious; of those 8, only 3 were in a position to have direct knowledge of this matter, and all said merely that the arrangements were unusual but had no concrete information to support that idea. Interviewees who were personally involved in the retirement arrangements stated that many employees had chosen to take early retirement due to a one-time window providing full benefits and stressed that no pressure was applied to do anything different for Sandusky. Interviewees noted that emeritus status was awarded to individuals who had made outstanding contributions, across all facets of the University. Interview data revealed no indication that Sandusky's retirement arrangements were influenced by a motivation to remove him from the coaching staff due to knowledge that he was mistreating children.

Documentary information on Sandusky's retirement. Examination of the Source Materials produced support for there being no relationship between Sandusky's retirement arrangements and the 1998 incident:

- Sandusky's retirement was discussed via email among Spanier, Schultz, and Curley, including Sandusky's decision not to accept the offer of becoming assistant Athletic director and his consideration of retirement the following year; dates of these emails are BEFORE the 1998 incident occurred, demonstrating that Sandusky's retirement was not a consequence of the 1998 incident.²⁴⁵
- A member of the Freeh Group reported to other investigators via email on his review of handwritten notes turned over by the Paterno family. These materials included some handwritten notes by Curley. The Freeh investigator summarized his findings: "No indication there was any problem with Sandusky's conduct other than too much time to 2nd Mile."²⁴⁶

SUMMARY AND CONCLUSIONS

The documentary and interview information are consistent in failing to support the idea that Penn State officials hastened Sandusky's retirement, or improperly allowed him to be honored with emeritus status, on the basis of understanding him to be a child abuser due to their knowledge of the 1998 investigation.

Freeh's decision to include this inflammatory accusation despite acknowledging -- in the Report itself -- the lack of supporting information is a strong indication of bias.

F.5. Cause: "*A cultural reverence for the football program*"

Supporting information/interpretations

Support in the Freeh Report for this conclusion comes from four sources:

- Reports from interviews with Lasch Building janitors that, after one janitor witnessed an incident where Sandusky was engaged in inappropriate behavior with a child in the showers, the janitor failed to report due to fear of losing his job. "The University would have closed ranks to protect the football program at all costs."²⁴⁷
- Suggestions that Paterno wielded influence out of proportion with his role as head football coach: "A senior Penn State official referred to Curley [Paterno's administrative superior] as 'Paterno's errand boy,'"²⁴⁸ "Witnesses consistently told the Special

Investigative Counsel that Paterno was in control of the football facilities and knew 'everything that was going on.'"²⁴⁹

- A total of two incidents where administrators reduced disciplinary sanctions imposed on football players by the Student Affairs Office, indicating (according to the Freeh Report) "an example of Paterno's excessive influence at the University."²⁵⁰
- An observation that the football program did not participate in Clery Act compliance.²⁵¹

Contrary information/interpretations

Freeh Group knew there was no "culture problem" with Penn State football. In an email to his team, Freeh stated: "There is a stronger case to be made for 'protecting the university' than JP [Joe Paterno] or the 'FB [football] program' – which is never really articulated in any evidence I have seen."²⁵²

Examination of a report draft revealed important insights into the thinking of the Freeh Group.²⁵³

- A detailed section that did not appear in the final report described the football program's "Commitment to Compliance," reviewing Paterno's Grand Experiment and adherence to the standard of "success with honor." Statements from interviewees described consistently high standards that were expected and enforced. This section concludes, "There was a strong and consistent message from Coach Joe Paterno and other head coaches that compliance was as important as winning on the field of play."
- A section with the heading "The Culture of PSU and the Dominating Influence of its Athletic Program" contained the following passage: "There was a culture ... in PS Athletic Department that led staff members to fail to identify or act on observed inappropriate conduct by Sandusky. When made aware of a violent crime, the AD leadership focused on damage control and more shocking, Sandusky's welfare vice (sic) the proper reporting of the crime and victim support. There existed an environment within the athletic department that led an employee to determine that the perceived threat of losing his job outweighed the necessity of reporting the violent crime of a child." Handwritten notes in the margin adjacent to this section: "NO EVIDENCE AT ALL!"
- A section with the heading "Isolation of the Football Program" contained the following passage: "This isolation led to a department that was not cooperative with those who

meddled into the football program business ... this seclusion of the football program created an 'us against them' mentality where anyone from outside the football program could not be trusted. This attitude that the football coaches could police their own and handle matters externally, and the University's acquiescence to this independence, decreased the external oversight from the athletic department and the university administration." Handwritten marks on the draft bracketed this passage and underlined as above, with a margin note of "BASIS??" apparently noting the lack of supporting information for these assertions.

This draft report shows that (1) the Freeh Group recognized the football program's historical commitment to high standards and compliance, but decided to omit this information from the final report; (2) the Freeh Group could not find facts to support the "flawed football culture" conclusion, and removed the speculative sections from the final report while retaining the unsupported claim that "a culture of reverence for the football program"²⁵⁴ was responsible for "directly contribut[ing] to the failure of Penn State's most powerful leaders to adequately report and respond to the actions of a serial sexual predator."²⁵⁵

Janitors' attitudes about reporting: Interview data (see Appendix 2.5: Interview Analysis and Summary: Were janitors fearful to report wrongdoing?). Freeh investigators interviewed 8 janitors, three of whom were present the evening that another janitor (who was not interviewed, but is referred to as "Janitor A" in the Freeh Report) reportedly observed Sandusky performing oral sex on a boy in the Lasch Building showers. The janitors present that evening confirmed that Janitor A described inappropriate conduct between Sandusky and a child and was upset, and each of the three said they strongly encouraged Janitor A to report the incident. Of those three, only one ("Janitor B" in the Freeh Report) expressed concern about possibly losing his job as a result of reporting to their supervisor. The second janitor ("Janitor C") present that evening appeared to have been skeptical about the validity of Janitor A's report, considering the possibility that Janitor A may have had a drinking problem or was not credible for other reasons; this information was not included in the Freeh Report. No information from the interview of the third janitor present that evening was included in the Freeh Report; this janitor firmly asserted that reporting such an incident would not endanger anyone's job. Four other members of the janitorial staff likewise stated that fear of losing their jobs would not have been a concern if they

had been faced with this situation. A former Trustee and previous Board Chair explained that the failure of Janitor A to report the Sandusky incident was a result of a flawed culture within athletics but provided no specific or concrete information.

Interview data did not support the idea that janitors in athletics were fearful to report wrongdoing out of concern for losing their jobs.

Paterno did not fire McQueary for reporting Sandusky's inappropriate conduct. If it were indeed true that the culture surrounding the football program was such that "the University would have closed ranks to protect the football program at all costs" – a quote from Janitor B included in the Freeh Report²⁵⁶ – why was McQueary not fired by Paterno after he reported seeing Sandusky in the shower with a child? No information indicated that McQueary was pressured, or even requested, to conceal his report about Sandusky.

Coach Paterno's influence: Interview data (see Appendix 2.6: Interview Analysis and Summary: Was Coach Joe Paterno powerful beyond his role as head football coach?). Of the 64 interviewees who provided information on this topic, 20 suggested that Coach Paterno was powerful beyond his role as head football coach. Nearly half of these were current or former Trustees; their comments were exaggerated, e.g., Paterno was "the most powerful man in Pennsylvania," "a god," "the 'king' in the monarchical culture of intercollegiate athletics." No specific concrete examples of such power were provided, in keeping with the fact that Trustees would not have had direct ongoing contact to make an informed judgment. Few meaningful examples were provided by any of the interviewees who expressed the opinion that Paterno was excessively powerful. In contrast, the numerous individuals (44) who stated that Paterno's power did not extend beyond his role as coach tended to be staff and administrators in the football program and in athletics, and these interviewees described Paterno's ethical behavior and adherence to external regulations, his disciplined use of the chain of command, and his deference to the athletic director and the university president. A senior administrator in athletics said, "people are wrong if they believe that Paterno ran the university." A Trustee and a senior University administrator each independently debunked the rumor that Paterno had thrown Spanier and Curley out of his house when they attempted to discuss his retirement.

Interview data indicated that despite a belief among some individuals that Paterno held power in the University beyond his role as football coach, interviewees in a position to directly observe Paterno stated that he was a disciplined and effective coach with high standards of personal ethics who followed the rules and respected the University's administrative hierarchy.

Special treatment for athletes in disciplinary and academic matters: Interview data (see Appendix 2.7: Interview Analysis and Summary: Do student athletes receive special treatment?). Out of 87 interviewees who spoke about this topic – including Penn State and State College law enforcement personnel, administrators in the Student Affairs Office, faculty having had oversight roles with athletics, athletics employees, and Trustees – 90% provided credible support showing that student athletes at Penn State have not been given special treatment allowing them to escape academic responsibilities or disciplinary consequences for any misbehavior. Student Affairs Office administrators said, “the integrity of the Student Affairs Office is beyond reproach” and at Penn State, “people have been doing the right things for a long time” by never giving athletes special treatment. A former dean said that during his 50 year career at Penn State he was never aware of any faculty being asked to give special treatment to athletes. A faculty member described an athletic culture where student athletes and their coaches ascribed to integrity in achieving academic success. A PSU police officer with 25 years in his position said there had never been a pattern of preferential treatment of student athletes and was not aware of any interference by administrators into police matters involving athletes. A State College police officer said during his 20 years, athletes and coaches had been consistently helpful with investigations.

Interview data provide compelling support that Penn State student athletes are not given preferential treatment in disciplinary matters or academics.

Football program did not intervene when players broke the law, according to State College law enforcement official. Carmine W. Prestia Jr., who served 25 years with the State College Police Department, and 15 years as a magisterial district judge, wrote an op ed describing his experience with football players: “Never once in my time as a police officer or judge has anyone in the football program asked me to cover up anything, withdraw a charge, or do something else unethical. I certainly saw a number of players get in trouble. Offenses ranged from simple

summary offenses to felonies of the first degree. ... Never once a request to do anything to cover up something. In all those years, if Joe was trying to protect his players, covering up for them, why didn't I hear or see anything? Where were these conspiracies? I know that legal problems pained and embarrassed all of the coaching staff, but the players had to deal with the consequences on their own."²⁵⁷

This article appeared during the time frame of the Freeh investigation, when the investigators were energetically reviewing relevant news reports.

Clery Act compliance by football program. From the Freeh Report: "*Like the rest of the University*, the football program staff had not been trained in their Clery Act responsibilities"²⁵⁸ (emphasis added). This statement alone demonstrates that the football program did not stand apart from the rest of the University in this regard. Because, as noted in the Freeh Report,²⁵⁹ the University's Clery Act policy was still in draft form and had not been implemented as of November 2011, the football program could not have "opted out" of training in Clery Act compliance as claimed in the Freeh Report.²⁶⁰

Penn State's history of integrity with athletics. Since the earliest days of collegiate athletics, Penn State has been a leader in academic standards for its student-athletes as well as ethical behavior on and off the field of play (see Appendix 3.3: Penn State Athletics and the Culture of Academic Excellence: A Historical Review). There is no indication that Freeh's investigators researched Penn State's history of athletic integrity, which would have been an important context as they attempted to understand the University's current culture surrounding athletics.

The Freeh Group also appears to have disregarded statements by interviewees who were knowledgeable about Penn State's compliance with internal and external requirements for athletic integrity, including Spanier's statement that only Penn State and Stanford had never had a major NCAA violation.²⁶¹

SUMMARY AND CONCLUSIONS

The Freeh Report misrepresented the information contained in the Source Documents and cherry-picked information to support the conclusion that Penn State has a “culture of reverence for the football program.” Instead, the Source Documents support the following:

- Most of the Lasch Building janitors did not believe they would lose their jobs for reporting a problematic incident involving Sandusky.
- Individuals in a position to have direct knowledge consistently described Paterno as a highly effective coach with high standards of personal ethics who followed the rules and respected the University’s administrative hierarchy. The minority of interviewees who held the belief that Paterno was ultra-powerful based this on reputational generalizations and provided no concrete details.
- Interviews with faculty, administrators in Student Affairs, and campus and town law enforcement officials overwhelmingly indicate no special treatment of student athletes regarding disciplinary matters or academics.
- The Freeh Report itself indicates that the football program did not differ from the rest of the University in regard to Clery Compliance.

F.6. Summary and final conclusions: Are the major conclusions in the Freeh Report supported by the results of their investigation?

The Freeh Report claims that “it is more reasonable to conclude” that Spanier, Schultz, Curley, and Paterno concealed Sandusky’s abuse of children. The “more reasonable to conclude” standard requires that the majority of the information supports the conclusion. By that standard, the major conclusions in the Freeh Report fail.

Our full, fair, and thorough review of all available information obtained through the Freeh Group’s investigation indicates that it is more reasonable to conclude that Spanier, Schultz, Curley, and Paterno believed that Sandusky was engaged in horseplay rather than in any serious misconduct. They thoughtfully considered the appropriate response and decided to help Sandusky understand that it was inappropriate for him to shower with children. They instructed Sandusky, who no longer worked for Penn State, not to bring children to Penn State facilities.

They also informed the director of Sandusky's charity -- where Sandusky worked with children -- that they had given him this instruction.

The Freeh Report relies on a damning interpretation of vague emails outlining a plan of action for responding to Sandusky being observed in Penn State showers with a child. The great majority of available information supports the competing conclusion that "these men were good people trying to do their best to make the right decisions:"

- A Federal high security clearance investigation of Spanier, conducted concurrently with the Freeh investigation, concluded that Spanier did not conceal information indicating wrongdoing by Sandusky. The Federal investigation was superior to the Freeh investigation because Curley and Schultz were interviewed, and Spanier was interviewed under oath and passed a polygraph.
- Interview data indicated that McQueary was vague when reporting the shower incident; that no one reported having heard from Spanier, Schultz, Curley or Paterno about anything more serious than horseplay in the 2001 incident; that the Penn State community had not heard credible rumors or that anyone had directly observed concerning behavior by Sandusky. No one suspected Sandusky.
- Interview data strongly supported the integrity and good character of Spanier, Schultz, Curley and Paterno, which is inconsistent with the allegations that they concealed Sandusky's misconduct.
- No reports were made that Spanier, Schultz, Curley or Paterno ever asked anyone to conceal information about Sandusky.
- Paterno met his reporting obligations in 2001. His actions were consistent with NCAA policy implemented in 2014, where a report is made to a superior and there is to be NO followup by the person reporting.

To support the conclusions, the Freeh Report relied upon selective misrepresentation and cherry-picking of their own investigative data.

- The Freeh Report suggests that Paterno was an ultra-powerful figure who could dictate to his superiors and that Curley was subservient to him -- ideas that are completely opposite of the great majority of findings in the investigative data.

- The Freeh Report states that Schultz concealed documents, but his Grand Jury testimony made the judge, and Penn State general counsel Cynthia Baldwin, aware that those documents could be in his office, and Schultz never destroyed them even though he had the opportunity.
- The Freeh Report notes multiple failures to inform relevant parties about Sandusky as indication of concealment – a point that is moot if, in fact, the officials believed no misconduct occurred.
- The Freeh Report contends that the 1998 incident – where Sandusky was thoroughly investigated by law enforcement and child services, and no charges were made – should have resulted in Penn State officials concluding Sandusky was a pedophile. There is no consideration of the likely possibility that this incident might suggest that Sandusky had been cleared of wrongdoing.

With suspect support for the major conclusions, The Freeh Report attempted to strengthen its case by providing motivations and causes, each supported by cherry-picked data:

- The Freeh Report states that Spanier, Schultz, Curley, and Paterno were motivated to conceal Sandusky's abuse of children out of a desire to avoid bad publicity, an assertion that is only weakly supported by selective interpretation of statements by Spanier and Curley.
- The Freeh Report contradicts itself by making inflammatory statements about Sandusky's retirement when the Report itself states that there was nothing suspicious about Sandusky's retirement arrangements – an indisputable indication of bias.
- The Freeh Report describes "a striking lack of empathy" for the child in the shower in 2001 – inflammatory language and a moot point if, in fact, Penn State officials believed the child was unharmed by horseplay.
- The Freeh Report claims a major causal factor was a "cultural reverence for football," something that is not remotely supported by the investigative data, and that Freeh and his investigators privately acknowledged was untrue.

Our full, fair, and thorough review of the source documents indicates that Sandusky may have been a “pillar of the community” pedophile (see Appendix 3.4: “Pillar of the Community” Pedophiles):

- Sandusky was a prominent figure in the community who was admired for his devotion to children, as a foster and adoptive parent, and as the founder of a charity for children at risk.
- Sandusky’s attentions to children were understood by members of the community as examples of his selfless devotion to the welfare of children.
- Sandusky was described as a “goofball” and a big kid who was socially awkward, had “boundary issues,” and preferred the company of children.
- The Freeh Group was trained by a leading FBI profiler of sexual abusers, and therefore had all necessary information to come to this conclusion as abundantly supported by their own investigative data.

The Freeh Report assigns nefarious reasons for the failures of Penn State officials and the community to identify Sandusky as a pedophile. Our full, fair, and thorough review of investigative material indicates that a more accurate interpretation is that Sandusky, like all pillar of the community offenders, fooled the entire community.

- Research on social judgment – which the Freeh Group should have considered – indicates that humans cling to their initial impressions of others and interpret discrepant information in ways to be consistent with those initial impressions (see Appendix 3.5: Psychological Science on Social Judgment). Interview data show that many individuals discounted or disregarded any doubts about Sandusky, and that even after he was charged with abuse, they had difficulty believing he was a pedophile.
- Sandusky was repeatedly evaluated by child welfare professionals as a foster and adoptive parent. These professionals failed to identify any concerning behavior.
- An in-depth evaluation of the 1998 incident by a trained mental health professional concluded that Sandusky had not engaged in grooming or other behavior consistent with abuse.

- At the time of the 2001 incident, Sandusky was retired from Penn State and was working for his charity, The Second Mile. The CEO of the charity, Jack Raykovitz, was a licensed psychologist and a mandated reporter. There is no indication that Raykovitz had observed any misconduct between Sandusky and the charity's child clients.
- The Freeh investigators failed to consider this question: If professionals were unable to determine that Sandusky was a pedophile, how could University administrators be expected to do better?

By advancing a sensationalistic narrative, the Freeh Report neglected to address the true problem: that Sandusky's public profile as an individual with a national reputation for service to children made it difficult for members of the Penn State community to recognize that Sandusky was a pedophile. In so doing, the Freeh Report unfairly and untruthfully scapegoated individuals with long records of distinguished service to the University, and unjustifiably attacked the culture of an institution with a proud history of high standards for achievement and ethics.

G. Why Would This Report be so Deficient? Sources of Bias

G.1. Investigator bias from the outset of the investigation

An article published by the American Bar Association cautions against bias in assuming, in investigations of sexual misconduct, that college administrators have acted to protect the institution. An excerpt:

Perhaps the biggest challenge for colleges and universities is overcoming the perception of bias, the idea that if administrators make a mistake, they do so to protect the institution. If the institutional failure results in harm to a complainant or respondent, discerning the nature of the failure is often a distinction without a difference. (A word of caution, here, however: in taking steps to improve campus practices and remedy past harms, we should take the time to understand most administrators' good intentions and common reasons for failing to respond properly, including insufficient training, incompetence of one or more individuals in the system, human error, and lack of

coordination. In the current climate, few recognize that most college and university administrators genuinely want to work collaboratively to educate and transform current practices.)²⁶²

Kathleen McChesney was hired by Freeh as co-leader of the investigative team because of her expertise in child sexual abuse in the Catholic Church; she was formerly the Executive Director of the Office of Child and Youth Protection of the U.S. Catholic Bishops Conference, and co-editor of "Sexual Abuse in the Catholic Church: A Decade of Crisis, 2002-2012." She offered her services to Freeh in an email, saying, "Louie: Just wanted to reach out in the event that any of my experiences at the Catholic Bishops Conference would be of use to your team. Good luck with the investigation. Too many sad parallels between this case and the Church."²⁶³ A member of the Freeh Group reported on her meeting with McChesney, saying, "I think she will be very helpful. She does not have much Clery Act experience but she does have experience changing attitudes in the church which has an insularity similar to what we are seeing."²⁶⁴ It is important to note that before the investigation had begun, Freeh investigators were making assumptions about an insular culture at Penn State and making connections with the Catholic Church coverups of pedophile priests.

Notes in the Freeh Group diary reflect an early interest in identifying problems with Penn State's culture; in December of 2012, two separate entries outline plans to "focus cultural issues – PSU engaged at highest levels w/ sports" and "Focus on Practice, Procedure, Culture."²⁶⁵

Comments were made in the diary after reviewing interview material from a member of the football program staff who said that Sandusky was often observed showering with children and people casually handed him towels. Notes in the diary: "No one tried to stop it; sick culture and weird culture."²⁶⁶ Investigator bias interfered with a possible interpretation that numerous people had seen Sandusky in showers with children and never observed any problematic behavior that would lead to concern. In an early report draft, there was a passage about failure to respond to Sandusky showering with kids; a handwritten margin note asks, "How is this abuse?"²⁶⁷

A diary entry records a briefing of the Penn State Board's Task Force, indicating an apologetic attitude for not having found evidence of a coverup: "No allegations of CSA [child sexual

abuse]. No smoking gun to indicate coverup. Enough into details & haven't found that, but still could find something."²⁶⁸ Surely this statement would not be made by investigators committed to neutrality in conducting their investigation.

During the writing of the Freeh Report, the investigators discussed how to frame the findings in their Report. McChesney emailed to another investigator a link to an op ed titled, "A Priest's View of Penn State," which begins with the statement: "The terrible parallels between the horrific sexual abuse cases at Penn State and those in the Catholic Church are by now well known," and continues to describe similarities between the two institutions. McChesney commented, "FYI – as discussed in Wilmington," referring to a recent meeting of the Freeh Group, and the other investigator replied, "Really interesting. I saw many things we just said around the table reflected in this article."²⁶⁹

In summary, our document review revealed numerous indications that the Freeh Group lacked neutrality from the very beginning of their investigation, as they expected to find indications of cultural deficiencies at Penn State that had led to covering up for a pedophile, consistent with the situation in the Catholic Church.

G.2. Pennsylvania Office of Attorney General

The OAG vigorously pursued the prosecution of Sandusky. Grand Jury presentments are understood to be one-sided representations of the prosecution's case and thus are inherently biased. The Sandusky presentment played a significant role in shaping the narrative around Penn State officials' response to allegations against Sandusky. The Presentment unfairly mentions Paterno despite not charging him with a crime, making him appear to be guilty, and making the scenario focused more on Penn State than on The Second Mile or on child protective services; inaccurate portrayal of the timeline of Sandusky's then alleged victimization of various children, creating the mistaken impression that multiple children were abused after the 2001 shower incident; claiming that McQueary stated he witnessed anal rape, despite his attempts to correct that statement; misleading statements about witness credibility (see Appendix 3.6: Factual Errors in Sandusky Grand Jury Presentment). Freeh investigators unquestioningly accepted the statements in the presentment despite having access to transcripts of witness testimony, some of which differed from the presentment in important respects.

The efforts of Fina and other OAG prosecutors to steer the Freeh investigation are described in our report section “E.2. Independence of the investigation: *COMPROMISED*,” where we detail repeated contacts between OAG prosecutors and Freeh investigators, including numerous incidents where information may have been improperly shared by prosecutors. The pattern of these communications strongly suggests an effort by prosecutors to influence the direction of the Freeh investigation to mirror the prosecution’s case, and a willingness by Freeh investigators to work closely with the OAG in a way that arguably compromised the independence of their investigation.

It is worth noting that the PA Office of Disciplinary Counsel has lodged a petition for discipline against Fina for improper questioning of Baldwin; Baldwin’s testimony was used to support charges of conspiracy to commit perjury and conspiracy to commit obstruction against Spanier, Schultz, and Curley, but the perjury charges were later dropped when a judge complained that Fina had misled him and had improperly questioned Baldwin.²⁷⁰

The OAG’s efforts to make their case in Sandusky’s prosecution appear to have profoundly influenced Freeh’s investigation and Report.

G.3. NCAA conflict of interest: “Image-conscious”

Documents released from the discovery process in the Corman lawsuit against the NCAA revealed that NCAA officials believed that the organization had no jurisdiction over the Penn State-Sandusky matter, but that they were motivated to sanction Penn State in order to enhance the NCAA’s reputation (see Appendix 3.7: NCAA, Freeh worked together).

Excerpts from an ESPN article²⁷¹ show the motivations of NCAA leaders:

Last week, emails made public in the Corman lawsuit showed that NCAA officials had questioned their own authority to sanction Penn State and that enforcement officials were hopeful that the university would be “so embarrassed they will do anything” when Erickson signed a consent decree accepting historic sanctions in July 2012.

“We could try to assert jurisdiction on this issue and may be successful but it’d be a stretch,” wrote Roe Lach, the former NCAA Vice President of Enforcement, in an email on July 14,

just nine days before Emmert announced the sanctions against Penn State. "I characterized our approach to PSU as a bluff when talking to Mark [Emmert] yesterday afternoon after the call. He basically agreed b/c if we make this an enforcement issue, we may win the immediate battle but lose the war when the COI [NCAA Committee on Infractions] has to rule."

The emails released last week also show that the NCAA did not believe it had the jurisdiction to act against Penn State. "I know we are banking on the fact the school is so embarrassed they will do anything, but I am not sure about that, and no confidence conference or other members will agree to that," NCAA vice president of academic and membership affairs Kevin Lennon wrote on July 14, 2012. "This will force the jurisdictional issue that we really don't have a great answer to that one." ...

In a July 4, 2012, story in the Centre Daily Times, Gene Marsh, who was hired by Penn State to deal with the sanctions issue, was quoted as saying that the NCAA punishing Penn State after the conviction of Sandusky and millions in civil settlements would be "like shooting road kill."

Shep Cooper, an administrator for the NCAA's Committee on Infractions, wrote an email about those comments to Marsh. "For what it's worth, I agree," Cooper wrote. "However, the new NCAA leadership is extremely image-conscious and if they conclude that pursuing allegations against PSU would enhance the association's standing with the public, then an infractions case would follow. I know that Mark Emmert has made statements to the press indicating that he thinks it could fall into some sort of LOIC [loss of institutional control] case." Cooper ended the email: "'Shooting road kill' is an apt analogy."

These documents establish that (1) the NCAA leadership did not think they had jurisdiction to sanction Penn State; (2) the NCAA leadership decided to proceed anyway, hoping that Penn State would acquiesce; (3) the NCAA leadership was motivated to use the Penn State situation to enhance the organization's reputation; (4) Mark Emmert made statements to the press that the Penn State situation involved loss of institutional control – the only avenue available for the NCAA to have jurisdiction in what was otherwise a criminal matter not subject to NCAA oversight.

G.4. Freeh's conflict of interest: Wanting to be NCAA's "go to investigators"

Freeh's Group began speculating in January of 2010 about ways to get business from the NCAA.²⁷² An email sent by Freeh to his associates said, "You may have seen comments by the oncoming NCAA President that he intends to increase enforcement actions by adding new investigative resources... It is an ideal time to launch a targeted BD [Business Development Plan] in this space."²⁷³ Freeh and his group worked energetically in 2010 to create a business model offering their services for "athletic compliance and investigations," noting that their team included "NCAA compliance subject matter experts."²⁷⁴ Documents outlining their services offer a view into their early perspectives on their investigative approach, including a focus on assessing "the student-athlete culture"²⁷⁵ and a comment about "typical corruption issues which fall into our sweet-spot."²⁷⁶ Throughout much of 2010, Freeh and his group conducted an investigation at the University of Southern California, which was sanctioned by the NCAA for lack of institutional control;²⁷⁷ Freeh suggested to his team that they use the USC investigation as a "test run" in order to develop a "more mature template" to be used in future jobs.²⁷⁸

A year later -- just months before Freeh was hired by Penn State -- a member of the group emailed others, quoting a newspaper article about University of Miami's NCAA violations, which suggested that the NCAA might do well to use some of the "millions" it reaps from football and basketball championships "to fund an independent investigative arm." He adds, "I showed it to Louie and he mentioned that we would be perfect" for that.²⁷⁹ Freeh then suggested working immediately to "develop a sales/marketing plan."²⁸⁰ A few days later, one investigator emailed others a news article suggesting that the NCAA did not have enough investigators, and said, "I forward it to you with the hope that it can be of assistance to our marketing efforts."²⁸¹ Another email followed two weeks later, informing the group of an upcoming conversation scheduled with Mark Emmert, president of the NCAA, to inquire about his interest in using the Freeh Group's investigative services.²⁸²

Pursuit of the NCAA did not halt during Freeh's investigation at Penn State. In February of 2012, one of Freeh's associates who was working on the Penn State investigation contacted Julie Roe Lach, Vice President for Enforcement at NCAA, to offer the Freeh Group's services as

independent investigators, adding that “the PSU case is going well.”²⁸³ Lach responded that they were beginning to consider the use of outside firms for investigation, and said she would add the Freeh Group to their list.²⁸⁴ Lach subsequently sent an email to an NCAA colleague with the instructions, “Please add the Freeh Group to our contractor list.”²⁸⁵

Shortly after the Freeh Report was released, and two days before the Consent Decree was signed, Donald Remy, NCAA General Counsel, contacted the Freeh Group to brief them on the sanctions to be imposed on Penn State, and the group discussed their desire to become the NCAA’s “go to investigators” in a series of emails. One of the group said, “This has opened up an opportunity to have the dialogue with Emmert about possibly being the go to external investigator for the NCAA. It appears we have Emmert’s attention now.”²⁸⁶ Freeh responded, “Let’s try to meet with him and make a deal – a very good cost contract to be the NCAA’s ‘go to investigators’ – we can even craft a big discounted rate given the unique importance of such a client. Most likely he will agree to a meeting – if he does not ask for one first.”²⁸⁷

It is a clear conflict of interest that the Freeh Group was soliciting work from the NCAA while simultaneously conducting an investigation where results were to be shared with the NCAA.

G.5. Reliance on sources with poor credibility

Cynthia Baldwin. The Freeh Report made extensive use of Baldwin as a source; 20% of citations of interviews were attributed to her. Freeh investigators relied heavily on Baldwin even though they were aware that she had mishandled her role in attending Grand Jury proceedings on behalf of the University and had interfered with Spanier’s attempts to inform the Board about the Grand Jury (see our report section “F.1. Spanier, Schultz, Paterno and Curley repeatedly concealed critical facts relating to Sandusky’s child abuse: ‘*From the University’s Board of Trustees:*’ Contrary information/interpretations”). Further, the Freeh Group was aware that OAG prosecutor Fina believed Baldwin had “interfered with the investigation”²⁸⁸ and that Fina was pressuring her with the threat of arrest (see our report section “E.2. Independence of the Investigation: *COMPROMISED*”). The Freeh Group themselves encountered early difficulties in gaining Baldwin’s assistance in producing materials for their investigation.²⁸⁹ In the face of all these indications that reduced Baldwin’s credibility, why did the Freeh Group nevertheless rely substantially on her?

It is worth noting that Baldwin's missteps were sufficiently serious that she has been recently accused by the state Office of Disciplinary Counsel of violating several of the Rules of Professional Conduct for lawyers.²⁹⁰

Vicky Triponey. Triponey, who served as Penn State's Vice President of Student Affairs from 2003 to 2007, found her 15 minutes of fame by granting an interview where she was hailed as "The Woman Who Stood up to Joe Paterno."²⁹¹ Resurfacing 5 years after leaving Penn State under duress, and reportedly earning \$10,000 for her interview,²⁹² Triponey found eager acceptance from the media when she detailed her criticisms of Paterno in the wake of the Sandusky scandal.

Triponey's time at Penn State was characterized by intense conflict with students, who reviled her for bulldozing their student government and replacing it with a pallid governance structure having little in the way of meaningful autonomy (see Appendix 3.8: Vicky Triponey: Biased Source). A student activist website called Safeguard Old State was created, where the "Triponey Timeline of Terror" recounted her assault on free expression by imposing censorship on the student radio station, along with other actions to diminish student influence.²⁹³

Interview data from the Freeh investigation indicate strong consensus from administrators and Trustees that Triponey was unprofessional, combative, and had an axe to grind with regard to athletics, especially football (see Appendix 2.8: Interview Analysis and Summary: Vicky Triponey). One interviewee stated that Triponey "was the only person he could recall that made the University better by leaving."²⁹⁴

Triponey contacted the Freeh Group early in the investigation to offer her perspectives. The investigators regarded her as "key" to interview.²⁹⁵ However, after the unambiguous message from interviewees that Triponey was not credible, investigators acknowledged that they did "not want to reference Triponey in any way (given her issues)" and began to search for other sources to support Triponey's claims that Paterno overrode Spanier's authority by insisting on special treatment for football players facing disciplinary actions – as the investigators put it, "to strengthen our discussion about culture/the 'why.'"²⁹⁶ One report draft showed that material previously attributed to Triponey was subsequently cited as coming from a current Trustee who was a former football player and who had pushed Spanier to force Paterno to retire.^{297 298}

The Freeh Group's disdain for Triponey was most evident after she sent a gushing email effusively congratulating the team the day the Freeh Report was released; one of the investigators responded to the team, "Suckup. But u already knew that."²⁹⁹

The Freeh investigators perpetuated Triponey's biased story about Paterno's excessive influence in protecting football players despite full recognition that their only source for this information was not credible. In their need to "beef up the culture section"³⁰⁰ they knowingly disregarded the majority of their investigative data showing that Paterno did not wield improper influence and that football players did not receive special treatment in disciplinary matters (see our report section "F.5. Cause: '*A cultural reverence for the football program*'").

Penn State leaders. The Freeh Report relied extensively on information from Trustees and senior administrators, who collectively accounted for 40% of the citations referencing interview data (30% trustees, 10% administrators). Those in the highest leadership positions in the university would have had the least direct contact with many matters under investigation. This is particularly true for Trustees, who have no role in institutional operations and meet to conduct business only a few times a year. Given the indications that Penn State leaders appeared to have interfered with the independence of the investigation (see our report section "E.2. Independence of the Investigation: *COMPROMISED*"), the heavy use of this group as sources in the Freeh Report potentially introduces bias.

G.6. Freeh Group's media sensitivity

Focus on press notices about Freeh. The Freeh Group closely followed press reports on Freeh's work as an independent investigator. In one example, the group shared an article from *The Chronicle of Higher Education* profiling Freeh's work at the University of Southern California: "What's the best way to clean up a mess in college sports? Why, hire the former head of the FBI, of course."³⁰¹ The investigator who circulated the article noted "free publicity!"³⁰² Freeh replied, "Thanks — a lot of media play for us it seems. I take it we're collecting this."³⁰³ In another exchange during the Penn State investigation, Freeh expresses concern about getting "scooped" if their group was not first to find relevant information.³⁰⁴ This interest in getting good press may have influenced the Freeh Group in their decisions about investigative strategy or interpretation of the evidence.

Freeh Group's uncritical use of media. From the very start of the investigation, investigators in the Freeh Group exchanged and discussed media reports about Sandusky. When the group was working on writing their Report, the focus on media pieces intensified. Passages from articles were highlighted and decisions were frequently made to include reporters' ideas in the Freeh Report. Often, the team appeared to be looking for direction, and at other times, confirmation of their own ideas. The Freeh Group appears to have been willingly led by the ongoing sensationalistic media narrative.

One prominent story line in media pieces involved the notion that Paterno was more powerful than the University President, and used his influence to prevent football players from facing student judicial processes. The Freeh Group circulated several articles on this subject and were quite clearly motivated to direct their conclusions to be consistent. One article quoted a sports law expert who said none of the events surrounding Sandusky fell under NCAA jurisdiction, but stated that the Freeh Report would likely identify instances of preferential treatment to athletes, which could indicate lack of institutional control and thereby constitute an NCAA rules violation. One of the investigators commented, "Note the statement that says there is an expectation that the Freeh Report will find evidence of favorable treatment for student athletes in the school judicial process. Yet another sign that we need to say something about the Meridien incident (but not Triponey)." ³⁰⁵

The Meridien incident involved misconduct of football players in 2007 which produced a conflict between Triponey and Paterno regarding the appropriate disciplinary process to be used. It is notable that the Freeh Group had previously "concluded that this incident was not relevant to our focus," ³⁰⁶ but upon reading a media article showing "expectations" that the Freeh Report would discover evidence showing preferential treatment of athletes, they decided to find a way to include information of questionable relevance provided by a source of questionable credibility. A reference to this incident is found as a footnote in the Freeh Report in a section about the janitors; the footnote begins, "Some individuals interviewed identified the handling of a student disciplinary matter in 2007 as an example of Paterno's excessive influence at the University." ³⁰⁷ Information in this footnote is conveyed without context from interviews, and the incident itself is an anomaly within the broader information gathered that shows overwhelmingly that football players did not get preferential treatment in disciplinary matters and that Paterno did not have

excessive influence at the University (see our report section “F.5. Cause: *‘A cultural reverence for the football program.’*”).

Crafting the report: Need to “add more punch.” Towards the end of the report writing process, Freeh encouraged the group to intensify the language used in conclusions. One investigator reviewed their timeline and said, “That should be enough to take a good pass at making it more forceful, as we have discussed – especially the Executive Summary. I do think that may address [Freeh’s] view about some of it reading like a ‘high school term paper’ – which again I think is a way of stating that we have the facts without enough strong conclusions.”³⁰⁸ In a later communication, another investigator forwarded a draft and said, “I may still have to add more punch.”³⁰⁹ At this stage, report drafts did not include mention of cultural reverence for the football program in the list of failures responsible for Sandusky’s actions. A few days after the “more forceful” and “add more punch” emails, the highly inflammatory – and blatantly untrue -- reference to Sandusky’s retirement was added to the list of “failures” and remained in the report’s final version, despite acknowledgement within the report itself that there was nothing suspicious about Sandusky’s retirement (see our report section “F.4. Cause: Sandusky’s retirement”). The express interest in producing media sound bites is reflected in the direction of the report writing, and especially in the press conference when the Report was released (see our report section “E.3. Report Release”).

G.7. Governor Corbett’s conflict of interest: “Thumb on the scale”

Corbett was enormously influential in the Penn State Board’s handling of the Sandusky matter.

As governor, Corbett was an ex officio voting member of the Penn State Board of Trustees. The governor appoints 6 members of the Board. Three members of the governor’s cabinet are also voting members of the Board. Together, the governor, along with Trustees appointed by the governor, comprised 10 of the 32 voting members of the Board in 2011 and 2012.³¹⁰

Traditionally, the Pennsylvania governor did not attend Penn State Board meetings. It was therefore a surprise to Trustees and to Penn State administrators when Corbett actively involved himself in Board affairs following the release of the Grand Jury presentment.^{311 312}

Corbett was Attorney General when Sandusky investigation began. Corbett was Pennsylvania's Attorney General in 2009, at the time when an investigation was initiated into allegations of sexual abuse by Sandusky. He came under criticism when, as a Trustee, he did not inform the Board about the possible pending charges against Sandusky -- something that legal experts said he could have done and that his fiduciary duty as a Trustee required³¹³ (see our report section "F.1. *'Spanier, Schultz, Paterno and Curley repeatedly concealed critical facts relating to Sandusky's child abuse: From the University's Board of Trustees.'* Contrary information/interpretations.")

Corbett controlled the hiring of Freeh. Corbett took an active role in the selection of the independent investigator. Corbett's general counsel provided a rank-ordered list of 3 candidates to Secretary of Education Ronald Tomalis, an ex officio Trustee who served as the Co-Chair of the PSU Board's Special Investigative Task Force;³¹⁴ Freeh was second on the list. When Freeh was chosen by Frazier and Tomalis, Corbett's approval was solicited and conveyed to Tomalis.³¹⁵ (At that time, Tomalis voiced to Frazier his reservations about Freeh's connection with the legal firm Pepper Hamilton: "Among some other things some members of firm are politically active in PA, but that can be addressed."³¹⁶ Our document review did not produce any indications that this potential conflict of interest was addressed in any way.) Why did the Board defer to the governor's wishes when selecting their independent investigator? Why did the governor insert himself into this decision?

Corbett's role in Board deliberations about Spanier and Paterno: "A political hit job." A New York Times article in November of 2011 described the surprising involvement of the Pennsylvania governor in the Board's decisions to dismiss Spanier and Paterno: "At an emergency meeting on Wednesday night, the Board removed both the university President, Graham B. Spanier, and Joe Paterno, the football coach. ... [Trustees] conceded, without being specific, that the Board had received some unsolicited encouragement about what action to take. ... 'It was indicative of him putting a thumb on the scale,' said a person with direct knowledge of the governor's deliberations."³¹⁷

An ESPN article³¹⁸ reported that Corbett actively lobbied for the removal of Spanier and Paterno, and quoted a friend of Corbett's who asked the governor, "Who told the Board to fire Joe and

fire Spanier?" and received the reply, "I told them to do it," adding, "[Corbett] was proud of it." "Throughout this whole process, I felt he had some ulterior motive," a Trustee says of Corbett. "Most Trustees felt uncomfortable with his role. It was odd for him to be there and participate the way he did. Very odd." The article reviewed "the untold story ... about bare-knuckle Pennsylvania politics, old grudges and perceived slights" that accounted for Corbett's motivations. Reportedly, Corbett held animosity towards Spanier, who prevailed in restoring funding to Penn State after the governor enacted a massive budget cut, and towards Paterno, who declined to endorse Corbett when he ran for governor due to a wish to avoid the conflict of interest that would result from the governor's ex officio seat on the Penn State Board. The day after the decisions were made to remove Spanier and Paterno, Corbett was seen at a restaurant celebrating: "He was just effusive. It was like a victory celebration. I remember thinking at the time that it just seemed a strange thing, a kind of gratuitous political piling on."

John Snedden, the federal investigator responsible for the renewal of Spanier's high security clearance, put it bluntly. "Instead of finding a sex scandal or a cover-up in the cold case he was investigating in Happy Valley, Snedden said he discovered ample evidence of a 'political hit job.' ... When the Penn State scandal hit, 'It was a convenient disaster,' Snedden said. Because it gave the governor a chance 'to fulfill vendettas.'"³¹⁹

Interview notes for Trustees who were present for these meetings are consistent with the news reports. A former Board Chair was "appalled at the behavior of the governor" who "urged the Board to act because 'my reputation is at stake.'"³²⁰ A Trustee who was subsequently elected Board Chair said that during the meeting "Governor Corbett was very vocal ... and [interviewee] had the impression he was leading the meeting. Corbett endorsed the dismissals of Spanier and Paterno."³²¹ Another Trustee who later became Chair of the Board said that Board Chair Garban was "out of his element and intimidated by the governor."³²² Frazier, Chair of the Task Force, said the governor told the Board to "think of the kids" and threatened loss of support in Harrisburg "if you don't do the right thing" and characterized the decisions as "more PR than legal."³²³ Trustees were aware of the governor's feud with Spanier; one longtime Trustee said, "Corbett is no fan of Graham Spanier as a result of last year's budget fight."³²⁴ Another Trustee was told by Secretary of Education Tomalis that Spanier would soon be fired; she had been

aware of the conflict between Corbett and Spanier but was nonetheless surprised at the level of “vindictiveness” from Harrisburg.³²⁵

The Freeh Report misrepresents the consistent and credible comments from Trustees about Corbett’s active role in Board discussions, suggesting that Trustees had “differing recollections” about Corbett’s actions.³²⁶ It is telling that an earlier draft of the report provided a more accurate account of interview data in describing Corbett as taking an active position in advocating for decisive action,³²⁷ indicating that the Freeh Group made a decision to downplay Corbett’s influence on the Board when Spanier and Paterno were removed.

Summary and conclusions. Freeh was hired, in part, due to the influence of Governor Corbett, who helped create a crisis at Penn State by withholding information about Sandusky’s criminal investigation, and who engineered the removal of Spanier and Paterno by threatening loss of state funding to the University. The Board’s actions created a public impression that Spanier and Paterno were guilty, and the Freeh Report reinforced that narrative through selectively misrepresenting information from the investigation.

G.8. Penn State Board Vice Chair John Surma’s conflict of interest: Motivated by revenge?

A series of emails obtained through our search of the source documents revealed that John Surma’s brother, Vic Surma, held a longstanding grudge against Paterno due to Vic’s belief that Paterno mistreated Vic’s son while he was a football player.

In 2007, a Letterman (former Penn State football player) emailed a member of the football staff, describing Vic Surma’s email sent to all former football players with harsh criticisms of Paterno: “He refers to Joe as Rat. It was really ugly. I wrote him a personal note asking him to stop, and he came back with more personal attacks. ... Not sure what his problem is, but he is angry man and looks like he is out to get ‘revenge’ on Joe, the staff, the program.”³²⁸

Following Sandusky’s arrest, Vic emailed a Penn State football coach, saying: “I was always proud to have been a PSU football player. Not anymore. The old man’s 40 year reign of hypocrisy has finally caught up with him... You know as well as I how many young guys he ruined for the purpose of promoting his own self interests ... I spoke to my brother today and he

is sickened by this also & said that the Trustees are meeting very soon. He is not permitted to tell me anything — yet. I got the distinct impression though that the Paterno virus has run its course in Central Pa.”³²⁹ A few days later, Vic wrote to the same coach: “You know him (Paterno) much better than I ever could, and my vitriol toward him is all because of the way he treated my son, nothing more.” He added (referring to his brother John Surma), “Tonight, seeing him sitting in judgement of Joe was the ultimate irony.”³³⁰

Information provided by Task Force Chair Ken Frazier indicates that Surma was a powerful influence in the Board’s decision making in the aftermath of Sandusky’s arrest.³³¹ Frazier said that Surma steered the Board’s discussion to “who are we going to blame?” and said that no time was provided for debate, as Surma was a “non-nuanced thinker” who “forced his opinion on the Board by stating things should be done his way or he was going to leave.” Frazier described Surma as a bully and said that many Trustees were “cowered” by Surma’s forceful approach and went along with him. Frazier said that “Surma and Corbett had a private discussion and Surma then stated that the Board needed to take decisive action or risk losing the Governor’s support in Harrisburg. ... Surma then asked if there were any objections to relieving Spanier and Paterno of their duties” and no one objected.

The Board’s dismissal of Spanier and Paterno supported the idea that Penn State officials were guilty in the Sandusky matter. Rather than insisting on due process, the Board rushed to a decision before they had full information. Having taken this precipitous action, the Board had reason to continue to support the guilty narrative as the investigation was conducted.

G.9. Change in reporting strategy: Deleting information from Freeh Group’s investigation of The Second Mile

Our review of the Source Materials produced a 12-page document outlining a plan for investigating the role of Sandusky’s charity, The Second Mile, in Sandusky’s abuse of children.³³² The plan included a table showing 41 individuals having affiliations with both The Second Mile and Penn State (many of these were current or former PSU Trustees), and describing the close connection between the two organizations. It is unclear to what extent the investigative plan was completed. However, a draft of the Freeh Report included material that was subsequently deleted from the final report.³³³ Excerpts of material that was removed:

- “Since its founding, TSM has been closely intertwined with the University. In 2011, more than ¾ of TSM Board were University alumni.”
- “In addition, ties between several well-respected and influential members of the University’s Board of Trustees and TSM is well documented.”
- “Some TSM Board members were awarded lucrative contracts from the University.” This passage goes on to detail the multi-million dollar construction projects received by specific TSM Directors.

This information indicates possible conflicts of interest that may have affected some Penn State Trustees and their close associates, raising the question of whether a decision was made to remove scrutiny from The Second Mile and focus it exclusively on Penn State.

G.10. Conclusions

- The Freeh Group entered into the investigation with expectations about finding evidence of a coverup, due to a flawed and insular culture, similar to the pedophile scandal in the Catholic Church.
- The Freeh Group was sensitive to their own press due to interests in marketing their services. They shaped their Report to be consistent with media narratives and added inflammatory language when writing conclusions to gain more press coverage.
- OAG prosecutors had an interest in Freeh’s investigation being consistent with the case they were developing against Sandusky. Corbett arranged for prosecutors to share information with Freeh. Freeh did not want to be “scooped” by law enforcement and willingly took direction from prosecutors.
- The NCAA knew it did not have jurisdiction because Sandusky’s prosecution was a criminal matter. Nevertheless, they decided to pursue sanctions against Penn State in order to enhance their organization’s reputation. The only avenue for the NCAA to take action was “loss of institutional control.” Freeh wanted to become the “go to investigator” for the NCAA and therefore had motivation to accommodate their needs.

- Freeh used sources with low credibility and cherrypicked information in order to support certain conclusions in the Report, especially those relating to a flawed football culture, which constituted loss of institutional control for the purposes of NCAA sanctions.
- Penn State Trustees and administrators were overrepresented as sources for the Freeh Report, and had opportunities to influence the shaping of the Report throughout the investigation.
- Governor Corbett and Penn State Board Vice Chair John Surma wielded enormous influence over the Board; each had reasons to perpetuate a narrative where Spanier and Paterno were blamed and both aggressively pursued the removal of Spanier and Paterno. Freeh was supportive of Corbett for helping him to get the job at Penn State and thus had motivation to support the governor's actions by crafting a report finding Spanier and Paterno at fault.
- The conflict of interest represented by the associations of many Trustees with The Second Mile may have motivated Trustees to encourage Freeh to delete their investigation of The Second Mile from the Freeh Report. Freeh was supportive of Ric Struthers, a member of the Board of Directors for The Second Mile, for helping him to get the job at Penn State.

H. Review of Freeh Report Chapter 10: “Recommendations for University governance, administration, and the protection of children in University facilities and programs.”

A full review of these recommendations is beyond the scope of our evaluation, which was intended to focus on the investigative basis supporting the major conclusions. However, we highlight several areas of importance.

Compliance recommendations

The Report contained 119 recommendations, including enhanced compliance measures and training, more centralized HR organizations and functions, expanded risk-management protocols, and board governance reforms. In support of these initiatives, Penn State has added new senior level positions and personnel in areas such as: Chief Ethics and Compliance Officer, Title IX Coordinator, University Ethics Officer, Athletics Integrity Officer, Clery Compliance Officer, Associate Athletics Director for Compliance. New policies and councils include: New Statement and Codes of Ethical Conduct, New Statements of PSU Core Values, Ethics and Compliance Council, Re-Structured Strategic Communication Council, Sexual Assault Task Force, and various new mandatory training programs in a number of related areas.

Penn State and its 2012 Board should be commended for rapidly implementing many of the recommendations. The University has integrated what many experts regard as best-in-class compliance measures at every level of the University. The overall cost in human resources and other capital has been substantial, and there will be ongoing costs related to upkeep and monitoring of the programs now in place. Now, at six years post-implementation for these measures, it is time to evaluate their effectiveness and efficiency to be certain that the desired goals are being met in a cost-effective manner. In addition, unintended consequences should be considered – are the new policies detrimental in any way, for example, by overburdening administrators, faculty, and staff with red tape and paperwork that interfere with their execution of the University’s mission?

Finally, given that some recommendations in the Freeh Report were intended to address alleged problems with “Penn State culture”³³⁴ – and since our review emphatically demonstrates that

there was no support for the Freeh Report's conclusions about culture problems – relevant recommendations should be subjected to careful review to determine whether cost savings can be realized by removing any unnecessary policies.

Board governance recommendations

Our review demonstrated that current and former trustees were interviewed about board governance, and that virtually all of them complained that the board was too large to effectively conduct the University's business. Many described the negative impact of the large board, including: a "power bloc" of trustees who determined the direction of the board, with trustees outside this inner circle feeling excluded;^{335 336 337 338 339} disengagement of many trustees as a function of the real decision-making being done by the small group of insiders;^{340 341 342 343 344 345} lack of transparency;^{346 347 348 349 350 351 352 353 354} leaks.^{355 356 357 358 359}

These concerns have been validated by reports from two Pennsylvania Auditor Generals, where recommendations for Penn State board governance reform have highlighted the need to decrease the size of the board and to increase accountability and transparency.^{360 361} Penn State's Faculty Senate undertook its own independent evaluation of board governance and recommended a smaller board for more effective decision-making.³⁶²

It is surprising that the Freeh Report does not mention the pervasive negative influence of the large board. An early draft of the report was pointedly critical of the board's functioning. Why were criticisms of the board deleted from the final version of the report?

Notably, in 2014 the board voted to INCREASE its size, and this was supported by many of the same trustees who told Freeh investigators that the board was too large in 2012. How are we to understand this change in perspective?

I. Final Conclusions

I.1. Freeh Report conclusions: Not supported by investigative findings

Freeh used a “more reasonable to conclude” standard, claiming that the majority of investigative data supported the conclusions of the Freeh Report. Our full, fair, and thorough analysis of the Source Materials concludes unequivocally that the Freeh Report conclusions do not meet that standard.

The great majority of Freeh’s investigative findings support a conclusion that: (1) Spanier, Schultz, Curley and Paterno were not aware that Sandusky harmed children; (2) Penn State’s athletic culture was laudable, not cultish, and did not support or obscure the actions of a pedophile. Our conclusions are supported by extensive data yielded in Freeh’s investigation – data that Freeh disregarded and withheld.

Did Spanier, Schultz, Curley and Paterno hide Sandusky’s misconduct? The Freeh Report conclusions rely on the worst possible interpretation of vaguely worded emails. Freeh rejects the explanation provided by Penn State officials that they carefully and responsibly assessed the best way to handle vague allegations about Sandusky and that they were good people trying to do their best to make the right decision. Our analysis identified the following sources of support for this explanation that Freeh rejected:

- A Federal high security clearance investigation of Spanier, conducted at the same time as the Freeh investigation, concluded that Spanier did not conceal information indicating wrongdoing by Sandusky; Spanier’s clearance was renewed. The rigor of this investigation surpasses that of the Freeh investigation -- Spanier testified under oath for this investigation and Schultz and Curley were also interviewed. John Snedden, the Federal investigator, called the Freeh Report “an embarrassment to law enforcement.”
- Information gained through interviews of hundreds of members of the Penn State community revealed that:

- McQueary told others he was vague in his report of the shower incident.
 - There were no reports of anyone having heard from Spanier, Schultz, Curley or Paterno about anything more serious than horseplay in the 2001 incident or at any other time.
 - There were no credible rumors about Sandusky circulating within the community. No one suspected Sandusky.
 - No reports were made that Spanier, Schultz, Curley or Paterno had ever asked anyone to conceal information about Sandusky.
 - Overwhelmingly, interviewees praised the characters of Spanier, Schultz, Curley and Paterno; they were described as ethical and acting with integrity in all aspects of their professional and personal lives.
 - Paterno met his reporting obligation in 2001 by following the procedures specified in an NCAA policy implemented in 2014, where a report is to be made to a superior and there is to be no followup by the person reporting.
- The Freeh Report suggests that because Sandusky was investigated in 1998, this indicated that Penn State officials understood Sandusky was harming children. The Report does not consider the very likely possibility that since Sandusky was cleared, the officials may have reasonably concluded Sandusky was vindicated and should subsequently be presumed innocent until proven guilty.
 - The Freeh Report suggests that Schultz concealed documents. Investigators disregarded Schultz's grand jury testimony – which they reviewed – where he stated that he believed such documents might be in his office. Notably, this testimony was made in the presence of Penn State General Counsel Cynthia Baldwin, who could have searched for these documents had she believed they were important. The Freeh investigators seem unsurprised an individual engaged in a cover up did not destroy potentially incriminating documents. Schultz had ample opportunity; he did not destroy the documents.
 - The Freeh Group appeared to disregard information provided in a full day training provided by expert FBI profiler Ken Lanning which showed that pedophiles may operate in ways that make detection very difficult, even for law enforcement

personnel, and especially for members of the community whose impressions are shaped by an extremely positive public profile of the offender.

- The Freeh Group appeared to disregard the fact that many professionals evaluated Sandusky in regard to his fitness to adopt, foster, and work with children. At the time of the 2001 investigation, Sandusky was retired from the University and was working with children at his charity, The Second Mile, which was run by a licensed child psychologist. None of these professionals detected that Sandusky was harming children. Why would University administrators be expected to recognize a problem that trained professionals were unable to discern?

Spanier, Schultz and Curley stand convicted of misdemeanor offenses of child endangerment.³⁶³ Paterno was never charged with a crime and Spanier's conviction is under appeal.³⁶⁴ Conspiracy charges were dropped for Curley and Schultz while Spanier was found not guilty of this charge – removing any idea of a cover up. Although these convictions may be interpreted to reinforce the accuracy of the Freeh Report, we note that a prominent jury consultant's survey found it impossible for these individuals to get a fair trial anywhere in Pennsylvania-- due to distorted media coverage and the Freeh Report. A majority of citizens surveyed decided these men were guilty; more than 70% believed the Freeh Report's conclusions meant that the officials were guilty of a crime.³⁶⁵ Freeh's opinions and suspect conclusions may have sufficiently tainted the jury pool to cause the convictions of Spanier, Schultz, and Curley.

Why did the Freeh Report include motivations and causes? It is implausible to think that experienced administrators of a major public University – individuals with spotless professional records and the highest levels of integrity, and leaders of a University renowned for high academic and ethical standards – would knowingly permit children to be harmed by allowing a pedophile to roam freely about the campus. The Freeh investigation yielded no compelling support for this absurd premise, and in fact yielded extensive information that disconfirmed this idea. It appears that, to strengthen the appearance of support, the Freeh Group included motivations and causes for the alleged failure of Penn State officials to stop Sandusky. Our review of emails exchanged among the investigators revealed their search for what they called “the ‘WHY’” factors as they were writing the report, after the investigation was largely concluded; it is notable that several members of the group expressed misgivings about adding

causal factors because they acknowledged that they could only speculate about these due to lack of any real supporting evidence.

- **To avoid the consequences of bad publicity.** The very weak support for this idea comes from statements attributed to Spanier and Curley which indicate their understanding of the situation in 2001 – that Sandusky did not realize it was inappropriate to shower with children and that his showering with children made others uncomfortable, and thus they believed that although Sandusky’s behavior didn’t cross the line, it didn’t “look good.” In their roles as University President and Athletic Director, Spanier and Curley had extensive experience in handling bad publicity; the idea that they would knowingly cover up for a pedophile, rather than manage the fallout from publicity surrounding a former employee, is preposterous. That the Freeh Report would stake its conclusions on such a weakly supported theory is clear indication of bias.
- **“A cultural reverence for football.”** Freeh himself acknowledged in an email to his investigators that they had never seen any indication that anyone was motivated to protect Paterno or the football program. In fact, abundant information gained from the investigation indicated that the culture of athletics at Penn State had long been pristine. To support this “causal” factor, the Freeh Report disregarded and misrepresented extensive information from hundreds of interviewees indicating that (1) Paterno did not wield undue influence in the University beyond his role as head football coach; (2) student athletes were not given special treatment in academic and disciplinary matters; (3) Lasch Building janitors were not afraid of losing their jobs. Freeh recognized that Penn State’s athletic culture was not deficient; why did he highlight this false conclusion in his Report? We believe we found the answer to this question and we elaborate below.
- **Sandusky’s retirement.** The Freeh Report states clearly that there was no association found between the 1998 allegations of misconduct (which were deemed unfounded) and Sandusky’s retirement timing or arrangements. Our document review confirms this. Why, then, was it necessary to include an entire chapter on this matter? Despite the disclaimer that Sandusky’s retirement was not suspicious, the Freeh Report includes an incendiary passage criticizing Penn State officials for allowing Sandusky to retire “not as a suspected child predator ... essentially granting him license to bring boys to campus

facilities for ‘grooming’ as targets for his assaults.”³⁶⁶ This blatant indication of bias undercuts the integrity of the entire Report.

- **“A striking lack of empathy for child abuse victim.”** This inflammatory and gratuitous “cause” is based on the lack of actions taken to protect children; the point is, of course, moot if Penn State officials did not have information that they believed indicated that children had been harmed.

I.2. Independence of Freeh Report fatally compromised

Multiple factors appear to have influenced the mischaracterization of the investigative data in the Freeh Report. Most notably, the independence of the investigation appears to have been sacrificed by Louis Freeh due to pursuit of his own conflicts of interest. Other parties appeared to have conflicts of interest and to have pursued them opportunistically in a highly charged situation where logic gave way to emotion. Collaboration between Freeh and these parties resulted in a Report with unsubstantiated conclusions.

NCAA. NCAA leaders knew that the Sandusky allegations were a matter of criminality and therefore they could not sanction Penn State within their own guidelines. Nevertheless, they decided that disciplining Penn State would improve the NCAA’s reputation, and provided a blueprint to the Freeh Group for the one avenue that would permit them to act: a finding of loss of institutional control.

Freeh had been openly pursuing a business relationship with the NCAA for almost two years, hoping to become the NCAA’s “go-to investigators.” This effort continued during the time he was investigating Penn State – an investigation that Freeh knew would be used by the NCAA. Contrary to his own public statements that no information was shared outside his group, Freeh regularly briefed NCAA officials during the investigation, and shared the Report with the NCAA prior to its public release. In the Report, Freeh delivered the “loss of institutional control” conclusion – a statement that the Penn State community must “transform the culture that permitted Sandusky’s behavior” – despite privately acknowledging that their investigative findings did not support this idea. After the NCAA announced its unprecedented sanctions against Penn State, Freeh’s Group noted, “This has opened up an opportunity to have the

dialogue with [NCAA President] Emmert about possibly being the go to external investigator for the NCAA. It appears we have Emmert's attention now."

Governor Corbett and the Pennsylvania Office of Attorney General. Governor Corbett closely oversaw Freeh's hire as Penn State's independent investigator and instructed Sandusky prosecutors to share information with Freeh. Prosecutors, especially Frank Fina, provided regular updates about their criminal investigation, some likely improper. Freeh was indebted to Corbett for his hire and was motivated not to be "scooped by law enforcement" in order to enhance his own reputation as an investigator; he therefore colluded with the OAG to produce a so-called "independent" report that was entirely consistent with the criminal case against Sandusky. As a Trustee, Corbett withheld material information related to Sandusky from the Board (as legal experts, including Freeh and his associate Judge Sullivan, believed he should have done), and exerted an outsize influence on the Board's decision to dismiss Paterno and Curley. Some suggest he may have been motivated by political agendas rather than in pursuing the interests of Penn State.

Penn State Board of Trustees. The Board's early response to the crisis was to quickly assign blame to Spanier, Schultz, Curley and Paterno. Some Trustees may have been influenced by Governor Corbett's threat to reduce state funding for the University if Paterno and Spanier were not dismissed – hardly an idle threat, given that he had recently done just that. Other Trustees may have been motivated by personal agendas underlying a desire to remove Paterno and/or Spanier. The public reason given for their decision was a common corporate approach – as expressed by 2012 Board chair Karen Peetz, "we needed to take our medicine"³⁶⁷ and wait for time to pass, trusting that "by 2014 ... it will just be a distant memory."³⁶⁸ Regardless of motivation, it was in the Board's interest for the findings of the Freeh investigation to validate their hasty actions to sacrifice due process and to scapegoat University officials in an attempt to demonstrate control over the crisis. Contrary to public statements by all parties, Freeh provided regular briefings to Trustees on developments throughout the investigation, and gave previews of report conclusions to Penn State leaders. Our review showed that Freeh adopted the "iconic coach" narrative after Task Force Chair Frazier forwarded a media piece, and that Freeh likewise adopted the "coverup" narrative following Board Vice Chair Masser's statements to the press. To what extent did Penn State Trustees attempt to actively influence Freeh's conclusions?

The Second Mile. The Freeh Group laid out a comprehensive plan for investigating the role of Sandusky's charity, The Second Mile, in his abuse of children. An early draft of the Freeh Report included results from this investigation, detailing extensive connections between The Second Mile and Penn State, especially the Board of Trustees. Why was The Second Mile completely removed from the final Freeh Report? At the time of his hire, Freeh failed to disclose a possible conflict of interest -- his connection to Ric Struthers, a close business associate who was a prominent donor to Penn State and a Director for The Second Mile. Struthers had agreed to advocate for Freeh's hire with Penn State Trustees. Did this association with a member of the Board of Directors for Sandusky's charity play any role in Freeh's decision to omit all mention of the investigation of The Second Mile?

I.3. Investigative and reporting flaws

The Freeh Group's investigative and reporting methodology were characterized by flawed tactics that impaired the quality of the work:

- Interview methodology was prone to error, subject to conscious and unconscious bias of investigators, and involved coercion of interviewees.
- Investigators failed to interview those having direct experience with the matters under investigation, and failed to qualify conclusions accordingly.
- No systematic analysis strategy was used to evaluate interview material.
- Despite claiming to use a "more reasonable to conclude" standard, the Freeh Report's conclusions were not supported by a majority of the information yielded by the investigation.
- Release of the Report was done at a press conference where conclusions were communicated in an inflammatory manner, under circumstances that prevented reporters from fully evaluating the material in the Freeh Report.

I.4. Penn State Board is too large

A consistent message from Trustees interviewed by the Freeh Group was concern over the negative impact of their large Board – power held by a group of insiders who made most of the decisions, other trustees feeling excluded and disengaged, lack of transparency, and communication leaks. Why did the Freeh Report fail to include a recommendation to decrease the size of the board in its focus on improving Penn State’s governance?

The handling of the Sandusky crisis appears to be a case study illustration of ways a large board may be too cumbersome for effective decision-making, especially under crisis conditions.

Trustees who were present described a situation where a minority of insider trustees rushed a decision while stifling discussion and discouraging dissenting voices. Regrets were expressed by some Trustees who later believed some of their hasty decisions were wrong.

Penn State’s Board must be decreased in size in order to create a culture where all Trustees are informed and engaged, the work of the Board is transparent, and a diversity of opinions is welcome as a valued element in high quality decision-making.

I.5. Need for public education about acquaintance abusers

The Board adopted a corporate solution to the Sandusky crisis, apparently believing that sacrificing a few individuals and expressing remorse would allow the University to recover quickly from the scandal. Such a hasty and unexamined approach was unworthy of any institution of higher learning. We believe it is our obligation to fully and accurately understand the circumstances surrounding Sandusky’s actions so that we can learn the appropriate lessons in order to prevent future abuse. To do otherwise is to dishonor victims and survivors of sexual abuse.

Our community did not know enough about acquaintance offenders who “hide in plain sight” behind an established reputation for compassionate service to youth. The longstanding sexual abuse recently disclosed at Michigan State University and the University of Southern California amplifies the need for improved understanding and public education.

Penn State has taken on a leadership role in research into the causes and treatments of abuse, as well as academic programming to train child protection professionals. We hope that Penn State will add to this a commitment to public education, joining with organizations such as the National Center for Missing and Exploited Children in the effort to prevent abuse through informing parents, children, and youth service organization about effective ways of protecting young people.³⁶⁹

I.6. Final comments

The Freeh Report does not accurately or fairly characterize the Source Material upon which it was purportedly based. Even worse, it was the product of external influences and was not by any measure objective or the result of independence. In short, it is both unreliable and misleading. Our University paid \$8.3 million for an “independent investigation” that was neither independent nor a fair and thorough investigation.

Entities charged with promoting the University’s interests failed, instead pursuing their own interests.

- The NCAA acted to enhance its own reputation and in so doing, sacrificed the well-being of Penn State’s student athletes, and dishonestly impugned our University’s stellar athletic culture, contrary to its own mission.
- Governor Corbett slashed the University’s funding and then actively influenced the handling of the Sandusky crisis in ways that harmed the Commonwealth’s land grant University, an institution he was obligated to support both as Governor and as a Trustee.
- Penn State’s Board scapegoated some of the University’s most loyal, honorable, and longstanding servants in a misguided attempt to quickly put the crisis behind them.
- Louis Freeh produced a report with conclusions that were not supported by his own investigation, contrary to the terms of his engagement with the University, in order to promote his own business opportunities.

As Trustees, our highest responsibility is our charge to protect and support the University’s mission and reputation. As a result of our full, fair, and thorough review of the Freeh investigation Source Materials, we repudiate the conclusions of the Freeh Report.

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APPENDIX 1

APPENDIX 1

Investigative Methodology for our Review of Interviews

The interview narratives were analyzed using established methodology for qualitative social science research.¹ Interviews were divided across six reviewers who read and summarized primary content into written notes. These notes were used to identify major themes related to the conclusions of the Freeh report:

- Rumors were widespread in the community and the football program, indicating knowledge of Sandusky's actions prior to Central Mountain incident.
- Sandusky was given a special retirement deal indicating he was "bought off" in order to separate him from the university, due to knowledge of his pedophilia.
- Characters of Spanier/Schultz/Curley/Paterno were consistent with a decision to cover up for a pedophile in order to protect the reputation of the football program.
- Football players were given special treatment with disciplinary matters, indicating institutional misconduct and inappropriate emphasis on football.
- Coach Paterno was powerful beyond his role as head football coach, indicating inappropriate emphasis on football over academics.
- Janitors in Lasch Building were fearful of losing their jobs if they were to report Sandusky's misconduct, indicating inappropriate value attached to football over ethical conduct.

These six themes were then used by reviewers to analyze the interview data. When a theme was present in an interview narrative, reviewers coded as yes/no to indicate presence versus absence of support for that theme. Approximately 5-10% of interviews were independently recoded to increase the reliability and validity of coding; very few discrepancies emerged, and those were resolved through conferencing.

The thematic codes were transferred to an Excel spreadsheet along with information on each interviewee (e.g., job title at time of Freeh interview) and categories we developed to describe interviewees' positions in relation to the university (see table below). Brief content summaries and relevant quotes from interviews were also included.

The data in the Excel spreadsheet were analyzed to provide summary information about number and categories of interviewees responding as support being present/absent for each theme. Content summaries and quotes were used to broaden the understanding of interviewees' responses. The full text of interviews was frequently reviewed to ensure that context was adequately considered in the accurate use of the quoted material. For each theme, quantitative information was provided (e.g., number of interviewees whose responses did or did not support that theme). In addition, relative weighting of the evidence was considered; this involved an assessment of the credibility of information provided, according to factors including the likelihood that the interviewee was in a position to have direct knowledge of the material reported. Citations for specific interviewees were included in the analysis of each theme to demonstrate the source for the information that was included, but individual identities were not revealed. Exceptions to this were made only for a few individuals whose positions were singularly influential and important in understanding their interview material: Rodney Erickson, President of the university; Cynthia Baldwin, General Counsel for the university; Ken Frazier, chair of the Special Investigative Task Force; Anthony Sassano, agent for the Pennsylvania Attorney General; and Vicky Triponey, former university Vice President for Student Affairs, who made public claims about Paterno and the university's football program after Sandusky's arrest.

In addition to the six thematic areas, analysis was conducted for two topics of focus by the Freeh group: the integrity of the investigation of the 1998 Sandusky incident, and the credibility of Vicky Triponey. These analyses were conducted in essentially the same manner as the six themes. In the analysis summary of the 1998 incident, names of law enforcement and child services professionals were included due to the importance of understanding the specific roles of these interviewees in understanding the credibility of their statements.

Group	Number	Percentage of Total
Athletics	150	34%
Administration	80	18%
BOT	55	13%
Commonwealth Campus	48	11%
Law Enforcement	27	6%
Academics	16	4%
Operations	12	3%
State College	10	2%
Camps	9	2%
Second Mile	9	2%
NFL	5	1%
Legislature	5	1%
Freeh Group	3	1%
Student	2	0%
Council	2	0%
Paterno family	2	0%
Alumni Association	2	0%
Email	1	0%

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APPENDIX 2

INTERVIEW ANALYSES

APPENDIX 2.1

Interview Analysis and Summary: 1998 investigation of allegations of sex abuse against Sandusky

- Analysis of interviews indicates that, due to the lack of evidence found in the 1998 investigation, in combination with Sandusky's reputation as a humanitarian dedicated to improving the lives of vulnerable children, Penn State officials could not reasonably be expected to treat Sandusky as a "suspected child predator."

The Freeh group interviewed several key individuals involved in the investigation of the 1998 incident. These include Ron Schreffler, Detective for the University Police Department;^{1 2 3} Jerry Lauro, Investigator for PA Department of Child Welfare;⁴ Stephen Sloane, Assistant District Attorney for Centre County.⁵ None of these law enforcement professionals reported being aware of any credible evidence of illegal misconduct by Sandusky. Schreffler and Sloane said that District Attorney Ray Gricar had integrity.

Keith Robb, Detective for State College Police Department, was interviewed although not involved with the Sandusky investigation, and said that Assistant DA Karen Arnold was known to be an aggressive prosecutor of sexual assault cases and would have proceeded if sufficient evidence existed in the 1998 Sandusky incident.⁶

James Norman was a police officer for the University Police Department in 1998. He was not involved in the Sandusky investigation but stated that if District Attorney Ray Gricar believed there was insufficient evidence to prosecute Sandusky, then this judgment could be relied upon to be true.⁷

The Freeh Report suggests mishandling of this incident by the university, referencing a statement from Schreffler that the Sandusky investigation was not referred to Human Resources, as would be routine.⁸ However, the report does not include Schreffler's qualifying statement: "He said the referral being made would depend on the circumstance of the incident. Since Sandusky wasn't arrested there's a good chance a referral wasn't done."⁹ Schreffler also said that "no one from the University Administration or Chief Harmon interfered with the investigation."¹⁰

Conclusion: The Centre County DA determined there was insufficient evidence to bring charges against Sandusky for the 1998 shower incident. All interviewees concur that DA Gricar and ADA Arnold were ethical and professional. None of the law enforcement or child services professionals were aware of any credible evidence of illegal misconduct by Sandusky. There was no indication that any university official interfered with the investigation in any way, or took any action to hide or suppress the existence of the investigation or its conclusions. Once the investigation was complete, and charges were not filed, there was no reason for anyone to consider Sandusky to be a "suspected child predator."

¹ Interview, February 27, 2012.

² Interview, March 24, 2012.

³ Interview, April 4, 2012.

⁴ Interview, January 31, 2012.

⁵ Interview, March 21, 2012.

⁶ Interview, December 14, 2012.

⁷ Interview, February 1, 2012.

⁸ Freeh Report, p. 49.

⁹ Interview, April 4, 2012.

¹⁰ Interview, January 27, 2012.

APPENDIX 2.2

Interview Analysis and Summary: Were the characters of Spanier, Schultz, Curley, and Paterno consistent with covering up to protect a pedophile?

- Analysis of interviews indicates that Spanier, Schultz, Curley and Paterno demonstrated consistent integrity in their professional lives; their characters are not consistent with covering up Sandusky's actions.

Of those who commented on the characters of any of these four men, only 9 provided any negative descriptions; 123 provided positive commentary on the four.

Three^{1 2 3} who offered negative assessments of any of the four men were current or former trustees. They described Spanier as "controlling," a "micromanager," and "standoffish" and one said he was not forthcoming with the Board of Trustees. One⁴ said that because Spanier did not ask who had witnessed Sandusky in the shower, it was fair to conclude that Spanier wanted to avoid the situation. One⁵ said that Spanier must have known about the 1998 incident because he was so "hands on" and suggested that because Paterno conveyed McQueary's statements to Curley and Schultz it was an indication that he "didn't want the incident handled." Two^{6 7} said that they did not perceive Schultz as forthcoming with the Board; one⁸ said he believed Schultz had once lied to the Board. Two^{9 10} suggested that covering up for Sandusky could have been motivated by the desire to avoid adverse publicity and reputational damage.

President Erickson described Curley as Paterno's "errand boy." A staffer in Football¹¹ described Curley as a "puppet" for Paterno and said Paterno would have been motivated to protect the football program. An administrator in Athletics (outside Football)¹² said Curley avoided confrontation and "could not say no" to football coaches.

A high level administrator¹³ questioned Paterno's honesty in regard to statements he had no prior knowledge of Sandusky's maltreatment of children, but provided no specifics.

An emeritus professor¹⁴ said that he could not believe Curley and Paterno were unaware of Sandusky's actions because "they knew everything about the football program."

One former football player¹⁵ stated that Paterno “called the shots” and Curley and Schultz would have done what he said.

Those providing positive assessments of the characters of Spanier, Schultz, Curley, and Paterno were current or former trustees, senior administrators, administrators, staff, and coaches in Athletics, and faculty.

Cynthia Baldwin, former chair of the Board of Trustees and then-current General Counsel, said about Curley and Schultz, “I had no reason to believe they weren’t telling the truth.”

A faculty member¹⁶ said he knew the four men very well and stated, “I know these people, I know this institution, I cannot be convinced that there was a cover up.” He added, “a lot of smart, ethical people” did not recognize Sandusky’s actions for what they were.

Multiple interviewees in high-level positions within Athletics reported that compliance with NCAA and other athletics rules was strongly emphasized from the top, with Spanier attending annual meetings of athletics staff and both Spanier and Curley threatening rule breakers with immediate termination.^{17 18 19 20 21} Several noted that Penn State rules were more stringent than those the university is required to uphold (e.g., NCAA, Big Ten) and that Penn State’s sincere adherence to rules was greater than they had experienced when working at other universities.^{22 23} ²⁴ One head coach said he never felt any pressure to win because the athletic culture was so positive.²⁵ Other coaches said that Spanier and Curley were consistent in stressing the need to “do the right thing” and embrace “success with honor.”^{26 27} A member of the football academic staff said, “integrity and honor are important benchmarks” for Athletics.²⁸

Spanier was described by current/former trustees and senior administrators as an effective leader who was open and accessible and well-liked by the university community.^{29 30 31} One trustee noted Spanier’s loyalty to Penn State, as evidenced by his refusal to accept the offer of a highly-paid position at the NCAA.³² A longstanding trustee who worked closely with Spanier described him as “an ethical person with lines you didn’t cross.”³³ Another trustee with a history of important leadership roles on the board said he did not believe Spanier would cover up information about Sandusky.³⁴ A senior administrator described Spanier as “the most morally upstanding man I have ever met.”³⁵

Schultz was praised by seven current/former trustees, who described his professionalism, dedication, and ethics.^{36 37 38 39 40 41} They said Schultz was “a team player who is very straight and respectable,”⁴² “a straight arrow who always took the right road,”⁴³ and who “took things seriously and was responsive to inquiries and issues.”⁴⁴ A former trustee who had worked closely with Schultz via several board leadership positions said he found it “very difficult to believe” that Schultz would have covered up Sandusky’s actions.⁴⁵ Another trustee who knew Schultz very well said Schultz was “one of the finest men he’s ever been associated with.”⁴⁶ A senior administrator described Schultz and Curley as “incredible men of integrity.”⁴⁷

Curley was described by a wide range of individuals as a person with great integrity. Trustees said Curley was “thoughtful, caring, sensitive, honest and forthright,”⁴⁸ “very well prepared, a great public speaker and an effective administrator,”⁴⁹ and “one of the most honest people you could ever find.”⁵⁰ A former chair of the board said he did not believe that Curley would intentionally cover up the Sandusky issue to protect the university.⁵¹ Administrators within Athletics said Curley is a man of high integrity and character who never acted in an unethical manner;^{52 53} one said Curley’s leadership of Athletics involved the values of a strong work ethic, loyalty, and a desire for the best outcome for the university.⁵⁴ Another high-ranking administrator within Athletics said it was “hard to believe” that Curley would have suppressed information about Sandusky.⁵⁵ A former football player said that his job requires him to work with Athletic Directors across the nation and “no one has a higher level of integrity than Tim Curley,”⁵⁶ another former player said Curley “would not knowingly lie or directly mislead anybody.”⁵⁷ Senior administrators outside Athletics said Curley “always wanted to do what was best for PSU, not just football,”⁵⁸ and “Curley’s word was his bond.”⁵⁹ A faculty member described Curley as “a decent, moral man.”⁶⁰

Multiple interviewees described Paterno as a person of high standards who promoted ethical conduct. An assistant football coach described Paterno as “a true visionary” who held everyone to a code of conduct, concluding “God doesn’t make many of those men.”⁶¹ A faculty member who worked closely with Athletics said “the ‘Paterno Way’ included ethics, integrity, public service, and academics.”⁶² A member of the football staff described Paterno’s consistent enforcement of high standards of behavior for his players: “a tough disciplinarian...nobody would cross Joe, they were more afraid of Joe than the law.”⁶³ A former player echoed this,

saying, "Paterno believed there was a right way and a wrong way to do things, as with football and in life. Paterno would challenge you to do it the right way."⁶⁴ An administrator in Athletics emphasized Paterno's academic leadership throughout the university, recalling Paterno standing up during a Faculty Senate meeting and challenging them to "be as good as this football team" in terms of academics.⁶⁵ A prominent community member said, "I challenge anyone to show me a person who has done more for the University or the community than Joe Paterno."⁶⁶

Conclusion: Very few interviewees provided negative assessments of the characters of Spanier, Schultz, Curley, and Paterno, and their comments were largely based on speculation and supposition, including the notion voiced by two trustees that avoiding reputational harm might have been a motivation for protecting Sandusky. Many more interviewees spoke about the high integrity of the four men, and made their assessments on the basis of extensive direct knowledge of them.

¹ Interview, March 12, 2012.

² Interview, April 12, 2015.

³ Interview, May 3, 2012.

⁴ Interview, April 12, 2015.

⁵ Interview, March 12, 2012.

⁶ Interview, April 12, 2015.

⁷ Interview, May 3, 2012.

⁸ Interview, April 12, 2015.

⁹ Interview, May 3, 2012.

¹⁰ Interview, April 12, 2015.

¹¹ Interview, February 28, 2012.

¹² Interview, February 7, 2012.

¹³ Interview, April 10, 2012.

¹⁴ Interview, February 16, 2012.

¹⁵ Interview, May 1, 2012.

¹⁶ Interview, February 21, 2012.

¹⁷ Interview, January 13, 2012.

¹⁸ Interview, March 12, 2012.

¹⁹ Interview, January 11, 2012.

²⁰ Interview, January 10, 2012.

²¹ Interview, January 10, 2012.

²² Interview, February 15, 2012.

²³ Interview, January 11, 2012.

²⁴ Interview, January 13, 2012.

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- ²⁵ Interview, January 11, 2012.
 - ²⁶ Interview, January 13, 2012.
 - ²⁷ Interview, January 11, 2012.
 - ²⁸ Interview, February 28, 2012.
 - ²⁹ Interview, March 22, 2012.
 - ³⁰ Interview, March 15, 2012.
 - ³¹ Interview, June 5, 2012.
 - ³² Interview, March 15, 2012.
 - ³³ Interview, April 16, 2012.
 - ³⁴ Interview, March 15, 2012.
 - ³⁵ Interview, April 19, 2012.
 - ³⁶ Interview, April 16, 2012.
 - ³⁷ Interview, June 5, 2012.
 - ³⁸ Interview, March 15, 2012.
 - ³⁹ Interview, March 15, 2012.
 - ⁴⁰ Interview, April 5, 2012.
 - ⁴¹ Interview, April 19, 2012.
 - ⁴² Interview, June 5, 2012.
 - ⁴³ Interview, March 15, 2012.
 - ⁴⁴ Interview, April 16, 2012.
 - ⁴⁵ Interview, March 15, 2012.
 - ⁴⁶ Interview, June 5, 2012.
 - ⁴⁷ Interview, March 22, 2012.
 - ⁴⁸ Interview, April 16, 2012.
 - ⁴⁹ Interview, June 5, 2012.
 - ⁵⁰ Interview, May 2, 2012.
 - ⁵¹ Interview, March 15, 2012.
 - ⁵² Interview, February 8, 2012.
 - ⁵³ Interview, February 6, 2012.
 - ⁵⁴ Interview, February 6, 2012.
 - ⁵⁵ Interview, January 24, 2012.
 - ⁵⁶ Interview, May 2, 2012.
 - ⁵⁷ Interview, April 26, 2012.
 - ⁵⁸ Interview, April 17, 2012.
 - ⁵⁹ Interview, April 19, 2012.
 - ⁶⁰ Interview, July 3, 2012.
 - ⁶¹ Interview, December 12, 2011.
 - ⁶² Interview, July 3, 2012.
 - ⁶³ Interview, December 6, 2011.
 - ⁶⁴ Interview, April 25, 2012.
 - ⁶⁵ Interview, February 15, 2012.
 - ⁶⁶ Interview, May 16, 2012.

APPENDIX 2.3

Interview Analysis and Summary: Were members of the Penn State community aware of rumors about Sandusky?

- Analysis of interviews indicates that most members of the Penn State community were not aware of rumors about Sandusky.

Of interviewees commenting on whether they had heard rumors concerning Sandusky, 34 reported hearing rumors and 245 reported not having heard rumors. It is important to note that all of the 21 interviewees who worked at Commonwealth campuses where Sandusky had held summer football programs stated they had never seen or heard of anything disturbing about Sandusky's behavior with children; an additional 37 Commonwealth campus employees were apparently not asked about this topic.

To fully understand the reports of hearing rumors, it is important to differentiate between rumors that are reasonably traced back to any direct knowledge of Sandusky's inappropriate behavior as opposed to public knowledge stemming from two incidents: (1) an incident involving a student at Central Mountain High School, where Sandusky worked as an assistant coach, which was reported to Children and Youth Services and which resulted in Sandusky's resignation from The Second Mile in September of 2010; (2) a report in the Harrisburg Patriot-News in March of 2011 about Sandusky being under investigation for alleged child molestation. An examination of interview narratives revealed that the majority of those who reported hearing about Sandusky's improprieties with children were referencing one of these two incidents, leaving 16 interviewees who had heard rumors that appeared to not have been directly related to this public knowledge.

Four former football players^{1 2 3 4} had heard rumors dating back 4 to 5 years prior to their interviews; several of these were aware of the incident at Central Mountain High School, and one reported hearing rumors that a mother of a victim from Lock Haven High School had talked about making a lot of money from the situation.⁵ One player said he did not believe the "rumblings" he heard because "Sandusky was a father figure to needy kids."⁶ Another former player⁷ said he believed that "select people within the community knew" and mentioned that

Jack Raykovitz, former director of The Second Mile, had told him a year prior to the interview that "Sandusky shouldn't be around kids."

A Penn State student⁸ who had participated in Second Mile football camps as a teenager said that he never saw or heard anything inappropriate regarding Sandusky; however, he was told by a former player about allegations of sexual contact with boys by Sandusky two years before his arrest, and stated that he did not believe this as Sandusky was a "figurehead of the community."

A group of four members of the local community who tailgated together reported hearing rumors.^{9 10 11 12} One of these¹³ is the father of two sons who had worked as football equipment managers; he said that one son had heard rumors of Sandusky in the shower with a boy, and the other had not heard any rumors. A retired Centre County Assistant District Attorney¹⁴ who worked with Ray Gricar on the 1998 Sandusky incident said he thought there were some tailgate rumors about the 1998 investigation.

A secretary in Athletics¹⁵ said that she had been told by another secretary that Sandusky had molested children; no time frame was provided. However, the other secretary¹⁶ was interviewed and denied having such knowledge. [Excerpt from interview notes]:

[She] said she was as "shocked" as everyone else when Jerry Sandusky was arrested and charged with all the sexual assaults in November 2011. She knew Sandusky from working with him and the football team earlier in her career. She described Sandusky as kind of goofy, funny and one of the nice guys she worked with on the football team. [She] knew Sandusky's wife and kids. She never suspected Sandusky of ever being involved in this type of criminal behavior. She said no one has confided in her about any knowledge of Sandusky's involvement in such behavior.

An administrator in Athletics (outside Football)¹⁷ reported hearing rumors about Sandusky's involvement with young boys around 2007 or 2008, and heard that Sandusky had been investigated but the charges were dropped. He heard similar accusations in 2009, but said he heard people say, "That's just Jerry, he's always clowning around" and "the kids from the Second Mile love him." He had also heard about the incident witnessed by the janitor but this story was dismissed by many as Sandusky acting like a big kid. He stated that he had heard

rumors from some of the football equipment managers who found the rumors hard to believe and referred to these incidents as Sandusky "messing around." He described Sandusky as "a big goofy guy who was like a sweet uncle." He noted that "many people also dismissed rumors concerning Sandusky because of the Duke University lacrosse case and other incidents where the victims turned out to be falsely accusing someone or were trying to extort money or falsely accuse."

A handful of other interviewees reported hearing second and third hand stories involving vague notions of Sandusky's improprieties, without mention of the timeline (and therefore these stories could have resulted from either of the two publicly known situations).

The Freeh Group interviewed a number of former/current football equipment managers. None of those interviewed reported hearing rumors about Sandusky. Apparently frustrated, interviewers asked one¹⁸ how it was possible the shower incident was not known by those who worked in the Lasch Building. He responded that he had no knowledge of Sandusky showering with boys and would have stopped it had he known. The answer to this question appears to be that Michael McQueary did not share his story even with his closest friends in the football program until after the news of the grand jury appeared in the Harrisburg newspaper in March of 2011. As confirmed by three interviewees,^{19 20 21} a small group (including McQueary) called themselves the "lunch bunch" because they ate lunch together every day. These three interviewees each described McQueary occasionally making comments about "something awful" he had seen, "something that changed my life forever." McQueary did not disclose further details, even when his friends made gentle inquiries, and his friends respected his privacy by not pursuing the matter. McQueary finally told them about testifying before the Grand Jury and said the disturbing thing he had seen involved Sandusky with a boy in the showers. Two of them^{22 23} said they had seen Sandusky openly showering with boys, and were not concerned, as other coaches routinely showered with their own sons.

The Freeh group interviewed a wide range of employees of the football program, including six coaches, four trainers, four equipment managers, two academic advisors, an administrator, a recruiting coordinator, and two administrative assistants. In addition, 28 employees of Athletics were interviewed, including nine high ranking administrators, as well as various levels of staff.

Outside Athletics, 13 police officers (either PSU or State College), two Faculty Athletic Representatives (former/current), 8 faculty, 40 trustees, and 26 senior administrators were interviewed. Also interviewed were 21 staff and administrators from the Commonwealth campuses. NONE OF THESE INDIVIDUALS REPORTED HEARING RUMORS ABOUT SANDUSKY MOLESTING CHILDREN.

Two high-level employees in Football and Athletics^{24 25} said they were unaware of any incidents or rumors concerning Sandusky prior to news reports. One said, "the whole thing is so unbelievable, I can't get my arms around it." President Rodney Erickson noted that he was particularly struck when reading the news accounts because he had never heard "anything like this about Sandusky."²⁶

One member of the football program staff²⁷ considered himself a close friend of Sandusky and described Sandusky's successful grooming of football program staff. [Excerpt from his interview notes:]

Sandusky was always very physical with the kids, constantly hugging them from behind, wrestling with them, or grabbing them by the neck. This was unique to Sandusky. Other coaches were not like this. [He] said, "When you saw Jerry with a kid, you felt lucky for the kid." [He] said he viewed it as Sandusky mentoring kids and giving kids with bad backgrounds a second chance. [He] said Sandusky was just a "big kid" himself. [He] believed that The Second Mile was Sandusky's passion.

[He] said that the other coaches spoke often about the Sandusky investigation after the publicity, making comments like "can you believe it?" and other statements indicating that they were surprised about the allegations.

[He] said Sandusky fooled the Football Staff just like he fooled everyone else and no one had any knowledge about what he was doing.

Conclusion: The Freeh group attempted to determine whether the Penn State community, especially within Athletics and Football, was aware of Sandusky's abuse of children and failed to act. The vast majority of interviewees questioned about this – 245 – said they had not heard rumors. Of those who did report having heard rumors, only 16 described stories that were possibly (not definitely) unlinked to public knowledge about Sandusky that resulted from his retirement from The Second Mile or from newspaper reports of the grand jury investigation. Few of the rumors involved anything beyond vague allegations of improper behavior with children; no one reported witnessing, or hearing directly about one or more specific incidents. It is striking that those having heard rumors tended not to believe they were plausible in view of Sandusky's reputation as a man who cared deeply about the welfare of children. His "goofy" and playful behavior provided a further level of cover for any inappropriate boundary crossing with children. There was no evidence in the interviews that members of the University community concealed knowledge about Sandusky's maltreatment of children.

¹ Interview, May 2, 2012.

² Interview, May 1, 2012.

³ Interview, May 30, 2012.

⁴ Interview, April 23, 2012.

⁵ Interview, May 1, 2012.

⁶ Interview, May 30, 2012.

⁷ Interview, May 8, 2012.

⁸ Interview, April 14, 2012.

⁹ Interview, April 4, 2012.

¹⁰ Interview, April 2, 2012.

¹¹ Interview, April 3, 2012.

¹² Interview, April 20, 2012.

¹³ Interview, April 4, 2012.

¹⁴ Interview, March 21, 2012.

¹⁵ Interview, May 3, 2012.

¹⁶ Interview, February 29, 2012.

¹⁷ Interview, February 7, 2012.

¹⁸ Interview, February 23, 2012.

¹⁹ Interview, February 22, 2012.

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- ²⁰ Interview, February 15, 2012.
²¹ Interview, December 17, 2011.
²² Interview, February 22, 2012.
²³ Interview, December 7, 2011.
²⁴ Interview, December 7, 2011.
²⁵ Interview, January 4, 2012..
²⁶ Interview, April 12, 2012.
²⁷ Interview, February 15, 2012.

APPENDIX 2.4

Interview Analysis and Summary: Was Sandusky given a special retirement deal because PSU officials knew he was a pedophile and wanted to get rid of him?

- Analysis of interviews indicates that Sandusky's retirement was not suspicious.

There were 42 interviewees who provided information relevant to this issue; their positions within the university spanned the entire range of those interviewed. It is noteworthy that the majority of these individuals would have had no direct knowledge of these events and therefore their statements must necessarily have been based on hearsay or speculation. Only 8 provided opinions favoring the idea that Sandusky's retirement arrangements may have been suspicious.

The Freeh Report explains that the Pennsylvania State Employees' Retirement System had offered a one year retirement window allowing members to retire after 30 years (instead of the usual 35) with full retirement benefits.¹ As described in the Freeh Report, Sandusky received a lump sum payment at his retirement to offset the decreased pension he would receive as a result of retiring at 30, instead of 35, years. Sandusky was also given emeritus faculty status, something typically awarded only to full professors; Sandusky was a tenured assistant professor.

A high level administrator in Human Resources² at the time of Sandusky's retirement met with Sandusky to explain the arrangements and processed some of the paperwork. She was interviewed by the Freeh group twice. She stressed that she was not asked or pressured to do anything different for Sandusky than for any other employee, and noted that many employees with 30 years of service were considering taking advantage of the window. She stated that the emeritus status was unusual but exceptions were sometimes made, and said Sandusky had been awarded this status due to his many years of successful coaching.

Others interviewed who were in a position to knowledgeably comment on Sandusky's retirement were consistent in stating that they had no knowledge of anything untoward in regard to his retirement arrangements. Those interviewees included high ranking administrators in Finance and Business,³ and in Human Resources for Athletics at the time of Sandusky's retirement and

immediately afterwards.^{4 5} One⁶ noted that the emeritus award was sometimes made as an exception for employees who were “well thought of.”

A football equipment manager who was a close friend of Sandusky,⁷ said that Sandusky had told him that he originally had wanted to coach for three more years, but that it was financially advantageous to him to retire within the window.

Only 3 of the 8 providing opinions that the retirement was “possibly suspicious” were in direct position to have knowledge of this matter, and none related any specific problematic facts about Sandusky’s retirement; all merely noted that the arrangements were “unusual.” These included Rodney Erickson, President (and Provost at the time of Sandusky’s retirement) as well as two top level administrators in Human Resources.^{8 9}

The remaining 5 interviewees who considered the retirement potentially suspicious were individuals who had had no direct involvement with Sandusky’s retirement. Their statements consisted of speculation (e.g., wondering why Sandusky retired early) or rumor-mongering.^{10 11}
12 13 14

Conclusion: Not a single interviewee provided any concrete information indicating that Sandusky’s retirement arrangements were made due to a motivation to hasten his departure from the coaching staff.

¹ Freeh Report, pp. 55-61.

² Interview, March 14, 2012.

³ Interview, April 10, 2012.

⁴ Interview, January 24, 2012.

⁵ Interview, December 15, 2011.

⁶ Interview, January 24, 2012.

⁷ Interview, February 15, 2012.

⁸ Interview, January 4, 2012.

⁹ Interview, February 2, 2012.

¹⁰ Interview, May 21, 2012.

¹¹ Interview, January 10, 2012.

¹² Interview, April 24, 2012.

¹³ Interview, May 1, 2012.

¹⁴ Interview, April 8, 2012.

APPENDIX 2.5

Interview Analysis and Summary: Were janitors fearful to report wrongdoing?

- Analysis of interviews indicates janitors were not fearful of reporting wrongdoing.

Of the 10 interviewees addressing this question, 3 provided information supporting the idea that janitors were fearful, and 7 provided disconfirming information. Respondents included 1 current/former trustee, 1 senior administrator, and 8 current/former janitors.

This line of inquiry centers around an incident that occurred in the fall of 2000, where a janitor (identified in the Freeh report as Janitor A) observed Sandusky in the Lasch locker room performing oral sex on a boy. This janitor was not interviewed by the Freeh group; three janitors present that evening were interviewed. One of those (identified in the Freeh report as Janitor B¹) had observed an adult and a child in the shower (he could only see their legs) and, apparently unconcerned, he waited for them to finish so he could clean the shower. The Freeh report stated: "He waited for the two to finish their shower, and later saw Jerry Sandusky and a young boy, around the age of 12, exit the locker room holding hands." This differs from the account in the interview notes for Janitor B, which did not mention the age of the child and did not say they were holding hands. From the notes for the interview of Janitor B: "While he was mixing the chemicals for the cleaning, he saw the doors open and Sandusky walked out of the shower with a young boy. [He] said something like 'hello coach' and Sandusky acted completely normal — [Janitor B] did not notice anything unusual about his demeanor at this point. The boy did not say anything." Janitor B stated that shortly afterward, Janitor A ran out of the shower room, very upset, and said he had seen Sandusky performing oral sex on the boy.

Another janitor working that evening was identified in the Freeh report as Janitor C.² Accounts from Janitor B and Janitor C agree that Janitor A spoke of seeing oral sex, was distraught over what he had seen, and both accounts indicate that Janitors B and C urged Janitor A to report the incident to police or to their supervisor. Both said they offered to assist Janitor A in making the report.

Janitor B said he told Janitor A 10 or 15 times that he should report the incident, but Janitor A, who was a wage and payroll (part time) worker, was afraid he would lose his job. Janitor B (a full time worker) said he felt that he would be fired if he reported Janitor A's story. In fact, it was Janitor B who later reported this incident to the DA's office after he read the March 2011 newspaper article about Sandusky.

Janitor C's account differs from Janitor B's, stating (apparently in response to a direct question) that he had no recollection of any discussion regarding fear about losing their jobs in retaliation for reporting the incident. Janitor C said that had he witnessed the incident, he would likely have become violent with Sandusky and would have reported to the police or his supervisor.

At the time, it seems Janitor C was skeptical about the veracity of Janitor A's report. Janitor C did not know Janitor A well and thought perhaps Janitor A had a drinking problem or "may have been making it up." Janitor C was reluctant to make the report himself because the information was second hand, he was not sure if Janitor A was credible, and he respected Sandusky. Janitor C told the interviewers he was concerned about making a false report, citing Proverbs in saying that it is a sin to make false witness against someone. Janitor C also appeared to believe that university policy required only the person observing a problem to report.

Another janitor working that night (Janitor D)³ was interviewed by the Freeh group, but his statements were not included in the Freeh report. Like Janitors B and C, Janitor D stated that Janitor A was very upset because he saw "something inappropriate" between Sandusky and a boy, and he immediately urged Janitor A to report the incident to their supervisor. From the interview notes: "In response to questions, [Janitor D] says he has no idea why [Janitor A] would not report what he saw. [Janitor D] advised that wage/salary employees made about half what the regular employees made and of course if you were someone causing a problem or creating problems for the bosses then maybe it would affect getting hired but in this situation, [Janitor D] did not think reporting this would be a problem in any way."

Notes from the interview of the janitors' supervisor⁴ indicate that: "In her opinion there is not an atmosphere of fear among the janitors for reporting a person such as Sandusky and no one should be concerned about losing their job for reporting."

Four other janitors who worked in Lasch Building at the time of this incident were interviewed.⁵
^{6 7 8} None said they would have felt concern over losing their jobs if they had made such a report. All said they would have reported (except one who made no comment either way). The janitor who was on vacation and was replaced by Janitor A the night of the incident was asked if being wage/payroll status would have made him reluctant to report; he responded that: "If it had been him he would have drug Sandusky outside and waited for the police to get there."⁹

Two interviewees who were not directly connected to janitors at Lasch Building commented on the likelihood of janitors reporting an incident such as the one involving Sandusky. A high level administrators outside Athletics¹⁰ stated his opinion that janitors were likely to report only to a supervisor due to the hierarchical nature of their union; he made no reference to janitors being fearful of losing their jobs. A former trustee¹¹ made note of the failure to report by the janitor as an indication of a flawed culture within athletics, but he appeared to only be referencing the story rather than contributing any independent information.

Conclusion: Only one person having direct involvement with the incident, or with the janitors who worked at Lasch Building at the time of the incident, described a fear of losing their jobs as a result of reporting Sandusky's improper behavior with a child. The interview material indicates that the janitors' failure to report was due to factors other than concern about retribution from an all-powerful football culture.

¹ Interview, August 2, 2012.

² Interview, August 2, 2012.

³ Interview, August 9, 2012.

⁴ Interview, April 5, 2012.

⁵ Interview, August 3, 2012.

⁶ Interview, August 9, 2012.

⁷ Interview, August 9, 2012.

⁸ Interview, August 9, 2012.

⁹ Interview, August 9, 2012.

¹⁰ Interview, April 8, 2012.

¹¹ Interview, March 15, 2012.

APPENDIX 2.6

Interview Analysis and Summary: Was Coach Joe Paterno powerful beyond his role as head football coach?

- Analysis of interviews indicates that Paterno was NOT powerful beyond his role as head football coach.

Among the interviewees who provided information relevant to this question, 20 supported the idea that Coach Paterno was powerful beyond his role as head football coach, and 44 refuted this idea. Analysis by category of respondent indicated the following breakdowns: current/former trustees (8 yes, 7 no); senior administrators (1 yes, 7 no); football program staff (1 yes, 12 no), Athletics Department (2 yes, 4 no).

Most of those who believed that Coach Paterno was powerful beyond the football program provided generalized comments without specifics. A former trustee characterized Paterno as “the ‘king’ in the monarchical culture of intercollegiate athletics.”¹ Another trustee said Paterno was “the most powerful man in Pennsylvania, even above the Governor.”² Two individuals, a trustee³ and a former football player,⁴ used vulgar metaphors, saying that “nobody could take a dump” and “a toilet wasn’t flushed” without Paterno knowing about it. One former trustee said that other trustees felt that Paterno was a god, or were afraid of him.⁵ Interview notes for another former trustee stated that “he knows nothing about the situation but opined that Paterno had too much power.”⁶

A few provided concrete reasons for their opinions that Paterno was very powerful. A former football player said, “I know how things work on campus, Paterno is more powerful than the governor” because “he took the endowment from nothing to where it is today.”⁷ A former trustee felt that Paterno’s advocacy for academic excellence following his first national championship indicated that he felt he was above the board.⁸ A faculty member recounted the board’s inability to convince Paterno to retire as an indication of his power.⁹ A senior administrator said that Paterno’s press conference (following the announcement of Sandusky’s indictment) indicated that the board had no control over Paterno and “he had to go.”¹⁰ A former football trainer said that some decisions involving other sports “had to go through Joe.”¹¹

The majority of those refuting the “all powerful” description spoke of Paterno as a highly effective, dedicated, conscientious head coach. Repeatedly, interviewees described him as disciplined and adhering to high standards for himself as well as players and staff; his dedication to compliance with external regulations as well as to his own code of personal ethics was emphasized.

Several interviewees directly contradicted the idea that Paterno’s power extended beyond the football program. A current trustee stated that the board was not afraid of Paterno.¹² A senior administrator in Athletics said “people are wrong if they believe that Paterno ran the university.”¹³ A head coach said, “He did not run the Athletic Department. When they would talk about issues, he would constantly refer to the AD and president as other coaches did. Paterno referred to them as the decision-makers on any issues a head coach would have and always said they will make the right call. Paterno deferred to the President and AD on Athletic Department wide decisions.”¹⁴ A member of the football coaching staff concurred, saying, “Paterno believed in the chain of command and followed it himself.”¹⁵ Another football coach said that Penn State was “not a Joe Paterno-run university” and added “there are no corners cut with Joe.”¹⁶ A senior administrator in Student Affairs involved in student disciplinary matters was “not a fan of Joe Paterno” because he made inquiries when his players got in trouble, but stated that his staff operated completely independently.¹⁷ A senior administrator¹⁸ and a trustee¹⁹ both debunked the rumor that Paterno had thrown Spanier and Curley out of his house when they went to discuss his retirement.

Conclusion: A minority of interviewees believed that Coach Paterno held power in the university beyond his role as head football coach; most of those individuals expressed reputational generalizations without basing them in concrete details, and some of those who provided reasoning for this position referred to Paterno’s leadership in fundraising and academics, indications of positive influence but not misuse of power. Importantly, the great majority of the individuals in direct position to observe incidents where Paterno could have overstepped his role as head football coach – members of the football program, the Athletic Department, and senior university administrators – stated that Paterno respected and adhered to the hierarchy of authority within the university. Results of this analysis demonstrate that although there existed a belief among some individuals that Paterno was more powerful than a

football coach should be, those with direct knowledge of Paterno's actions viewed him as a highly effective coach with high standards of personal ethics who followed the rules and respected the university's administrative hierarchy.

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- ¹ Interview, March 15, 2012.
 - ² Interview, March 15, 2012.
 - ³ Interview, May 3, 2012.
 - ⁴ Interview, May 1, 2012.
 - ⁵ Interview, March 13, 2012.
 - ⁶ Interview, March 22, 2012.
 - ⁷ Interview, April 18, 2012.
 - ⁸ Interview, March 13, 2012.
 - ⁹ Interview, February 21, 2012.
 - ¹⁰ Interview, April 10, 2012.
 - ¹¹ Interview, April 20, 2012.
 - ¹² Interview, April 12, 2012.
 - ¹³ Interview, February 7, 2012.
 - ¹⁴ Interview, January 13, 2012.
 - ¹⁵ Interview, February 28, 2012.
 - ¹⁶ Interview, December 20, 2011.
 - ¹⁷ Interview, December 6, 2011.
 - ¹⁸ Interview, February 10, 2012.
 - ¹⁹ Interview, March 8, 2012.

APPENDIX 2.7

Interview Analysis and Summary: Do student athletes receive special treatment?

- Analysis of interviews indicates that athletes do not receive special treatment in disciplinary matters or academics.

Of those who provided information related to this question, 9 interviewees said athletes did receive special treatment, and 79 said they did not. A breakdown of roles is important to provide context for those providing affirmative responses: Penn State law enforcement personnel (2 yes, 5 no); State College law enforcement personnel (2 yes, 3 no); senior administrators (2 yes, 16 no); Football program employees (1 yes, 14 no); trustees (1 yes, 8 no); administrative staff (1 yes, 15 no).

Law enforcement officials on and off campus commented that sometimes staff from the football program advocated for student athletes in ways that they felt were inappropriate.^{1 2 3 4} This opinion was shared by two administrators from Student Affairs.^{5 6} One of these administrators was Vicky Triponey, former Vice President of Student Affairs; her time at Penn State was extremely controversial and is addressed in a separate section of this report which shows that her credibility is in question.

One interviewee said that football players sometimes were given access to athletics facilities in ways that were against the rules.⁷ A trustee said he thought there probably was something to the allegations that athletes are given special treatment, but had no concrete knowledge to report.⁸ A past president of the Penn State Alumni Association had heard rumors of athletes receiving special treatment in disciplinary proceedings, but thought that if this was true, such incidents had happened long ago and were not currently occurring; he noted that Joe Paterno had a reputation for being very strong about discipline of his players, and recalled that Franco Harris was benched for several games for being in "Paterno's dog house."⁹

The great majority of respondents said student athletes did not receive special treatment. This included 8 administrators in Student Affairs.^{10 11 12 13 14 15 16 17 18} Several of these individuals had worked in Student Affairs for decades and reported that athletes were never treated

differently than other students in disciplinary matters. One said “the integrity of the Student Affairs Office is beyond reproach.”¹⁹ Another was “adamant” that student athletes were not given special treatment and emphasized that, at Penn State, “people have been doing the right things for a long time.”^{20 21}

Three faculty having close ongoing relationships with Athletics and student athletes, some dating back several decades, were unanimous in reporting no interference by Athletics on behalf of student athletes.^{22 23 24 25} One said that Spanier and Curley made it clear that anyone violating NCAA rules would be fired;²⁶ another noted that Paterno often advocated for more stringent rules than required by the NCAA.²⁷ One stated that “the culture” was understood, in that student athletes knew they needed to be successful students, and coaches did not try to undermine the academic integrity of student athletes.²⁸ Two former deans^{29 30} agreed with these faculty, one stating that in 50 years, he was never aware of any faculty being asked to give special treatment to athletes.³¹

In contrast to the concerns voiced by a minority of law enforcement officers, the majority who were interviewed believed that student athletes did not receive special treatment. A retired officer of the PSU police stated that during his 25 years, he had not seen a pattern of preferential treatment of football players by campus police; he noted that some officers might have been more lenient while others were “extra hard” on them, and added that he was not aware of any interference by administration into police matters involving athletes.³² An officer with the State College Police Department for more than 20 years said that both athletes and coaches had consistently been helpful when involved with investigations.³³

Anthony Sassano, an agent in the PA Attorney General’s office who was an investigator in the Sandusky case, said there was no influence from administration or football coaches in regard to arrest of students or athletes. He said the police department “did not show much mercy” on football players. He noted that the Penn State Police Department was “legalistic” and “would proceed if someone did something wrong, no matter who it was.”

A senior administrator in Athletics said he was unaware of any disparate treatment of student athletes, and said he strongly believes in the ways that the University has integrated student

athletes into typical student life, for example, by allowing them to have contact with international students and nonathletes because they do not live in special dormitories.³⁴

Conclusion: 90% of respondents, including administrators in Student Affairs, faculty and deans with longstanding history of connections with Athletics, and law enforcement officers on and off campus, reported no special treatment of student athletes regarding disciplinary matters or academics.

¹ Interview, December 21, 2011.

² Interview, February 15, 2012.

³ Interview, January 19, 2012.

⁴ Interview, December 21, 2011.

⁵ Interview, March 10, 2012.

⁶ Interview, March 26, 2012.

⁷ Interview, February 1, 2012.

⁸ Interview, March 8, 2012.

⁹ Interview, April 19, 2012.

¹⁰ Interview, March 22, 2012.

¹¹ Interview, December 6, 2011.

¹² Interview, December 21, 2011.

¹³ Interview, March 14, 2012.

¹⁴ Interview, December 27, 2011.

¹⁵ Interview, February 8, 2012.

¹⁶ Interview, December 19, 2011.

¹⁷ Interview, December 19, 2011.

¹⁸ Interview, April 12, 2012.

¹⁹ Interview, February 8, 2012.

²⁰ Interview, March 22, 2012.

²¹ Interview, December 6, 2011.

²² Interview, February 6, 2012.

²³ Interview, January 12, 2012.

²⁴ Interview, December 7, 2011.

²⁵ Interview, February 16, 2012.

²⁶ Interview, January 12, 2012.

²⁷ Interview, February 6, 2012.

²⁸ Interview, February 6, 2012.

²⁹ Interview, April 10, 2012.

³⁰ Interview, February 16, 2012.

³¹ Interview, February 16, 2012.

³² Interview, February 1, 2012.

³³ Interview, December 14, 2011.

³⁴ Interview, January 4, 2012.

APPENDIX 2.8

Interview Analysis and Summary: Vicky Triponey

- Analysis of interviews indicates that Triponey is not a credible source of information. Interviewees described her as unprofessional and unfair in her approach to discipline of student-athletes, and said that her job performance was unsatisfactory and led to a contentious separation from the university.

References to Vicky Triponey were found in material from 28 interviewees, primarily trustees and high level administrators. Only two individuals, both trustees, spoke positively about Triponey.^{1 2}

Triponey was described in many interviews as conflict-prone, combative, and volatile. She “lashed out” at President’s Council meetings.³ Others considered her “emotionally unhealthy,”⁴ “too dominating,”⁵ and “universally disliked.”⁶

Concerns were noted regarding Triponey’s management style. Former Provost and current President Erickson⁷ noted that Triponey was not well regarded at her previous university and observed that she failed to develop good relationships with her senior administrators, who left for other jobs. A senior University administrator reported that he conducted a review of complaints that Triponey “abused her staff and used her staff for personal gain;” these reports were found to be legitimate and Triponey was subsequently fired.⁸

Multiple interviewees described conflicts between Triponey and Joe Paterno in regard to disciplinary matters involving football players. Both Triponey and Paterno were described as unyielding in their positions,⁹ their relationship was characterized as “contentious and childish.”¹⁰ Erickson indicated that Triponey was “old school student affairs” at a time when new approaches were coming into practice. Football staff believed Triponey was unfair to their players^{11 12} and did not understand Paterno’s stringent discipline of his players.¹³ One of Triponey’s senior administrators said Triponey “had an axe to grind any time Athletics was involved.”¹⁴ A special committee was set up by Spanier and charged with studying and benchmarking Penn State’s judicial affairs process; the administrator responsible for this work said that both Triponey and Paterno supported the recommendations.¹⁵

Following the Sandusky scandal, Triponey surfaced in the press, complaining that Paterno had caused her to be fired.^{16 17} One interviewee stated that Triponey was paid \$10,000 for her interview with ESPN.¹⁸ A trustee noted that despite Triponey's claim that Paterno was the source of her dismissal, the trustee believed that complaints made by a number of trustees who felt Triponey was "horrible in dealing with people" convinced Spanier to remove her.¹⁹ Another trustee stated that Triponey "was the only person he could recall that made the University better by leaving."²⁰

Conclusion: Triponey was unprofessional and left the university under duress. She was known to have hostility towards Penn State Athletics, particularly Joe Paterno and the football program, and seized the opportunity to obtain revenge and financial gain following the Sandusky scandal. Her interview results are therefore not credible because it is not reasonable to expect that her answers would reflect a fair portrayal of events or situations occurring while she worked at Penn State.

¹ Interview, May 3, 2012.

² Interview, March 15, 2012.

³ Interview, April 12, 2012.

⁴ Interview, April 12, 2012.

⁵ Interview, April 20, 2012.

⁶ Interview, March 15, 2012.

⁷ Interview, April 12, 2012.

⁸ Interview, February 2, 2012.

⁹ Interview, April 12, 2012.

¹⁰ Interview, April 12, 2012.

¹¹ Interview, February 6, 2012.

¹² Interview, December 7, 2011.

¹³ Interview, December 5, 2011.

¹⁴ Interview, April 12, 2012.

¹⁵ Interview, January 18, 2012.

¹⁶ Interview, February 2, 2012.

¹⁷ Interview, January 3, 2012.

¹⁸ Interview, January 3, 2012.

¹⁹ Interview, April 5, 2012.

²⁰ Interview, April 16, 2012.

APPENDIX 3

CONTEXTUAL REPORTS

APPENDIX 3.1

Freeh press conference: Media circus

Excerpted from: Silverwood, W. "Maximize your message to the media: Hold a press conference." January 11, 2017. Facebook Notes, Wendy Silverwood.
<https://www.facebook.com/notes/wendy-silverwood/maximize-your-message-to-the-media-hold-a-press-conference/1295359887193132/>

Maximize Media Attendance: Hold a Press Conference

Freeh Press Conference - July 12th 2012, Philadelphia

Why a press conference? It's appropriate to hold a press conference when you have significant hard news to release and want to convey it to a broad audience.

Pro Tip: Create a media-friendly set-up. The set-up should include a podium and, typically, a microphone for the speakers to use when delivering their comments. Depending on your venue, you can also provide chairs for the speakers and/or attendees.



FSS was a new venture for Freeh and the firm had no track record.

"We had a huge amount of emotional feelings for the victims. Which is one of the reasons why we did the one press conference -- we had to do one press conference, but it wasn't anything I wanted to talk about ever again."

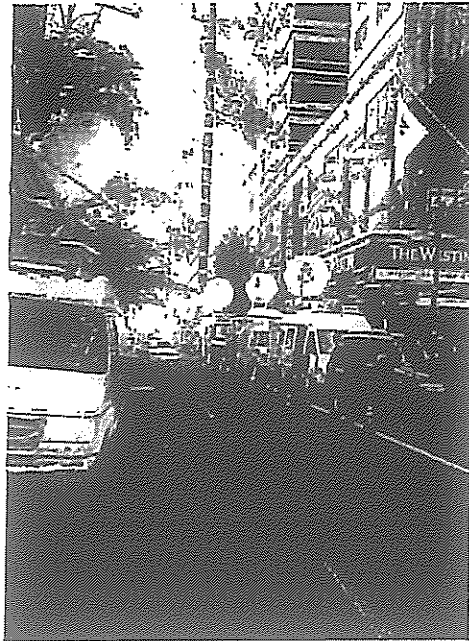
<http://fortune.com/2013/07/25/louis-freeh-on-penn-state/>

Why would Freeh consider doing his first ever press conference for Penn State? FSS could just as easily have presented the report at University Park before a special session of the Trustees. The Board - who held a fiduciary duty - could then properly assess and respond to Mr. Freeh's opinions within that report. This would have been just as sensitive to the victims and delivered on the commitment the Board made when they engaged Freeh and his fledgling firm.

Pro Tip: Pick an easily accessible site. Your location should be convenient for the media to access and, when possible, relevant to the news you have to announce.

Originally, PR firm Kekst & Company wanted to hold the press conference conveniently in NYC, but it was ultimately decided that it should be held in Pennsylvania, given this was a more relevant location dealing with the state's flagship university.

The press conference was held in the ballroom at The Westin in downtown Philadelphia. Local TV affiliates of ABC, CBS, NBC, Fox; metro DC & NYC media outlets; and the national TV and print media outlets such as CNN, WSJ, NYT were in attendance.



Pro Tip: Hold it at the right time. Timing is very important for press conferences. The best choices for coverage are usually Tuesday through Thursday, in the late morning or early afternoon (between 10 am and 2 pm), so that reporters can meet their deadlines.

The Date

The date of Thursday, July 12th was special because it was one of the slowest sports news reporting days of the year and if you wanted maximum media exposure for something that involves a very high profile college football program and its coach, this is the day.

The Timing

A 9 am release of the prepared remarks & planned upload of the report to the web - with a 10 am press conference - allowed reporters to comfortably file and report a sensational story in time for the noon news cycle.

The date and timing of Freeh's dramatic press conference and release of the Freeh report ensured that there would not be any more meaningful review of the Freeh report itself by national news outlets.

Bonus factor: the Summer Olympics were starting at the end of July when many sports and national reporters would be leaving shortly for London and covering the Games. Thus they would not be inclined to fully review, vet and report on the Freeh report.

This maximized even more the impact of Freeh's message, something that shouldn't matter for a non-biased, full, fair and independent investigation.

Before the press conference

The full Freeh report, which was 267 pages and included 702 endnotes and 105 pages of appendices, was to be made available to the media and the public exactly one hour before his 10 am press conference.

But that didn't happen.

An article posted by Deadspin at 2:35 am the morning of July 12th contains a document with a talking point for an "unexpected" 9:05 am difficulty with the website – which is curious – because it's not 9:05 am yet.

Clearly, there was intent to not make the full report as accessible as FSS wanted the public to believe, and to have the media rely heavily on the Remarks & Key Findings.

The Freeh Report Will Conclude Paterno's Firing Was Warranted, According To These Preparation Documents



Timothy Burke
DIRECTOR CSPI
THE PENN STATE SCANDAL

2010.07.12

9:05 Thank you for bearing with us. Apparently there have been some difficulties with the website. We are working to email the report as soon as we can. Please bear with us a bit longer. In the meantime, we have copies of Mr. Freeh's statement.

Beginning of Q&A

We will now begin the Q&A period. Please raise your hand if you would like to ask a question and wait to be

Additional talking points for the planned press conference were also retrieved and posted by Deadspin.

Q: Does the evidence suggest the removal of President Spanier was appropriate?

A: [Yes, we believe it does.]

Q: Does the evidence support the termination of Coach Paterno?

A: [Yes, we believe it does.]

Q: Do you believe Coach Paterno did all he should have to report these allegations?

A: [No]

Q: Do you believe Coach Paterno was protecting Mr. Sandusky?

A: We can only report on what Coach Paterno did and did not do. We are not ascribing motives or motivation.

Q: Do you believe Coach Paterno had too much power at PSU?

A: [To come]

Q: Do you believe anyone else was protecting Mr. Sandusky?

[1] <http://deadspin.com/5925339/the-freeh-report-will-conclude-paternos-firing-was-warranted-according-to-these-preparation-documents>.

The Timing during the press conference

8:57 a.m.

Louis Freeh issued his prepared remarks.

FOR IMMEDIATE RELEASE

REMARKS OF LOUIS FREEH IN CONJUNCTION WITH ANNOUNCEMENT OF PUBLICATION OF REPORT REGARDING THE PENNSYLVANIA STATE UNIVERSITY

Philadelphia, PA, July 12, 2012 – Louis Freeh today issued prepared remarks in conjunction with today's publication of his report of the investigation into the facts and circumstances of the actions of The Pennsylvania State University surrounding the child abuse committed by a former employee, Gerald A. Sandusky. Mr. Freeh will summarize these remarks during his press conference at 10 a.m. today.

http://www.cbssports.com/collegefootball/FreehReport_Press_Release_07_12_12.pdf

News sites and Twitter lit up shortly after, a narrative was shaped, all in time for the noon news cycle.

8:59 a.m

Freeh report: 'Total disregard for the safety and welfare of Sandusky's child victims'



By The Patriot-News
Follow on Twitter

on July 12, 2012 at 8:59 AM, updated July 12, 2012 at 9:34 AM

Print
Email



9:00 a.m.



ESPN Big Ten
@ESPN_BigTen

Follow

"Messrs. Spanier, Schultz, Paterno and Curley – repeatedly concealed critical facts relating to Sandusky's child abuse."

9:00 AM - 12 Jul 2012

13

9:13 a.m.

COLLEGE

Freeh Report: Penn State Administration, Joe Paterno Covered Up Jerry Sandusky's Child Abuse (UPDATED)

10/07/2012 09:13 AM Updated Jul 17, 2012

10k



Tyler Klinghede

Sunday Edition Reporter, The Huffington Post

This virtually instantaneous and uniformly negative reporting just before, during and after his press conference perpetuated the many unproven assertions and opinion-based conclusions, without any evaluation or analysis by the news outlets. The timing did not afford any meaningful opportunity for the four principals involved, their representatives, any neutral third party or even the Trustees to assess or even respond to Mr. Freeh's opinions.

Clearly, the release of the report was meticulously staged for maximum impact and minimum chance for any kind of a rebuttal.

9:07 a.m.

The University issued a brief statement in response to the release of the Freeh Report, with a mass email at 9:10 am.

Freeh report released to public

July 12, 2012

Statement from University leadership and the Board of Trustees:

Today with the report released by Judge Louis Freeh, the Penn State Board of Trustees delivered on the commitment we made last November when we engaged Judge Freeh to conduct an independent investigation into the University's actions regarding former Penn State employee, Jerry Sandusky, and the handling of allegations of the child abuse crimes of which he has since been found guilty.

9:10 a.m.

Onward State – Penn State's student run blog - was able to obtain a copy of the Freeh report as a PDF before the "crash" and place it on their site. These student reporters were able to pore thru portions of the report, while not everyone else in the room had access.

<http://onwardstate.com/2012/07/12/live-blog-freeh-report-on-penn-state-release/>

9:31 a.m.

PennLive reports this using just the key findings:

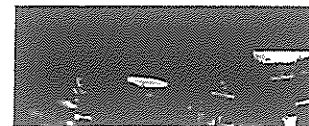
Joe Paterno, others covered up Jerry Sandusky abuse of children, PSU-Freeh report says



By Sara Ganim | The Patriot-News
Follow on Twitter

on July 12, 2012 at 9:31 AM, updated January 21, 2013 at 12:37 PM

Print
Email



9:40 a.m. – 9:45 a.m.

With the press still having problems accessing the full report - two USB drives, and then a third- were given out to hurriedly share among a full room of reporters to download the report onto their laptops. A futile effort if you're a reporter who can't access the website and you have to wait your turn for a USB.

This ensured that the media could not read much more into the report past the Key Findings before Freeh took the lectern at 10 am.

9:52 a.m.

The NCAA released the following statement:

"Like everyone else, we are reviewing the final report for the first time today. As President Emmert wrote in his November 17th letter to Penn State President Rodney Erickson and reiterated this week, the university has four key questions, concerning compliance with institutional control and ethics policies, to which it now needs to respond. Penn State's response to the letter will inform our next steps, including whether or not to take further action. We expect Penn State's continued cooperation in our examination of these issues."

However, Chair of the NCAA executive committee Ed Ray later admitted that he never fully read the Freeh report and only looked at the executive summary and press accounts.

In his testimony in the Paterno Family's ongoing case, Ray admitted that he was unaware that he needed to prep for anything related to the Freeh Report before the organization's executive board met to discuss possible sanctions on the University. Instead, Ray spent time in Hawaii where he was unable to read the entire report. Ray said he returned on the 19th or 20th and approved the consent decree on the 21st without actually reading the report that was the basis of those sanctions.

It's worth noting that the entire Freeh report was viewable and downloadable online for the entirety of Ray's trip and two days before.

"So I may have looked at the executive summary when it came out, and certainly read press accounts, but I don't believe I read or was able to download and get a copy of the full report until after I got back, which was about the time of the press conference (announcing the Consent Decree), or something shortly thereafter," Ray said to Wick Sollers, the Paterno family lawyer.

10:00 a.m.

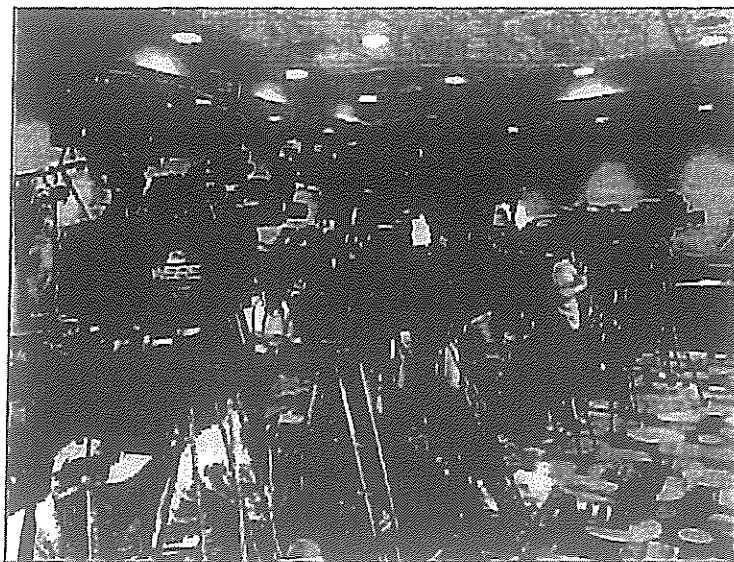
Louis Freeh took to the lecturn.

Pro Tip: Make it visual. Consider the visual impact of your event — especially for photographers and TV cameras. Display a banner behind the speakers and on the podium.



Pro Tip: Have an agenda. Start promptly. It is unprofessional to keep the media waiting. The entire press conference should not last more than one hour, including the Q & A.

Freeh's agenda was to reinforce pre-determined themes to the media and the public at large.



Talking Points / Freeh Presser Q & A prep/ Kekst & Company

Kekst was the PR firm handling the work for the "special committee of the Pennsylvania State University board of trustees that is investigating the university's actions with regard to the allegations of child abuse" and coordinated efforts with Freeh Sporkin Sullivan.

Kekst's Penn State team includes Tom Davies, Jeremy Fielding, Stef Goodsell & Jim Fingerioth. Tom Davies was the press conference moderator.

Q & A prep done by FGIS, LLC Managing Director, Walter Donaldson, II

- A: We believe it would rank them very highly, among the best in the nation.
- Q: What recommendations would you like to see all educational institutions adopting?
- A: We think the recommendations are valid for every institution of higher learning.

Walter Donaldson, II
Managing Director
Freeh Group International Solutions, LLC
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Fax: (302) 854-1142
Mobile: (302) 854-3792
Donaldson@FreehGroup.com
www.FreehGroup.com



<https://www.scribd.com/document/99880230/Penn-State-Q-A>

APPENDIX 3.2

Freeh press conference statements: Errors

Excerpted from: Blehar, R. (2013). Sandusky scandal report 2.

http://www.march4truth.com/uploads/3/3/1/5/3315120/report_2_-_ncaa_sanctions_full.pdf

Judge Freeh's press conference statements on the following pages are evaluated against the 20 errors and omissions cited on page 4. Red indicates lines struck based on the errors and omissions.

Our most saddening and sobering finding is the total disregard for the safety and welfare of Sandusky's child victims by the most senior leaders at Penn State. The most powerful men at Penn State failed to take any steps for 14 years to protect the children who Sandusky victimized. [Messrs. Spanier, Schultz, Paterno and Curley never demonstrated, through actions or words, any concern for the safety and well-being of Sandusky's victims until after Sandusky's arrest.]

In critical written correspondence that we uncovered on March 20th of this year, we see evidence of their proposed plan of action in February 2001 that included reporting allegations about Sandusky to the authorities. After Mr. Curley consulted with Mr. Paterno, however, they changed the plan and decided not to make a report to the authorities. Their failure to protect the February 9, 2001 child victim, or make attempts to identify him, created a dangerous situation for other unknown, unsuspecting young boys who were lured to the Penn State campus and football games by Sandusky and victimized repeatedly by him.

The stated reasons by Messrs. Spanier, Schultz, Paterno and Curley for not taking action to identify the victim and for not reporting Sandusky to the police or Child Welfare are:

(1) Through counsel, Messrs. Curley and Schultz have stated that the "humane" thing to do in 2001 was to carefully and responsibly assess the best way to handle vague but troubling allegations.

(2) Mr. Paterno said that "I didn't know exactly how to handle it and I was afraid to do something that might jeopardize what the university procedure was. So I backed away and turned it over to some other people, people I thought would have a little more expertise than I did. It didn't work out that way."

(3) Mr. Spanier told the Special Investigative Counsel that he was never told by anyone that the February 2001 incident in the shower involved the sexual abuse of a child but only "horsing around." He further stated that he never asked what "horsing around" by Sandusky entailed.

Taking into account the available witness statements and evidence, it is more reasonable to conclude that, in order to avoid the consequences of bad publicity, the most powerful leaders at Penn State University - Messrs. Spanier, Schultz, Paterno and Curley - repeatedly concealed critical facts relating to Sandusky's child abuse from the authorities, the Board of Trustees, Penn State community, and the public at large. [Although concern to treat the child abuser humanely was expressly stated, no such sentiments were ever expressed by them for Sandusky's victims.]

Further, they exposed this child to additional harm by alerting Sandusky, who was the only one who knew the child's identity, about what McQueary saw in the shower on the night of February 9, 2001.

[The evidence shows that these four men also knew about a 1998 criminal investigation of Sandusky relating to suspected sexual misconduct with a young boy in a Penn State football locker room shower. Again, they showed no concern about that victim. The evidence shows that

Comment [rMB1]: STRIKE. Point 6. There is no evidence to support that any of Penn State's leaders had any knowledge of Sandusky doing anything illegal or improper until after his arrest, therefore they had no reason to be concerned.

Comment [rMB2]: STRIKE. Point 6. There is no evidence to support that any of Penn State's leaders had any knowledge of Sandusky doing anything illegal or improper until after his arrest, therefore they had no reason to be concerned.

Comment [rMB3]: STRIKE. Point 7. Gary Schultz and Wendell Countryman both received reporting the incident to the proper authority - Centre County Children and Youth Services (CYS). Freeh's team did not attempt to verify if the report was made and pressed assumed it was not. This is a matter pending before the courts and any findings related to the 2001 incident are premature.

Comment [rMB4]: STRIKE. Point 1. After making a report to an's welfare agencies, the Penn State officials were protected, by law, from learning the child's identity. There is no evidence that any calls were repeatedly refused on the Penn State campus after 2001.

Comment [rMB5]: STRIKE. Point 1. Federal and state laws protect the identity of the subjects of child abuse investigations. Penn State officials were legally correct to refuse Sandusky's offer to reveal the subject's identity.

Comment [rMB6]: STRIKE. Point 7. Gary Schultz and Wendell Countryman received that the incident was reported to Centre County CYS.

Comment [rMB7]: STRIKE. Point 12. The lawyer for the Sandusky's provided a hearsay account of the Sandusky's abusive behavior, who stated that the PSU ADP told him to avoid publicity. This is "hearsay" and was not admissible in a court of law.

Comment [rMB8]: STRIKE. Points 2, 3, and 7. PSU officials were unaware of Sandusky's activities in 1998 and other.

Comment [rMB9]: STRIKE. Point 8. PSU officials did not believe that McQueary's report constituted a crime.

Comment [rMB10]: STRIKE. Point 8. PSU officials were unaware of any victim until 2001.

Comment [rMB11]: STRIKE. Point 7. Schultz and/or Countryman's notification to CYS in 2001 could have allowed the child's safety. The Freeh team did not seek to verify if the report was made. This is a matter pending before the courts and any findings related to the 2001 incident are premature.

Comment [rMB12]: STRIKE. Points 2 and 4. Gary Schultz knew the details of the 1998 investigation and could not disclose the results to the other men. The contents of the email support that no details were provided.

Edits to Freeh Press Conference Findings – 12 July 2012

[Mr. Paterno was made aware of the 1998 investigation of Sandusky, followed it closely, but failed to take any action] even though Sandusky had been a key member of his coaching staff for almost 30 years, and had an office just steps away from Mr. Paterno's. [At the very least, Mr. Paterno could have alerted the entire football staff, in order to prevent Sandusky from bringing another child into the Lasch Building. Messrs. Spanier, Schultz, Paterno and Curley also failed to alert the Board of Trustees about the 1998 investigation or take any further action against Mr. Sandusky.] None of them even spoke to Sandusky about his conduct. In short, nothing was done and Sandusky was allowed to continue with impunity.

Based on the evidence, the only known, intervening factor between the decision made on February 25, 2001 by Messrs. Spanier, Curley and Schultz to report the incident to the Department of Public Welfare, and then agreeing not to do so on February 27th, was Mr. Paterno's February 26th conversation with Mr. Curley.]

We never had the opportunity to talk with Mr. Paterno, but he did say what he told McQueary on February 10, 2011 when McQueary reported what he saw Sandusky doing in the shower the night before: "You did what you had to do. It is my job now to figure out what we want to do." Why would anyone have to figure out what had to be done in these circumstances? [We also know that he delayed reporting Sandusky's sexual conduct because Mr. Paterno did not "want to interfere" with people's weekend. To his credit, Mr. Paterno stated on November 9, 2011, "With the benefit of hindsight, I wish I had done more."

[Their callous and shocking disregard for child victims was underscored by the Grand Jury] which noted in its November 4, 2011 presentment that there was no "attempt to investigate, to identify Victim 2] or to protect that child or others from similar conduct except as related to preventing its reoccurrence on University property."

[None of these four men took any responsible action after February 2001 other than Mr. Curley informing the Second Mile that Mr. Sandusky had showered with a boy.] Even though they all knew about the 1998 incident, the best they could muster to protect Sandusky's victims was to ask Sandusky not to bring his "guests" into the Penn State facilities.

Although we found no evidence that the Penn State Board of Trustees was aware of the allegations regarding Sandusky in 1998 and 2001, that does not shield the Board from criticism. In this matter, the Board – despite its duties of care and oversight of the University and its Officers – failed to create an environment which held the University's most senior leaders accountable to it. Mr. Spanier resisted the Board's attempt to have more transparency. In fact, around the time that Mr. Sandusky, Mr. Curley and Mr. Schultz were arrested, Mr. Spanier was unwilling to give the Board any more information about what was going on than what he was providing to the public.

[After a media report on March 31, 2011, the Board was put on notice about serious allegations that Sandusky was sexually assaulting children on the Penn State campus]. The Board failed in its duty to make reasonable inquiry into these serious matters and to demand action by the President.

Comment [rMB13]: STRIKE. Points 2 and 3. There is no direct evidence that Paterno was ever informed of the 1998 incident. Furthermore, there is no evidence that Paterno was ever updated or told of the outcome of the incident. The finding is completely unsupported by the evidence.

Comment [rMB14]: STRIKE. Point 1 and 2. Paterno was unaware of the 1998 investigation.

Comment [rMB15]: STRIKE. Point 2. Based on the evidence, Spanier was unaware of the 1998 incident at the time of the May 1998 BOT meeting. Moreover, it would have been proper to inform the BOT about an unfounded complaint of child abuse against Sandusky.

Comment [rMB16]: STRIKE. Points 3 and 4. All except Schultz were unaware of Sandusky's activities and Sandusky was not found guilty of any crime. There was no need to talk to him.

Comment [rMB17]: STRIKE. Point 1. Dr. Spanier stated there was no agreement to report the incident to PSU, however, the option was left open if Sandusky was uncooperative. There is no evidence that Paterno changed the decision.

Comment [rMB18]: STRIKE. Point 15. Seeking comment, Paterno met with Curley and Schultz on the weekend to inform them about the incident.

Comment [rMB19]: STRIKE. Point 6. PSU officials were unaware of Sandusky's crimes until November 2011.

Comment [rMB20]: STRIKE. Point 1. The child's identity was protected by Federal and State laws.

Comment [rMB21]: STRIKE. Point 7. PSU's report to DHS entered data protection plan was put in place for the child.

Comment [rMB22]: STRIKE. Point 7. Any statement regarding the appropriateness of PSU officials' efforts in response to the 2001 incident has yet to be decided in a court of law and are premature.

Comment [rMB23]: STRIKE. Points 2 and 4. There is no evidence that Curley, Schultz, or Paterno knew of the nature of the 1998 incident.

Comment [rMB24]: STRIKE. Point 6. While the March 31, 2011 report mentioned the 1998 incident, it stated the incident didn't result in charges. It did not say that Sandusky was sexually assaulting children on the Penn State campus.

Edits to Free Press Conference Findings – 12 July 2012

(The President, a Senior Vice President, and General Counsel did not perform their duty to make timely, thorough and forthright reports of these 1998 and 2001 allegations to the Board. This was a failure of governance for which the Board must also bear responsibility.)

Comment [rMB25]: STRIKE. Points Spanier, Paterno, et al, did not believe McQuay's 2001 report was anything more than horsing around.

We also found that:

- The Board did not have regular reporting procedures or committee structures to ensure disclosure of major risks to the University;
- Some Trustees felt their meetings were a "rubber stamp" process for Mr. Spanier's actions;
- The Board did not independently ask for more information or assess the underreporting by Spanier about the Sandusky investigation after May 2011 and thereby failed to oversee properly his executive management of the worst crisis in Penn State's history;
- The Board was over-confident in Spanier's abilities to handle crises and was unprepared to deal with:
 - the filing of criminal charges against senior University leaders and a prominent former football coach in November, 2011; and,
 - the firing of Coach Paterno.

From 1998–2011, Penn State's "Tone at the Top" for transparency, compliance, police reporting and child protection was completely wrong, as shown by the inaction and concealment on the part of its most senior leaders, and followed by those at the bottom of the University's pyramid of power. This is best reflected by the janitors' decision not to report Sandusky's horrific 2000 sexual assault of a young boy in the Lasch Building shower. The janitors were afraid of being fired for reporting a powerful football coach.

Comment [rMB26]: STRIKE. Points 2, 5, 4, and 7. Spanier, et al, were unaware of the 1998 incident and believed the 2001 incident was "horsing around." There was insufficient grounds to report other incident to the SGT.

Comment [rMB27]: STRIKE. Points 26 and 27. The hearsay testimony of Junior Ronald Petrolije at trial completely contradicted his grand jury testimony. In addition, there are several additional issues with Petrolije's testimony that cast doubt on its veracity.

Analysis of Freeh's Remarks During the Question and Answer Session

The following remarks were made by Louis Freeh during the question and answer period preceding his formal report at the press conference.¹ Red type indicates the allegation/statements that are unsupported based on the errors in the Freeh Report that were identified on page 5 of this report and the trial verdicts at Appendix A.

20:40 - "the evidence clearly shows, in our view, ~~an active agreement to conceal~~"

22:20 - "the rapes of these boys occurred in the Lasch Building"

24:12 - "feel obligated to advise the Board on a timely and fulsome basis. That clearly did not happen here in 1998."

26:00 - "between 2009 and 2011, some of the same things I just alluded to." (referring to Sandusky interacting with youth on the PSU campus)

26:20 - "the reasonable conclusion that we make is that all four individuals, that I've mentioned including Mr. Paterno made a decision -- made a decision to actively conceal knowledge in the events of February 2011. I can't parse between them, degrees of responsibility - what's significant and shocking is that the four of them, the four most powerful people at Penn State University made a decision to conceal this information."

28:18 - "As we put in our report, the motivation to avoid the consequences of bad publicity. Not just bad publicity."

28:52 - "What's striking about 1998 is nobody even spoke to Sandusky. Not one of those four persons. Including the coach who was a few steps away from his office. There's no indication anybody spoke to him."

30:08 - "Well we know when Mr. Curley speaks to the Second Mile he used the same word, that they were worried about Sandusky showering with a boy because of bad publicity. So this

¹ http://www.youtube.com/watch?v=g_afZMa5HIA (PBS)

notion of bad publicity, which is really disclosure, opening, and reporting, is a pervasive concern and fear by those running the university."

30:55 - "There's several e-mails - contemporaneous e-mails - in 1998, which we found by the way, which shows he's (Paterno) clearly following the case. He's clearly following the 1998 investigation."

33:08 - "The janitors, that's the tone on the bottom. Ok. These are the employees of Penn State who clean the locker rooms in the Lasch building where young boys are being raped. They witness, what is probably, in the report, the most horrific rape, that's described."

36:20 - "He (Paterno) as someone once said, made perhaps the worst mistake of his life. We're not singling him out. We're putting him in a category of four other people who are the four major leaders of Penn State... He was an integral part of the active decision to conceal."

TWENTY CRITICAL ERRORS/OMISSIONS IN THE FREEH REPORT

The following list is provided to quickly identify some of the most critical errors and omissions in the Freeh Report. The list of errors and omissions is not all inclusive, but identifies many of those which were used by the NCAA as a basis for levying sanctions and Freeh's press conference remarks. The errata² published with the Freeh Report did not identify any of the errors contained below; therefore these errors remain the record today.

The Freeh Report:

1. Omitted Federal and state laws regarding the confidentiality of child abuse reports.
2. Incorrectly found that Paterno, Curley, and Spanier knew the details of the 1998 investigation (none of the e-mails used as evidence contain any details about the investigation).
3. Incorrectly found that Spanier failed in his duties by not informing the Board of Trustees about 1998 (based on the Standing Orders of the BOT, the e-mail evidence, Spanier's travel schedule, and his statement – Exhibit 2J - he did not know of the investigation).
4. Incorrectly found that Paterno, Curley, Spanier, and Schultz were kept informed of the 1998 investigation of Sandusky (e-mail evidence shows they were not kept informed).
5. Incorrectly found that Paterno and Curley provided Sandusky with access to facilities for conducting programs for youth (access was granted by PSU's Outreach Office).
6. Constructed an incomplete timeline of Sandusky's crimes.
7. Did not investigate the claims by Gary Schultz and Wendell Courtney regarding contacting Centre County Children and Youth Services (CYS) about the 2001 incident.
8. Did not address the changing testimony and non-specific information reported by Mike

² <http://progress.psu.edu/assets/content/Louis-Freeh-Report-on-Penn-State-ERRATA-SHEET.pdf>

McQueary regarding the 2001 shower incident.

9. Omitted the testimony of Dr. Jonathon Dranov regarding the 2001 incident.
10. Incorrectly characterized e-mails as “cryptic” and “unique” to the 2001 shower incident.
11. Incorrectly concluded that Schultz, Spanier, and Curley had agreed to report the incident to DPW, but Paterno changed the plan.
12. Incorrectly concluded that PSU failed to report Sandusky in 2001 to avoid the consequences of bad publicity.
13. Did not investigate the potential conflict of interest issue between DPW and The Second Mile that was mentioned by police chief Thomas Harmon during the 1998 investigation.
14. Incorrectly stated Paterno, Curley, and McQueary should have reported the 2001 incident to comply with the Clery Act.
15. Incorrectly found that Paterno did not report the 2001 incident immediately because he didn’t want to interrupt anyone’s weekend (Paterno informed PSU officials on the weekend. In addition, Paterno’s schedule reveals that his out of town travel delayed his report by a day).
16. Incorrectly recounted the trial testimony regarding the Fall 2000/Victim 8 incident.
17. Did not critically analyze testimony in the Fall 2000/Victim 8 incident.
18. Incorrectly stated that Victim 6 was assaulted (Sandusky was acquitted of that charge).
19. Incorrectly stated that Victim 7 was assaulted (Sandusky was not charged with assault).
20. Incorrectly stated that Victim 5 was assaulted (Sandusky was acquitted of that charge).

APPENDIX 3.3

Penn State Athletics and the Culture of Academic Excellence: A Historical Review

It is indisputable that off the field, Joe Paterno's focus for his football team was their academic success. One needs no further proof than the successful Grand Experiment and his bold 1983 challenge to Penn State's Board of Trustees – to upgrade the academic curriculum, faculty and facilities and turn the school into a world class university.

The athletic department had been upgrading academic requirements for years before the late 1960s when Paterno, in his tenure as head coach, began instituting the Grand Experiment. His belief that Penn State could become an elite collegiate football power with athletes who were superior on the field and in the classroom took these aspirations to a higher level. "People tell me it can't be done without sacrificing standards," Paterno said in a 1967 article in the Philadelphia Daily News.¹

Paterno was realistic. He knew most of his players would not be scholars but he wanted them to be good students, "people who belong in college ... [learning] art and literature and music and all the other things college has to offer." Easy courses were out, and tougher ones were in. And over the decades he and his staff pushed them all to get their degrees and become good citizens contributing to society.²

In Paterno's 46 years as head coach, the graduation rates of his players were among the best in the nation. Since the NCAA and the American Football Coaches Association began tracking annual graduation rates in the mid-1980s, Penn State football players have graduated at an average percentage rate in the high 80s, with graduation rates of minority players also averaging in the 80s—both far above the national average.^{3 4 5 6 7 8 9}

Thirty former chairs of the University Faculty Senate from various academic backgrounds are on the record in 2012 supporting the athletic department's academic success and strict adherence to the rules.¹⁰ One former chair, Dr. John Nichols, was a founder and one-time chair of the Coalition on Intercollegiate Athletics, a nationwide alliance of 63 university faculty senates with FBS [Div 1] football programs concerned about the trajectory of athletics in an academic environment. "Our [Penn State] faculty chairs believe the academic intentions and performance

of our athletic department over many years has been among the best of peer institutions and many people outside Penn State may not realize that," said Nichols, now professor emeritus of the university's College of Communications.^{11 12}

Thirty-one of Paterno's players became first team Academic All-Americans with thirteen of those selected as first, second or third team All-Americans on the field. Five of his seventeen players who received prestigious \$18,000 postgraduate fellowships from the College Football Hall of Fame were also first team All-Americans.¹³

Dennis Onkotz, Charlie Pittman and John Urschel are living bookends for Paterno's Grand Experiment. Onkotz, a linebacker studying bio-physics, and Pittman, a running back majoring in business, were in Paterno's first recruiting class and became Academic All-Americans in 1969 as well as first team All-Americans on the field. They also were the first Paterno players to receive a hall of fame \$18,000 post-graduate fellowship and went on to successful business careers.^{14 15}

Urschel, an offensive lineman who was in one of Paterno's last classes of recruits, was the premier scholar-athlete in the country in 2013 when he received the esteemed Sullivan Award, presented by the Amateur Athletic Union as the nation's outstanding amateur athlete, and the William V. Campbell Trophy, given to the nation's outstanding college football scholar-athlete, by the National Football Foundation and College Hall of Fame. Urschel earned bachelor and master's degrees in mathematics and a master's in mathematics education with a perfect 4.0 Grade Point Average at the same time becoming a two-time All-Big Ten starting guard and a second-team All-American. He turned down Princeton and Stanford to attend Penn State because he said he wanted to play for Joe Paterno. He is now pursuing a Ph. D at MIT and continuing his football career in the National Football League with Baltimore.^{16 17}

It was Penn State's first national championship team in 1982, led by Academic All-American Todd Blackledge who won the Davy O'Brien Award as the nation's outstanding quarterback, that spurred the Board of Trustees to invite Paterno to talk about his team at the trustees meeting on Jan. 22, 1983. Paterno surprised everyone. Instead of discussing football, Paterno concentrated on academics and the deficiencies of the university in that realm.^{18 19}

"It bothers me to see Penn State football be Number One and...several weeks later and we find out we don't have many of our disciplines that rated up there with other institutions in the

country,” Paterno told the trustees. “We need money so that we can get some stars... We need vibrant, aggressive, brilliant teachers and scholars... We need chairs [of departments]... We need a better library... We need more controversy, we need more freedom, we need more people to come to us with different ideas, we need more minorities ... We need to find our soul ... We have got to raise \$7 to \$10 million bucks as far as I’m concerned in the next six months or we are going to lose some things and an opportunity we have.”^{20 21}

With the full support of the Board of Trustees and the administrations of Presidents John Oswald, Bryce Jordan, Joab Thomas and Graham Spanier, Paterno’s call to academic arms transformed Penn State into one of the country’s great public universities. In the next three decades, Paterno’s financial challenge helped raise billions of dollars to fulfill his academic vision—including nearly \$14 Million toward the \$34.4 Million expansion of the library that now bears the Paterno name—while also personally contributing \$5 Million.^{22 23 24}

In honor of Joe and Sue Paterno’s long time commitment to academics, Penn State’s College of Liberal Arts in partnership with the school’s Schreyer Honors College named its new fellows program in 2008 after the Paternos. The program for undergraduates requires a commitment that includes “completing a specified number of honors or honors-equivalent courses, maintaining a high grade average, and completing a research-based or creative capstone project.” As the initial news release about the program stated, “The (Patermos) embody academic ambition and excellence in the liberal arts tradition that is a hallmark of the Fellows program – as well as its commitment to ethics, leadership and service...In their many years at Penn State, the Paternos have consistently advocated that excellence is not something reserved for a few elite, but a trait that should be pursued vigorously by all.”²⁵

Paterno’s emphasis on academics and his Grand Experiment were not born in isolation. They were an extension of Penn State’s long history in the education of students participating in varsity sports, a struggle between academics and the often tainted world of intercollegiate athletics that goes back to the era of the so-called “tramp athlete” in the late 1800’s and early 1900’s. When Penn State began competing against other colleges in the late 1880s, the students organized and ran the teams under an organization entitled the Athlete Association starting with baseball, football, track and basketball. Some faculty assisted in an advisory capacity—but not as

coaches as now defined--while others bemoaned the time students spent playing sports of any kind.^{26 27 28 29}

In January of 1899 the ultimate authority for athletics was given to the alumni, a move that would change Penn State athletics forever. Nine years later, the alumni created the position of graduate manager, a position that continued until the early 1950s, and superseded the authority of the first three athletic directors.^{30 31}

The alumni wielded so much power and influence over the next several decades that eventually in 1928 the administration was forced to take control and radically cut back the athletics program. In 1907, the Faculty Committee on Athletics helped implement four new rules on eligibility that set academics as a priority for varsity sports, including one that required athletes be enrolled as students within two weeks of the start of a semester and another declaring students be ineligible if they did not achieve a certain level of grades.^{32 33}

However, the student body rebelled at the passing of new eligibility rules that would eliminate the "tramp athlete" syndrome then inherent in intercollegiate athletics. In that era it was common for athletes to move from school to school, sometimes within the same academic semester year, similar to a vagrant who travels aimlessly on foot. Two of Penn State's most famous historical athletes bore that tainted designation - Levi Lamb and Lee Talbot.^{34 35}

The rules would have made it mandatory that athletes spend a full year in the classroom and pass a "satisfactory examination for advancement" before joining a varsity team while also playing "for no more three years." Not until a period from 1911 through 1914 were those rules adopted under the presidential leadership of Edwin Sparks, including a rule that made anyone ineligible who had received a "Bachelor's degree from this or any other college of equal scholarship standards" or who had competed in intercollegiate athletics at another college equal/similar standards.^{36 37 38}

Meanwhile, on a national level, Penn State also was involved in helping to organize a new group of college presidents to bring stability, standard rules and continuity in college athletics. In 1905 the Intercollegiate Athletic Association of the United States was born. Oddly, Penn State was not granted membership in the New York based group until 1908 and one year later, the organization of 50 colleges changed its name to the National Collegiate Athletic Association, or NCAA.^{39 40}

It's no coincidence that the emphasis on eligibility and the classroom evolved during a 22-year stretch (1906-1927) when Penn State football emerged as an intercollegiate power in an era long before the creation of national polls. In retrospect the undefeated 1911 and 1912 teams are now considered national champions by some historians.^{41 42 43} The teams from 1919 through 1923 were unbeaten in 30 straight games, playing an intersectional schedule in such venues at New York City, Washington DC, Seattle and the 1923 Rose Bowl in Pasadena. Five players from that period have been inducted into the College Football Hall of Fame and five others became first team All-Americans, later becoming highly successful in such professions as medicine, business, higher education and the military.^{44 45 46 47}

By the early 1920s, college football rivaled major league baseball and horse racing as America's favorite sports, but college administrations and faculty became concerned about the overemphasis of intercollegiate athletics in the academic environment. In January of 1926, the Carnegie Foundation for the Advancement of Teaching began examining the place of athletics on 130 college campuses, including Penn State. At about the same time, a small but influential Penn State alumni faction led by Alumni Secretary Mike Sullivan began pushing for the de-emphasis of all intercollegiate athletics, particularly football. His efforts also coincided with a new, reform-minded college president, Ralph Hetzel.^{48 49 50}

In the restructuring of the athletic department, the administration and alumni created a new 13-man Board of Athletic Control to oversee all sports. On August 10, 1927, two months after the arrival of Hetzel, this board with the approval of the board of trustees, ended all financial aid to athletes, banning scholarships starting with the entering class of freshmen in the fall of 1928 and reducing other spending. (As of 1924, 75 student-athletes were on scholarship or receiving financial aid.) To further stress academics, the board also recommended the separation of sports from the Department of Physical Education, which occurred in January, 1930 with the creation of a new School of Physical Education to replace the PE department and giving all coaches academic rank under the supervision of a school director who would not be a coach.^{51 52}

When in 1927, Penn State officially informed the Carnegie Foundation of the Board of Athletic Control's actions, the foundation's final report erroneously cited Penn State as one of the institutions "whose athletic standards were not consistent with its educational and ethical values." President Hetzel later persuaded the study committee to add a footnote to its report, but

the footnote was completely ignored by the public and media, a situation reminiscent of the false narrative propagated in 2011-12 about the alleged culture of football at Penn State.^{53 54}

Even before the elimination of scholarships, the quality of the football program had begun to deteriorate. With the elevation of physical education to a complete academic school in 1930, Hugh Bezdek relinquished his head coaching position to become professor and director of the new school. Bezdek had been a national leader against the creeping “professionalism” in intercollegiate athletics. His seven-year tenure as director of the School of Physical Education reinforced his philosophy with academics a major priority.^{55 56}

However, without financial aid for athletes, the football team spiraled downward into mediocrity under Coach Bob Higgins, a two-time All-American end on Bezdek’s best teams who also had been a good student, graduating with a degree in Commerce and Finance.^{57 58} From 1930 through 1938, the team did not have a winning season. Early in the decade alumni and other friends helped Higgins by recruiting young men from the coal mines and steel towns of Pennsylvania. They found them subsidized housing and jobs to help pay their tuition and books. What the alumni did circumvented college policy but was not against the NCAA rules, and as the 1940s progressed Penn State was relevant again on the field, climaxing with the undefeated Cotton Bowl team of 1947 that finished No. 4 in the nation.^{59 60 61}

After the 1948 season, Higgins retired and was succeeded for one year by Joe Bedenk, another Penn State All-American under Bezdek and long-time assistant to Higgins. With college football again changing in the post-World War II years, the board of trustees in May of 1949 authorized the implementation of 100 tuition scholarships for athletes. A year later athletic financial aid was restructured with 30 full scholarships that included tuition, room and board for football. Within months additional full scholarships and tuition-only were authorized for all sports.^{62 63}

Under college president Milton Eisenhower, the hiring of a new football coach and athletic director in the early 1950s revolutionized Penn State’s student-athletes. Charles “Rip” Engle, with success on the field in the academically-stringent Ivy League at Brown University and family roots in central Pennsylvania and Penn State, became the head coach in the spring of 1950 and brought his graduating quarterback, Joe Paterno, with him. Yet it was the hiring of Michigan’s experienced administrator Ernie McCoy in 1952 as athletic director and dean of the School of Physical Education that was the catalyst of the academic advancements.^{64 65}

McCoy, a shrewd businessman who also believed in the education of athletes and following the rules, overhauled the athletic department, including its administrative and financial operations. McCoy eliminated the alumni-dominated athletic board of control that supervised all sports from intramurals to varsity. As dean of physical education, he bolstered the athletic department's academic rigor, making it more attuned to the same standards of Penn State's other academic components such as Engineering and Business.^{66 67}

Coaches continued to teach in the classroom as they had done for years, but now with more direct responsibility to School of Physical Education through associate dean John Lawther, the successful former men's basketball coach (1936-49), who was a true academic.^{68 69} Penn State's Faculty Senate helped implement new entrance rules that required athletes be admitted under the same qualifications as non-athletes and to make the same academic progress as non-athletes. McCoy explained to *The Daily Collegian*, the Penn State student newspaper, in 1959: "... (athletes) must either be in the upper two-fifths of their high school graduating class or score high in the college board exams or pass a university-given entrance test... Under senate regulations, a student is put on probation when his semester average falls below 1.7... An athletic (scholarship) will be removed if an athlete is not making normal progress toward a degree. This 'normal progress' means a student must have accumulated an All-University average of 1.4 at the end of his freshman year, a 1.6, a 1.8 at the end of his sophomore year and a 1.9 by completion of his junior year. A 2.0 is necessary for graduation... I think our eligibility requirements are higher than most other schools."⁷⁰

In conjunction with the new rules, assistant coaches monitored the classroom work of the athletes and provided any needed tutoring. In 1954, Engle placed assistant coach Frank Patrick in charge of academic advising for football players, freshmen in particular, as a collateral duty.⁷¹ What began then as a small step to support the proper education of football players and other athletes would one day grow into a highly-praised national example of academic support for athletes that continues to this day under the name of the Morgan Academic Center for Student-Athletes with a full-time staff of 17 and dozens of part-timers in a brand new (2016) modern facility loaded with updated computer technology.⁷²

No doubt the foundation of Paterno's Grand Experiment was set by McCoy, Engle, and President Walker but it was Paterno who elevated the basic student-athlete education philosophy to the

highest level. Some critics have attempted to disparage Paterno's Grand Experiment, pointing partly to the admission of a number of student-athletes after 1980 who were football players under special university rules.⁷³ Those "presidential admissions" had been in place for decades for the general student population and were aimed at admitting high school students with academic potential but with inferior grades. Once enrolled, the students had to abide by university's regular academic standards.⁷⁴

Some of the football players who received "presidential admissions" went on to graduate and others did not make it. The Grand Experiment continued, if diluted a bit from Paterno's original goal, but Paterno also believed he was giving those on "presidential admissions" a chance to get a degree, receiving all the same academic supports as the other football players were getting in academic support unit.^{75 76}

"Presidential admissions were not just for football players," said John Coyle, Penn State's NCAA and conference Faculty Representative from 1970 to 2000. "The Presidential Admits allowed consideration to be given also for talent to admit freshmen on the main campus as long as the prospective student met the university-wide minimum academic requirement. For most years, the number of special admits for the Blue Band, ROTC, Music, Theater, etc., far exceeded the number of requests to consider student athletes. Then in the 1980's, Penn State received growing criticism for the relatively low number of minority athletes, especially in basketball and football. Coach Paterno made a special effort to rectify this situation, but had to request more special admits— a classic case of "damned if you do and damned if don't." Actually, the normal progress requirements for student-athletes were more stringent than most D-1 institutions and admission standards were higher than for some other Universities."⁷⁷

Until the scandal broke in late 2011, Penn State was considered the prototype of a clean athletic program that followed the rules and pushed its student-athletes towards academic excellence. Despite attempts to tie its image to the crimes of Jerry Sandusky, there has never been evidence of academic sacrifice for football success.^{78 79 80 81}

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APPENDIX 3.4

“Pillar of the Community” Pedophiles

One in every five girls and one in every seven boys are sexually abused by the time they reach adulthood.¹ Despite these numbers, many victims do not report sexual abuse to authorities or even their families, for a variety of reasons ranging from shame or fear to confusion.² This means that in every community, there are both victims and offenders who are unknown to anyone.

The stereotypical child sexual abuser is portrayed as a stranger, lurking around school bus stops or playgrounds in search of victims. As such, we teach children about “stranger danger” but ignore discussing the statistically more likely situation that children are far more likely to be victimized by someone they know.

It is important to fully understanding how offenders operate, which children are at highest risk for abuse, and when/how to report child abuse suspicions. Most news reports revolve around the “situational” offender, who is more likely to abuse children because there is an opportunity and a desire to offend. Situational offenders have no preference for a certain type of victim and tend to be both sexually and morally indiscriminate. This is the “stranger danger” type of offender.³

However, much less understood, and more difficult to identify, is the “preferential” child sex offender (PSO). How does this type of offender differ from the situational offender? While situational offenders typically have no preference for age or gender and are likely unknown to the victim, preferential offenders have a distinct preference for and are sexually attracted to children.⁴

“Nice guy” or “pillar of the community offenders”

There is a sub-category of preferential child molesters known as “nice guy” or “pillar of the community” offenders. While our stereotype of a child sexual offender views a molester as an evil monster, the PSO is quite the opposite, making it very difficult for those around them to

“see,” or believe, that they have a sexual attraction toward children. Characteristics of a nice guy offender include:⁵

- High social status and/or working in a position of authority
- Friendly, helpful, giving or loving and takes special interest in certain children or groups of children.
- Often involved in organizations that serve children, such as schools, youth camps or sports leagues, churches, or youth charities.
- Gains the trust of children by offering time, attention or gifts
- May be socially awkward and prefer the company of children over same age adults

While a situational offender is driven by opportunity or impulse, the PSO will seek or use positions where there is opportunity to seduce and manipulate victims, families and communities in order to carry out their crimes. This is accomplished, over time, through a process known as “grooming.”

Grooming

The grooming process does not only occur with the intended victim. Offenders will also groom families and even the local community. In addition, sex offenders may groom criminal justice and other institutions, including state child welfare agencies and professionals, into believing that they present no risk to children.

What does grooming look like?

Grooming usually begins with subtle behavior that may not initially appear to be inappropriate, such as paying a lot of attention to the child or being very affectionate. Grooming may involve:⁶

- An unrelated adult who seems overly interested in a child.
- An adult who frequently initiates or creates opportunities to be alone with a child (or multiple children).
- An adult who becomes fixated on a child, sometimes at the expense of interactions with their own children or families.

- An adult who gives special privileges or opportunities to a child (e.g., rides to and from practices, etc.).
- An adult befriends a family and shows more interest in building a relationship with the child than with the adults
- An adult displays favoritism towards one child within a family.
- An adult finds opportunities to buy a child gifts.
- An adult caters to the interests of the child, so a child or the parent may initiate contact with the offender.
- An adult who displays age and gender preferences.

Who is at greatest risk of becoming a victim of a PSO?

At greatest risk of grooming and abuse by a PSO are those children, needy because of emotional or physical neglect or who come from families immersed in stressful life situations such as divorce or inadequate financial resources.⁷ Identifying children from these environments, the PSO seduces them with gifts, opportunities, attention, affection or whatever the molester determines might be lacking from a child's life. This molester identifies with the child, listening and talking to them and gaining their trust as an authority figure.^{8,9}

In public, "nice guy" PSOs are viewed positively by everyone around them. In private, they often push boundaries with children, lowering inhibitions by being very physical or playful, sometimes discussing sex topics or providing pornography in order to make the child think of sex acts as less taboo and more "normal."¹⁰

Why are PSOs difficult to identify?

Because children are groomed into compliance by the PSO, victims will often not call out for help or disclose that they've engaged in sexual behavior.¹¹ Even though they may be suffering psychological harm, the PSO treats them well, makes them feel special, and gives them access to things or opportunities not otherwise available. And because these molesters are seen as pillars of the community, even when their social behavior may be perceived as odd or awkward, it is simply unfathomable to those around them that this trusted and well respected person could possibly be sexually abusing children.¹²

Prevention of Childhood Sexual Abuse

Despite the clear need to prevent child abuse, most major offender management initiatives center around registering known sex offenders, notifying communities about offenders in their neighborhoods, conducting background checks on individuals wishing to work with children, and giving longer prison sentences to offenders. These are all reactionary measures and there are no scientific data available that support their efficacy.¹³ And, to date, there are virtually no evidenced based programs or policies that focus on the area of child abuse prevention.

Little known facts about child abusers:¹⁴

- The overall re-offense rate for child molesters is significantly lower than that for other criminals
- 25% of victims are abused by a family member and 60% are abused by someone else from their social network.
- One third of all adult offenses against juveniles involve “compliant victims” or someone who cooperated for a variety of reasons.
- It is estimated that 93% of sexual abuse cases involve someone the child victim knows.
- Child molesters are more likely to be educated and employed than other criminals.

Policy and law focus on reporting, registration and notification, while ignoring the facts that that children are actually at lower risk of being molested by someone who is a known offender and stranger than by someone within their own family or close social network. As difficult as it may be to conduct research on “nice guy” offenders (because they are unknown), reducing child abuse will never occur as long as state and federal governmental efforts are reactive, rather than proactive.

Additionally, while laws and policies have changed to increase the number of mandated reporters and to educate employees about how and when to report abuse suspicions, 42,000 calls to Pennsylvania’s ChildLine went unanswered in 2015 alone.¹⁵ If only a small fraction of those calls were credible reports, how many children in the state of Pennsylvania have suffered, or are still suffering, at the hands of an unknown abuser?

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- ¹NSOPW. "United States Department of Justice National Sex Offender Public Website." *Common Questions*, U.S. Department of Justice, www.nsopw.gov/en-US/Education/CommonQuestions?AspxAutoDetectCookieSupport=1#answer-06
- ²"Fact Sheet: What You Need to Know About Sex Offenders." *Center for Effective Public Policy*, The Bureau of Justice Assistance, 2008. www.csom.org/pubs/needtoknow_fs.pdf
- ³Lanning, K. "Child Molesters: A Behavioral Analysis For Law Enforcement Officers Investigating Cases of Child Sexual Exploitation." *Office of Juvenile Justice and Delinquent Prevention (Dept. of Justice)*, Washington, DC, December 1992.
- ⁴Lanning, K. "Child Molesters: A Behavioral Analysis For Law Enforcement Officers Investigating Cases of Child Sexual Exploitation." *Office of Juvenile Justice and Delinquent Prevention (Dept. of Justice)*, Washington, DC, December 1992.
- ⁵Clemente, J. "Analysis of the Special Investigative Counsel Report and the Crimes of Gerald A. Sandusky & Education Guide to the Identification and Prevention of Child Sexual Victimization". February 2013.
- ⁶Lanning, K. "Child Molesters: A Behavioral Analysis For Law Enforcement Officers Investigating Cases of Child Sexual Exploitation." *Office of Juvenile Justice and Delinquent Prevention (Dept. of Justice)*, Washington, DC, December 1992.
- ⁷Lanning, K. "Child Molesters: A Behavioral Analysis For Law Enforcement Officers Investigating Cases of Child Sexual Exploitation." *Office of Juvenile Justice and Delinquent Prevention (Dept. of Justice)*, Washington, DC, December 1992.
- ⁸Lanning, K. "Child Molesters: A Behavioral Analysis For Law Enforcement Officers Investigating Cases of Child Sexual Exploitation." *Office of Juvenile Justice and Delinquent Prevention (Dept. of Justice)*, Washington, DC, December 1992.
- ⁹Clemente, J. "Analysis of the Special Investigative Counsel Report and the Crimes of Gerald A. Sandusky & Education Guide to the Identification and Prevention of Child Sexual Victimization". February 2013.
- ¹⁰Clemente, J. "Analysis of the Special Investigative Counsel Report and the Crimes of Gerald A. Sandusky & Education Guide to the Identification and Prevention of Child Sexual Victimization". February 2013.
- ¹¹Clemente, J. "Analysis of the Special Investigative Counsel Report and the Crimes of Gerald A. Sandusky & Education Guide to the Identification and Prevention of Child Sexual Victimization". February 2013.
- ¹²Clemente, J. "Analysis of the Special Investigative Counsel Report and the Crimes of Gerald A. Sandusky & Education Guide to the Identification and Prevention of Child Sexual Victimization". February 2013.
- ¹³Finkelhor, D. "The Prevention of Childhood Sexual Abuse." *The Future of Children*, vol. 19, no. 2, 2009, pp. 169–187., doi:10.1353/foc.0.0035.
- ¹⁴Finkelhor, D. "The Prevention of Childhood Sexual Abuse." *The Future of Children*, vol. 19, no. 2, 2009, pp. 169–187., doi:10.1353/foc.0.0035.
- ¹⁵DePasquale, E. "Interim Report of Significant Matters Regarding the Department of Human Services' Administration of the Statewide Child Abuse Hotline (ChildLine)." May 2016.

APPENDIX 3.5

Psychological Science on Social Judgment

Why do people have difficulty believing someone might not be who they appeared to be all along?

When we initially meet someone, we form an impression. Although there is an adage “don’t judge a book by its cover,” science has demonstrated repeatedly that first impressions are most important. That is why we try so hard to “make a good first impression.” That first impression sets the stage for how we continue to see and understand that person. In fact, when we first meet a stranger, the first impression provide the only (and therefore, the most compelling) information that we have about someone. This is known as confirmation bias.¹ *All additional information is judged based on that initial impression.* Thus, if our first impression of our new neighbor is that he is a friendly guy who came over to help move around the furniture that the movers put in the wrong place — all other information will be judged by that standard. That is why neighbors are often so surprised when a serial or spree killer is discovered in their neighborhood. We hear on TV that “He/she was such a quiet, polite guy.”

The fact that all additional information we receive about someone is then viewed consistently with that first impression is known as the “halo effect.”² This is an automatic thought process—our perception of another person is “colored” by a person’s specific characteristic or behavior. Because it is automatic (we don’t realize we are doing it), we judge the total person based on a single factor — a person’s strength, weakness, physical appearance, or behavior. So in the case of that first impression of the neighbor (he is helpful and friendly), the halo effect means that we see all of their other behaviors as fitting with that impression/ belief. In actuality, this automatic tendency prevents people from being objective—because people do not always behave in just one way. However, the halo effect means that our initial impression causes us to ignore other information because it does not fit with what we believe we know to be the truth.

When we cannot ignore a piece of contradictory information (we actually see our neighbor slap his wife across the face), we automatically use a thought process called confirmation bias. We take the contradictory information and work to understand it in a way that fits with our initial

impression. So we make excuses for the behavior – he must have been really drunk, she must have said something horrible for that “nice guy” to do that. In short, we process and later remember the contradictory information in a way that confirms our preexisting beliefs. We give very little consideration to the fact that maybe our initial impression was wrong. We stick with our initial impression because it is easier to force the new information into our overall belief system rather than having to start to build a totally new perception/belief system about this person.

But even if we cannot rationalize behavior such as domestic abuse by that “great guy” next door, why do so few people do something about it? There are several reasons:

1. People are often shocked or frightened by what they have seen or heard. They fear that the perpetrator may turn and do the same thing or something even worse to the person who reports or intervenes.
2. Particularly in cases when the behavior is not witnessed directly, people often doubt themselves. “What if the person who told me that is lying?” The vast majority of us have experienced false rumors being spread about us and we know how difficult it is to combat those falsehoods. Therefore, we are often reluctant to act on negative information passed on to us because of the possibility that it too is false.
3. People fear potential consequences should they get involved and report it. What if nothing changes and they made it worse for the person being abused? Will the person reporting be legally liable if it ends up being false? Could the person reported turn around and sue the reporter for false reporting? Could there be some other type of retaliation?
4. People believe that if it was really happening “someone else must have reported it by now.” Most people have heard the story of Kitty Genovese, who in 1964, was raped and killed in two separate late-night attacks outside her apartment building in Queens. For more than half an hour, 38 respectable, law-abiding citizens watched a killer stalk and stab a woman as she cried out “He’s killing me, please help.” Only one woman eventually called the police and that was after Kitty was dead. When interviewed

later, many of the witnesses thought that it was “none of their business” or “I assumed someone else had already called.” In this case, the horrific event was actually witnessed. This assumption that “it is not my business” or “someone else has reported it” (called the bystander effect) is even stronger when the person did not witness the concerning behavior first hand.

¹Nickerson, R. “Confirmation Bias: A Ubiquitous Phenomenon in Many Guises.” *Review of General Psychology*, vol. 2, no. 2, 1998, pp. 175–220, doi:10.1037//1089-2680.2.2.175.

²Nisbett, R., and Wilson, T. “The Halo Effect: Evidence for Unconscious Alteration of Judgments.” *Journal of Personality and Social Psychology*, vol. 35, no. 4, 1977, pp. 250–256., doi:10.1037//0022-3514.35.4.250.

APPENDIX 3.6

Factual Errors in Sandusky Grand Jury Presentment

Background: Pennsylvania Grand Jury Processes

In Pennsylvania, an Investigating Grand Jury is an investigative and prosecutorial tool that can be utilized by a county District Attorney or the Attorney General. An investigative grand jury can be impaneled to hear and observe testimony and evidence to determine if there is any to support the filing of criminal charges. If the investigative grand jury believes the evidence presented by the prosecution warrants the filing of criminal charges against an individual or individuals, an investigative grand jury presentment will be issued.¹

The grand jury differs from a petit jury (trial jury) in its numbers and duty. A petit jury usually consists of only 6-12 jurors while grand juries usually have 23 jurors. Petit juries are tasked to determine guilt while grand juries are not. Pennsylvania grand jurors serve for a period of 18 months, appearing in court an average of 2 days per month. Although grand juries can be extended for a longer term, sometimes testimony on one case will carry over into a second panel's term.²

All evidence presented in a grand jury is done in strict secrecy. All grand jury participants including, but not limited to, jurors, attorneys, and stenographers, are sworn to secrecy and subject to prosecution for contempt if they disclose information. Additionally, all documents produced and transcripts made reflecting testimony are available only to the Commonwealth, the prosecution, and are not available for public consumption.³

For a witness, counsel can be present in the grand jury room during questioning and is allowed to advise the witness but cannot make objections or arguments or otherwise address the grand jury or the attorney for the Commonwealth. The supervising judge has the power to remove counsel from the grand jury room. If counsel violates the rules of the grand jury, they are subject to a charge of contempt.⁴

Limitations of Grand Jury Proceedings and Presentments

The Attorney for the Commonwealth controls the investigation and dissemination of information to the grand jury itself. The Attorney for the Commonwealth controls the witnesses and the testimony they offer to the grand jury in both content and context. Consequently, the grand jury is presented with a one-sided version of the accusations in the light most favorable to the prosecution. Judge Sol Wachtler once said that district attorneys have so much influence on grand juries that "by and large, a grand jury would indict a ham sandwich on the death of the pig, if that's what you wanted." Wachtler believed grand juries "operate more often as the prosecutor's pawn than the citizen's shield."

Because of their one-sided nature, presentments issued by grand juries should never be considered 100% factual. In the case of the Sandusky grand jury presentment, there are claims made that have been shown to be false, misleading or structured in such a way as to focus attention on certain individuals and create highly biased perceptions of the case, which were propagated through sensationalistic media reports upon release of the presentment.

Factual Error #1: Including Joseph V. Paterno in Presentment

While federal grand juries must adhere to certain investigative rules and demand secrecy in investigative findings to prevent collateral damage to innocent witnesses and other third parties, Pennsylvania does not bind its state grand juries in such a manner. The failure to regulate precisely what is included in the document does not provide those individuals with the ability to defend themselves. Publicly mentioning Paterno strongly implied he had committed a crime. The prosecuting attorney has stated that there never has been any evidence that Joe Paterno was involved in perpetrating any crime, so his name should have never been mentioned in the presentment.⁵

Factual Error #2: Misrepresentation of Victimization Timeline

The investigators did not actually find any of the victims. The victims were either self-reported (Victims 1, 9, 10), were reported (victims 3, 4, 5, 7) by the mother of Victim 6 (1998 shower incident), or were hearsay victims not yet identified (Victims 2, 8). When crafting the presentment, prosecutors numbered victims by their entry into the case, not by the dates of their victimization.⁶

From the 2011 Grand Jury Presentment using alphabetical identifiers for each victim

- Victim 1, AF – Reported abuse by Sandusky
- Victim 2, U1 – An incident was witnessed by a graduate assistant in 2001 in a PSU Shower
- Victim 3, JS – Abused in PSU showers/facilities by Sandusky (Identified by mother of Victim 6)
- Victim 4, BH – Abused in PSU showers/facilities by Sandusky (Identified by mother of Victim 6)
- Victim 5, MK – Abused in PSU showers/facilities by Sandusky (Identified by mother of Victim 6)
- Victim 6, ZK – Reported by mother in 1998 - Abused in PSU showers/facilities by Sandusky
- Victim 7, DS – Abused in PSU showers/facilities by Sandusky (Identified by mother of Victim 6)
- Victim 8, U2 – Not known, Identified by hearsay witness (Janitor) – Reported abuse in a PSU shower by Sandusky

Based on this numbering system, the presentment steers the reader to conclude that Victim 1 was the first victim and Victim 9 the last. If, as the reader is led to believe, these victims are numbered chronologically, then after Victim 2's abuse was reported to PSU officials, 7 others would have been subjected to abuse.

But that isn't what happened. This revised timeline shows how abuses reportedly occurred:

Chronological Timeline for Identifying Sandusky's Victims

- Nov. 2008, Victim 1, AF – Reported abuse from 2005-2008 by Sandusky.
- June 2009, Victim 2, ZK – Reported by mother in 1998. Reported abuse in PSU showers/facilities by Sandusky (acquittal on indecent assault).
- June 2009, Victim 3 BK – 2nd child in 1998 investigation. Reported abuse in PSU showers/facilities by Sandusky. Never brought to trial.

- June 2009, Victim 4, JS – Identified by ‘Victim 2’ mother. Reported abuse in Sandusky home, on trips, and at PSU.
- June 2009, Victim 5, BH – Identified by ‘Victim 2’ mother. Reported abuse in Sandusky home, on trips, and at PSU.
- June 2009, Victim 6, JK – Identified by ‘Victim 2’ mother. Reported abuse in PSU shower by Sandusky.
- June 2009, Victim 7, DS – Identified by ‘Victim 2’ mother. Reported abuse in PSU pool.
- Nov. 2010, Victim 8, U1 – An incident was witnessed by a graduate assistant in 2001 in a PSU shower.
- March 2011, Victim 9, U2. Identified by hearsay witness (Janitor). Reported abuse in a PSU shower by Sandusky.

As shown, the 2001 incident that Mike McQueary witnessed was the second to the last victim account known to the OAG and the final witness was hearsay testimony without a known victim. There is no evidence to support the notion that the handling of the 2001 shower incident by PSU administrators led to multiple other children being abused.

Factual Error #3: McQueary’s Statement

By far, the most outrageous sentence in the Sandusky grand jury presentment appears on pages 6 and 7:

“He saw a naked boy, Victim 2, whose age he estimated to be ten years old, with his hands up against the wall, being subjected to anal intercourse by a naked Sandusky.”

This statement has been dispelled on numerous occasions.

McQueary family friend, Dr. Jonathon Dranov, testified that he queried Mr. McQueary 3 times on the night he witnessed the incident about whether he saw a sexual act and 3 times he was told “no.” He was one of the first two people to whom Mr. McQueary spoke.⁷

Following the November, 2011 presentment release, McQueary wrote an email to a prosecutor and a Sandusky investigator, clarifying what he had seen. “I cannot say 1000 percent sure that it

was sodomy.” “I did not see insertion ... it was sexual and/or way over the line in my opinion, whatever it was.”⁸

In more recent testimony in Sandusky’s PCAR hearing, Jonelle Eshbach, a Commonwealth attorney who worked on the Sandusky case, also testified that McQueary asked for permission to publicly correct the record but was asked by her not to do so for fear that he would jeopardize the Commonwealth’s case.⁹

The December 16th, preliminary hearing testimony of Mike McQueary also proved the falsity of the Sandusky grand jury presentment’s statement that he had reported seeing Sandusky engaged in sexual intercourse with a young boy. From his December 16, 2011 testimony are the following quotes:

“I have never used the word anal or rape in this -- since day one.” (p. 72)

“I’ve already stated that when I saw his arms wrapped around the boy that I could not see his hands...” (p. 75)

“I cannot say that I saw Mr. Sandusky’s hands on a boy’s genitals.” (p. 75)

“I would not have used the words anal intercourse.” (p. 81)

“I think it’s clear I can’t remember the words I used.” (p. 102)

Although McQueary’s testimony about the shower incident has since changed over time, this sworn testimony, closest to the time of his appearance before the grand jury, strongly indicates that his grand jury testimony did not include statements about witnessing anal rape. McQueary’s email attempting to correct statements in the presentment further supports the idea that the inclusion of this material in the presentment can only have been a deliberate misrepresentation.

Error #4: Misrepresentations of Witness Credibility

The grand jury presentment states that “The grand jury finds the graduate assistant’s testimony to be extremely credible.” On the surface, this would seem to be compelling in terms of the strength of the testimony. However, grand jury panels change over time and sometimes testimony is carried over to another panel of jurors. That was the case with the Sandusky grand jury. The grand jury which issued the presentment and recommended criminal charges be

brought against Sandusky was not the same grand jury to hear Mike McQueary's testimony. And, in fact, a member of the 30th grand jury, who heard McQueary's testimony, disputes the presentment's characterization of McQueary as "extremely credible." Stan Bolton, a 53-year-old employee of the Home Depot in York, Pa., says he was skeptical of McQueary's claim that sexual acts were going on between the boy and Sandusky because McQueary also said that he didn't see penetration. "This planted a seed with me -- either you saw it or you didn't," says Bolton, who was one of 23 grand jurors.¹⁰

The presentment also states that the testimony of Gary Schultz and Tim Curley was deemed not credible by the jurors and that no reports were ever made to "officials" regarding what they were told by McQueary. It does, however, acknowledge that Tim Curley reported what they were told to officials at The Second Mile, exactly what was required by PA law at the time.¹¹ Despite Curley's action following the law about reporting, and no action being taken by The Second Mile officials, no one at The Second Mile who was aware of the 2001 incident was ever investigated, let alone charged, for failure to report.

Error #5: Unbalanced Focus on Penn State

While the presentment acknowledges that all the Sandusky victims were participants in The Second Mile and that Sandusky was the founder and primary fundraiser for the charity, all evidence presented focuses solely on Penn State. It also discusses at length testimony by a coach at Central Mountain High School who was an eyewitness to behavior by Sandusky that was considered to be "suspicious" but states that once the child victim and his mother came forward with a complaint, Sandusky was immediately barred from the school. What it doesn't mention is that when approached by the victim and his mother, school officials did NOT immediately report what they were told to child welfare agencies, but instead told the boy and his mother to "go home and think about it." As reported in a book written by Victim 1, the school did not make a report until they were threatened by the victim's psychologist.¹²

Conclusion: While the Sandusky grand jury presentment was automatically accepted as factual from the day of its release, a more thorough review indicates that it was crafted to fully focus attention on Penn State and away from The Second Mile, Central Mountain High School, state child welfare agencies and local law enforcement. It was also written in such a way as to create

and anchor a perception by readers that individuals at Penn State knew of a “rape” and opted to keep it quiet despite the fact that a report was appropriately made, per law in 2001, to The Second Mile.

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- ¹ Subchapter B-Provisions and Responsibilities for Reporting Suspected Child Abuse. *Section 6311 - Title 23 - DOMESTIC RELATIONS*, www.legis.state.pa.us/WU01/LI/LI/CT/HTM/23/00.063.011.000..HTM.
- ² Subchapter B-Provisions and Responsibilities for Reporting Suspected Child Abuse. *Section 6311 - Title 23 - DOMESTIC RELATIONS*, www.legis.state.pa.us/WU01/LI/LI/CT/HTM/23/00.063.011.000..HTM.
- ³ Subchapter B-Provisions and Responsibilities for Reporting Suspected Child Abuse. *Section 6311 - Title 23 - DOMESTIC RELATIONS*, www.legis.state.pa.us/WU01/LI/LI/CT/HTM/23/00.063.011.000..HTM.
- ⁴ Subchapter B-Provisions and Responsibilities for Reporting Suspected Child Abuse. *Section 6311 - Title 23 - DOMESTIC RELATIONS*, www.legis.state.pa.us/WU01/LI/LI/CT/HTM/23/00.063.011.000..HTM.
- ⁵ Thompson, C. “Jerry Sandusky Prosecutor: No Evidence Joe Paterno Participated in Criminal Cover-up at Penn State.” September 4, 2013. *PennLive.com*. www.pennlive.com/midstate/index.ssf/2013/09/jerry_sandusky_prosecutor_no_e.html.
- ⁶ The Court of Common Pleas of Centre County, Pennsylvania Civil Action-Law. *Michael J. McQueary vs The Pennsylvania State University*. 17 Oct. 2016, pp. 95–100.
- ⁷ Elehar, R., and Morgan, E. “Why Victim 6 Should Have Been Victim 2.” *Second Mile Sandusky Scandal*, Blogspot.com, February 4, 2013. notpsu.blogspot.com/2013/02/why-victim-6-should-have-been-victim-2.html
- ⁸ Plaintiff’s Exhibits From Jury Trial Held October 17-27, 2016. *Michael J. McQueary vs The Pennsylvania State University*. 2012, pp. 206–207.
- ⁹ The Court of Common Pleas of Centre County, Pennsylvania Civil Action-Law. *Michael J. McQueary vs The Pennsylvania State University*. 17 Oct. 2016, pp. 95–100.
- ¹⁰ Van Natta, D. “The Whistleblower’s Last Stand.” March 4, 2014. *ESPN*. www.espn.com/espn/feature/story/_/id/10542793/the-whistleblower-last-stand.
- ¹¹ Subchapter B-Provisions and Responsibilities for Reporting Suspected Child Abuse. *Section 6311 - Title 23 - DOMESTIC RELATIONS*, www.legis.state.pa.us/WU01/LI/LI/CT/HTM/23/00.063.011.000..HTM.
- ¹² Coffey, W. “End Zone: Victim No. 1 Tells His Story of Abuse.” December 8, 2012. New York Daily News. www.nydailynews.com/sports/zone-victim-no-1-tells-story-abuse-article-1.1216072

APPENDIX 3.7

NCAA, Freeh worked together¹

ESPN, Nov 12, 2014

Don Van Natta Jr.

Court documents filed in Pennsylvania show that the NCAA and investigators from a firm hired by Penn State University to conduct a wholly independent investigation of the University's handling of the Jerry Sandusky child sex abuse scandal worked closely in the investigation.

The firm, led by former FBI chief Louis B. Freeh, published damning conclusions about Penn State's "lack of institutional control" that the NCAA used as the basis for its sweeping sanctions against Penn State in July 2012.

The court documents filed Tuesday but released publicly Wednesday, obtained by "Outside the Lines," strongly suggest the NCAA provided an investigative blueprint to Freeh.

Correspondence between Freeh and the NCAA began less than two weeks after Penn State hired Freeh's firm, with a Nov. 30, 2011, request from NCAA president Mark Emmert to speak by phone with Freeh.

Former FBI chief Louis B. Freeh, who led the investigation of how Penn State handled the Jerry Sandusky child sex abuse scandal. From then on, correspondence and meetings between the groups continued, the documents show:

- On Dec. 7, 2011, Freeh and his top deputies met with Donald Remy, the NCAA's general counsel; Julie Roe Lach, then vice president of enforcement for the NCAA; Jonathan Barrett, outside counsel for the Big Ten; and other officials for three hours at the Nittany Lion Inn on the university's State College campus.

- On Dec. 19, 2011, Remy solicited input from a Freeh partner about the text of a letter the NCAA was intending to send to Penn State.

• The NCAA on Dec. 28, 2011, emailed Freeh's top deputy a list of 32 questions that sought information about the culture of Penn State's football program and university leaders' duty to report suspected criminal behavior.

• Less than two weeks later, on Jan. 7, 2012, NCAA lawyers and enforcement officials hosted a two-hour video-conference call for 15 to 17 of Freeh's investigators, described by one of them in email as an "education session." In all, there were 13 conference calls with the NCAA during the course of Freeh's investigation.

After the Freeh report was released on July 12, 2012, Emmert attempted to have a direct "principal to principal" discussion with Freeh, an email five days later shows.

The culture of Penn State's football program and university leaders' duty to report suspected criminal behavior were central findings of the Freeh report. The Penn State Board of Trustees accepted all of the report's findings, and the NCAA followed up on July 23, 2012, with severe sanctions: a \$60 million fine, the vacating of football team wins from 1998 to 2011, a four-year postseason ban, a four-year scholarship reduction and athletic department probation for five years.

Although the NCAA ultimately loosened some sanctions, the fallout has continued. The documents filed in state court Wednesday are part of a lawsuit filed by Pennsylvania State Sen. Jake Corman and state treasurer Rob McCord that challenges the NCAA's \$60 million fine against Penn State. A lawsuit filed by the estate of former football coach Joe Paterno against the NCAA over the sanctions and alleged defamation of Paterno continues in state court.

"Clearly the more we dig into this, the more troubling it gets," Corman told "Outside the Lines." "There clearly is a significant amount of communication between Freeh and the NCAA that goes way beyond merely providing information. I'd call it coordination. ... Clearly, Freeh went way past his mandate. He was the enforcement person for the NCAA. That's what it looks like. I don't know how you can look at it any other way. It's almost like the NCAA hired him to do their enforcement investigation on Penn State."

"At a minimum, it is inappropriate. At a maximum, these were two parties working together to get an outcome that was predetermined."

Officials from the Freeh group had no immediate response Wednesday. Remy said Corman's assertions are a "mischaracterization of the evidence" and "are inconsistent with the facts." "I think the communications between the Freeh group and the NCAA were consistent with the NCAA's commitment to cooperate with the Freeh group and our commitment to monitor the progress of that investigation," Remy said. "In no way do those documents demonstrate the NCAA was doing anything beyond that."

In a statement, Penn State said, "It has been public knowledge for almost three years that the University had agreed that the NCAA and the Big Ten Conference would monitor the progress of the Freeh investigation. While the NCAA may have made suggestions to the Freeh Group with respect to its investigation, the scope of the Freeh investigation was established by the Penn State Board of Trustees, as set forth in the Freeh engagement letter, not by the NCAA. The University's preliminary review of the NCAA's proposed questions suggests that there are many proposed questions that are not addressed in the final July 12, 2012 report."

Remy has told the court in the Corman lawsuit that the Freeh investigation "was entirely independent from the NCAA." "Yet based on discovery to date in this matter, this characterization of the investigation is woefully incomplete," Corman's lawyers wrote in the court documents filed Wednesday. "To illustrate, the NCAA's involvement with the Freeh Group was regular and substantive and began nearly from the outset of the Freeh Group's retention by Penn State."

Also among the documents is an email exchange between Cynthia Baldwin, then the general counsel of Penn State, and Remy. In December 2011, Baldwin sent Remy a draft copy of a letter that she was preparing to send to Emmert and the NCAA seeking more time to respond to its concerns about the Sandusky matter. Remy said he'd have some suggested fixes for Baldwin soon. "Thank you," Baldwin writes to Remy. "We await your comments and suggested changes."

Corman said: "It isn't often you ask the person you are writing a letter to pre-edit that letter that will eventually be made public, unless you are trying to orchestrate some kind of outcome. And that's what this looks like."

Remy disputed that on Wednesday: "We had a discussion: 'Do we need to respond to your letter.' To the extent we talked about that, it doesn't show anything other than responsible communication between the NCAA and Penn State so we wouldn't get in the way of their ability to have director Freeh do his independent investigation. ... Mr. Corman's suggestion that it is anything beyond that is a gross mischaracterization of what actually occurred."

Besides those meetings and early communications and providing detailed questions, the NCAA proposed search terms to help Freeh's investigators better search emails, the documents show. Remy also offered to provide a witness list to Freeh; it is unknown whether one was given. Emmert relied on the Freeh report's findings to force then-Penn State president Rodney Erickson to accept the unprecedented sanctions.

Much of the language used by Freeh at his news conference about his findings on July 12, 2012, covered subject areas that the NCAA had asked about from the beginning: lack of institutional control and the culture problem at Penn State. And Freeh, during the news conference, focused most of his criticism on Penn State's leaders: Paterno, former president Graham Spanier and former university vice presidents Tim Curley and Gary Schultz.

"I'm angry," Corman said. "When you read the other communications we've seen, the NCAA is saying 'we have an image problem.' So it looks like the NCAA was looking to improve its own image at the expense of Penn State. And to do that, they were orchestrating an outcome with Freeh to make it happen ... A lot of people were hurt by the sanctions brought down by the NCAA, and to think it was achieved possibly by this coordination by Freeh and the NCAA makes me very, very angry."

On Dec. 29, 2011, Omar Y. McNeill, the partner and general counsel of Freeh's firm, Freeh Sporkin & Sullivan LLP, thanked Remy, the NCAA general counsel, for emailing a copy of the five-page list of questions. Among the NCAA's 32 questions: "How has Penn State University exercised institutional control over the issues identified in and related to the Grand Jury Report? Were there procedures in place that were or were not followed?" Other questions were, "Describe the culture of the university as it relates to ethical behavior. Describe the culture of the athletics department." "Also, I await your list of potential witnesses, database search terms, etc., you would like to provide," McNeill wrote to Remy in a 12:30 p.m. email on Dec. 29, 2011.

On Nov. 9, 2011, the Penn State Board of Trustees fired Coach Joe Paterno as outrage about the Sandusky allegations engulfed the campus. Nine days later, on Nov. 18, 2011, board member Kenneth Frazier emphasized the former FBI director's independence and his mandate to find the truth for Penn State's community. "He has complete rein to follow any lead, to look into every corner of the university to get to the bottom of what happened and then to make recommendations that will help ensure that it never happens again," Frazier said then.

At the time, Freeh told reporters there would be "no favoritism" in his investigation. He called that assurance "the main condition of my engagement" with Penn State. Freeh's firm was paid \$8.2 million by Penn State to conduct the inquiry.

The disclosures in the documents filed Wednesday echo a fact pattern in the NCAA's handling of the scandal at the University of Miami. In that case, the NCAA provided a list of questions to a Miami lawyer in a bankruptcy hearing to attempt to glean under-oath responses from a University of Miami booster.

In an email from Remy to a top Freeh official on Jan. 6, 2012, Remy wrote that the NCAA had prepared a PowerPoint demonstration for Freeh's investigators, but it was general in nature and not specific to Penn State. "As discussed, this informational briefing is being provided to your team to illustrate how the NCAA enforcement staff historically has examined issues involving institutional control and ethical conduct," Remy wrote. "We hope that it will be helpful as you independently examine similar issues related to your charge. Of course, it goes without saying that at this time the NCAA does not have an open enforcement inquiry or investigation into ... the issues at Penn State and this presentation is not focused on that institution."

The sanctions handed down by the NCAA after the Freeh report's release were unprecedented in college football. Corman scoffed at that assertion, pointing out that a week earlier the NCAA had provided detailed, Penn State-specific written questions to Freeh's investigators. "This appears to be an attempt to cover something that is obviously an attempt to collaborate and cooperate," he said.

Last week, emails made public in the Corman lawsuit showed that NCAA officials had questioned their own authority to sanction Penn State and that enforcement officials were

hopeful that the university would be “so embarrassed they will do anything” when Erickson signed a consent decree accepting historic sanctions in July 2012.

“We could try to assert jurisdiction on this issue and may be successful but it’d be a stretch,” wrote Roe Lach, the former NCAA Vice President of Enforcement, in an email on July 14, just nine days before Emmert announced the sanctions against Penn State. “I characterized our approach to PSU as a bluff when talking to Mark [Emmert] yesterday afternoon after the call. He basically agreed b/c if we make this an enforcement issue, we may win the immediate battle but lose the war when the COI [NCAA Committee on Infractions] has to rule.”

The emails released last week also show that the NCAA did not believe it had the jurisdiction to act against Penn State. “I know we are banking on the fact the school is so embarrassed they will do anything, but I am not sure about that, and no confidence conference or other members will agree to that,” NCAA vice president of academic and membership affairs Kevin Lennon wrote on July 14, 2012. “This will force the jurisdictional issue that we really don’t have a great answer to that one.”

In another disclosure of court records Monday, a longtime NCAA staff member said the NCAA was “image-conscious” and predicted the NCAA would take swift action against Penn State shortly after the Freeh report was released in July 2012.

In a July 4, 2012, story in the Centre Daily Times, Gene Marsh, who was hired by Penn State to deal with the sanctions issue, was quoted as saying that the NCAA punishing Penn State after the conviction of Sandusky and millions in civil settlements would be “like shooting road kill.”

Shep Cooper, an administrator for the NCAA’s Committee on Infractions, wrote an email about those comments to Marsh. “For what it’s worth, I agree,” Cooper wrote. “However, the new NCAA leadership is extremely image-conscious and if they conclude that pursuing allegations against PSU would enhance the association’s standing with the public, then an infractions case would follow. I know that Mark Emmert has made statements to the press indicating that he thinks it could fall into some sort of LOIC [loss of institutional control] case.” Cooper ended the email: “‘Shooting road kill’ is an apt analogy.”

¹ Van Natta, D. NCAA, Freeh Worked Together." ESPN, November 12, 2014.
<http://newspaper.st/Links/111165742/>

APPENDIX 3.8

Vicky Triponey: Biased Source

Nationally, Vicky Triponey is known simply as “The Woman Who Stood up to Joe Paterno.”¹

However, according to the Penn State administrators, faculty and students who witnessed her behavior during four years as Penn State’s Vice President for Student Affairs, Triponey is not remembered as the sole voice of concern in a so called “corrupt culture.” The people who worked with or for her, as well as the students she impacted, describe her as someone who attempted to silence the voice of students and to do so at any cost.

Evidence that Penn Staters described Triponey accurately can be found in her previous record of “accomplishments” during her time at the University of Connecticut. While in Storrs, Triponey forced an increase of mandatory student fees and required the student newspaper to hire a full-time advisor under her total control.^{2 3 4} This authoritarian style was also evident at Penn State.

Until Triponey’s hiring, Penn State students had always enjoyed certain powers of self-governance – they controlled their own affairs on issues of student life outside of the classroom. These responsibilities were wide-ranging and included the ability to distribute student fees as it saw fit, the freedom of student media, and the ability to charter new student organizations and impose penalties on groups that violated university policies. Within months of her arrival at Penn State in 2003, Triponey effectively ended student self-governance by consolidating those powers within the Office of Student Affairs.

For example, a mere three months after Triponey was hired, she disbanded the Student Organizations Appeals Board (SOAB), which was part of the Undergraduate Student Government Supreme Court.⁵ Made up entirely of students, the SOAB was responsible for registering all undergraduate student organizations that applied for recognition. Despite any evidence of problems, Triponey called the process “purely mechanical” and cited the protection of “Constitutional rights” as justification for the assault on self-governance.⁶

Less than two years later, Triponey provided the support and seed money to disband the student government entirely. The Undergraduate Student Government (USG) had existed for 44 years. Triponey anonymously funded the group Students for Real Advocacy, which was tasked with winning a student referendum to dissolve the USG into the "advocacy-based" UPUA.⁷ Anonymous funding of one student group to be used against another University-sanctioned student group by the Vice President of Student Affairs should have raised ethical concerns about Triponey's behavior for at least two reasons. First, The Vice President of Student Affairs should not be taking sides by pitting one student group against another group. Second, if Triponey had legitimate reasons for believing that the USG should be dissolved, then her support, monetary or otherwise, should have been transparent and not anonymous.

Triponey's private \$3,000 donation proved effective: Six percent of the student body voted to disband USG, while four percent voted to keep it, despite serious questions about forged signatures on the petition to hold the referendum.⁸ All USG self-governing powers were immediately absorbed by Triponey's office, and the UPUA – without any autonomy to decide anything – became the duly recognized Penn State undergraduate student government by Triponey and then-President Graham Spanier. Triponey hand-picked the students for the student government transition team herself.⁹

As one Student Senator at the time put it: "We don't think this represents the student body very well. Administration is involved from the start, and student control is at a minimum."¹⁰

USG Senate President Andy Banducci called Triponey's game: "I don't want to single out Vicky Triponey, but the Student Affairs office has been most involved [in the trend of reducing student power]. A lot of intrusions on student government have happened under her reign."¹¹

¹ O'Neill, A. "The woman who stood up to Joe Paterno," CNN, July 20, 2012.

² Monks, M. "Groups want increase to student fees." *The Daily Campus*, February 26, 2002.
<http://safeguardoldstate.org/wp-content/uploads/2008/05/Groups-want-increase-to-student-fees-News-The-Daily-Campus-University-of-Connecticut.pdf>

³ Staff. "The Daily Campus should remain independent." *The Daily Campus*, April 7, 2003.
<http://safeguardoldstate.org/wp-content/uploads/2008/05/Editorial-The-Daily-Campus-should-remain-independent-Commentary-The-Daily-Campus-University-of-Connecticut.pdf>

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- ⁴ Vivier, S. "Let us run our Newspaper." *The Daily Campus*, April 27, 2003.
<http://safeguardoldstate.org/wp-content/uploads/2008/05/Let-us-run-our-Newspaper-Commentary-The-Daily-Campus-University-of-Connecticut.pdf>
- ⁵ Rhodes, T. "Students should be outraged at group process." *The Daily Collegian*, September 10, 2004. http://www.collegian.psu.edu/archives/article_4db367e7-2234-5d62-924d-83529b708f3c.html
- ⁶ Triponey, V. "Students will benefit from group process," *The Daily Collegian*, September 10, 2004. http://www.collegian.psu.edu/archives/article_30b4ac08-c05f-51cb-aabe-725f1ca9c1bf.html
- ⁷ Carl, M. "Foulke sets up group." *The Daily Collegian*, February 7, 2006.
http://www.collegian.psu.edu/archives/article_207b2f79-2443-54e1-8bad-4b3c5fd9b6d0.html
- ⁸ Staff. "Secrecy, hypocrisy characterize UPUA planning process." *The Daily Collegian*, February 28, 2006. http://www.collegian.psu.edu/archives/article_a8fcb240-84f2-5f55-b32a-a8effe98825c.html
- ⁹ Remitz, J. "Foulke creates group to aid UPUA." *The Daily Collegian*, April 25, 2006.
http://www.collegian.psu.edu/archives/article_a0cfb39e-28ba-55a6-b2ee-6e2ed78dba8f.html
- ¹⁰ Remitz, J. "Foulke creates group to aid UPUA." *The Daily Collegian*, April 25, 2006.
http://www.collegian.psu.edu/archives/article_a0cfb39e-28ba-55a6-b2ee-6e2ed78dba8f.html
- ¹¹ Staff. "The Referendum." *The Daily Collegian*, February 28, 2006.
http://www.collegian.psu.edu/archives/article_3463c49b-e391-59fe-b016-9ec502b35e49.html

APPENDIX 4

APPENDIX 4

Kenneth Lanning, FBI Expert in Child Sex Abuse: Training Provided to Freeh Group, December 13, 2011

Kenneth V. Lanning is retired from 30 years with the FBI as their premier expert in child molestation cases. Lanning is an author of multiple publications describing characteristics of preferential child sex offenders, the processes involved in victimization, and the responses of communities and youth-serving organizations to child victimization. On the basis of this expertise, Lanning was hired by the Freeh group to train the team's investigators in this specialized area. A full day training was provided on December 13, 2011.¹ This training session was largely based on information contained in a manuscript later published in the *Journal of Interpersonal Violence*, titled "Acquaintance Molestation and Youth-Serving Organizations;"² the manuscript was provided to the Freeh group. Together with the information contained in the manuscript, some essential points conveyed include:

1. Profile of the "nice guy" acquaintance offender: "who seems to love and is often loved by children. Acquaintance offenders are frequently described as "nice guys" and "pillars of the community," and quite often they actually are, in all other respects. Many have qualities that are much admired by particular groups (e.g., regular and "faithful church attendance," many hours of community service, or an exemplary military career). Many individuals do not prevent or recognize the sexual victimization of a child by a respected member of society because they cannot believe a man who is otherwise good, spiritual, generous, or seems to truly care for children could be a child molester; even a plea or jury verdict of guilt may be rejected by such supporters."³ Powerpoint slides indicate that Lanning identified characteristics of Jerry Sandusky that were consistent with a "pillar of the community" offender.
2. Obstacles for youth-serving organizations in detecting acquaintance offending: "We came to realize that many of the challenges in understanding certain behavior patterns that we had seen in working on investigations and in litigation also confront youth-serving organizations. Most problematic seem to be those cases that do not fit the stereotype of "evil" sexual predators forcing "innocent" young children into overt sexual

activity. That narrow and naïve stereotype has blinded far too many otherwise reasonable people, delaying or blocking their recognition of how acquaintance molestation more often occurs and how recurrences might be best prevented and addressed. Children can be sexually victimized within organizations whether or not the organization is legally negligent and regardless of the degree of negligence.”⁴

3. Acquaintance offenders are widely misunderstood by: Society and media; mental health and child protective services; investigators and prosecutors; legislatures and judges; youth-serving organizations. Media reports are driven by the need to get ratings and fill time, and are often inaccurate.
4. Priorities for youth-serving organizations in creating policy for preventing child victimization: “When consulting with child abuse experts, organizations need to verify that the experts have specific experience and expertise with *extrafamilial* cases involving *acquaintance* offenders. All efforts to address this problem should be developed and implemented on the basis of an informed understanding of the nature of sexual victimization of children and the behavior patterns of child molesters and victims. Organizations must often deal with difficult cases in which (a) well-liked individuals who are dedicated to helping children sexually victimize children over time in ways that may involve behavior generally not thought of as sexual (e.g., touching, rubbing, hugging, horse play, etc.).”⁵
5. Importance of following a disciplined analytic process when conducting an investigation involving possible child sexual victimization: Steps: (1) gather information; (2) assess and evaluate information; (3) corroborate (make sure that information is consistent across multiple sources). Corroboration must include consideration of: multiple accounts; written records (detailed/reliable); video/audio recordings; statements against self-interest (“He was like a pied piper with children”); consistency across accounts.

In statements to the media, Lanning describes Penn State’s handling of Sandusky as a typical case of an organization failing to act due to being uninformed about acquaintance victimization.

Child sex-abuse expert Kenneth Lanning of Virginia, who worked for the FBI for 30 years, said the Penn State case "is actually extremely common" and that such cases force the public to confront the possible "nice-guy molester" who isn't necessarily part of their framework. "The reason these guys get away with this so long is hardly anybody understands this and has the slightest idea of what they're looking for, because these cases do not fit the popular stereotype that Americans want to believe and which is perpetuated by the media," he said. "And when I tell you hardly anyone understands these cases, that includes police and prosecutors."⁶

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Lanning said often those around the molester see signs, not overt sexual activity -- but "boundary violations" like horsing around in the shower or rubbing a child's back. "Sometimes it's covered up and sometimes it's damage control and some of it is the good-old-boy network and some of it is ignorance," said Lanning. "But at some point people don't process this information totally." "These cases are difficult to investigate, not only because society doesn't understand, but police don't understand," he said.⁷

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According to Lanning, who spent 35 years profiling pedophiles, a hallmark of "acquaintance molesters" is that they tend to be deeply trusted and even beloved. They are not strangers, but "one of us." They are expert at seducing children and are almost as expert at seducing adults, including parents, into believing in them. "It's hard to identify those people close to you as a potential molester, because you know them so well," Lanning says. "No one wants to believe such a thing of a friend."⁸

Conclusion: The Freeh group failed to incorporate information regarding acquaintance child sex offenders into their understanding of the Sandusky matter.

1. Lanning provided information indicating that Jerry Sandusky was a “pillar of the community” offender whose stature in the community blinded people to the possibility he could be harming children; this idea was not included in the Freeh report.
2. Lanning provided information indicating that youth-serving organizations – along with law enforcement, child protective services, and society and the media – are commonly unaware of the ways to recognize acquaintance offenders; the possibility that Penn State officials may have unintentionally failed to understand Sandusky’s actions as abusive is not included in the Freeh report.
3. Lanning provided information to guide youth-serving organizations in obtaining qualified consultation when creating policies to protect children – emphasizing the need for consultants to be knowledgeable about acquaintance victimization; this was not included in the Freeh report recommendations.
4. Lanning provided guidelines for conducting investigations of child sex abuse, and emphasized the importance of evaluating information and carefully corroborating reports before making conclusions; the Freeh report disregards information contrary to the conclusions rather than qualifying the conclusions.
5. Lanning cautioned that media reports on child sex victimization cases are often inaccurate and motivated by competing interests (getting ratings, filling time); the Freeh group read media reports uncritically and allowed themselves to be influenced by sensationalistic accounts based on questionable evidence.

¹ Lanning, K. “Sexual victimization of children by staff personnel: Responses by youth serving organizations.” December 13, 2011, PowerPoint presentation.

² Lanning, K., and Dietz, P. “Acquaintance Molestation and Youth-Serving Organizations.” *Journal of Interpersonal Violence*, vol. 29, no. 15, 23 May 2014, pp. 2815–2838., doi:10.1177/0886260514532360.

³ Lanning, K., and Dietz, P. “Acquaintance Molestation and Youth-Serving Organizations.” *Journal of Interpersonal Violence*, vol. 29, no. 15, 23 May 2014, pp. 2815–2838., doi:10.1177/0886260514532360.

⁴ Lanning, K., and Dietz, P. “Acquaintance Molestation and Youth-Serving Organizations.” *Journal of Interpersonal Violence*, vol. 29, no. 15, 23 May 2014, pp. 2815–2838., doi:10.1177/0886260514532360.

⁵ Hotakainen, R. "Why did suspicions about Jerry Sandusky yield no action for so long?" June 15, 2012. McClatchy Newspapers. <http://www.mcclatchydc.com/news/nation-world/national/article24731104.html>

⁶ Donaldson, S. "Penn State Scandal: 'Nice Guy' Pedophiles Groom Their Victims, Experts Say." November 7, 2011. ABC News. <http://abcnews.go.com/Health/jerry-sandusky-penn-state-scandal-pedophiles-groom-victims/story?id=14896987>

⁷ Jenkins, S. "Blame for the Penn State scandal does not lie with Joe Paterno." November 8, 2011. Washington Post. https://www.washingtonpost.com/sports/colleges/blame-for-the-penn-state-scandal-does-not-lie-with-joe-paterno/2011/11/08/gIOADqMF3M_story.html?utm_term=.84b4d7391df6