

000013Q2 CCGPRO 201602

**IN THE COURT OF COMMON PLEAS
CENTRE COUNTY, PENNSYLVANIA**

GRAHAM B. SPANIER,

Plaintiff,

v.

THE PENNSYLVANIA STATE
UNIVERSITY,

Defendant.

) CIVIL DIVISION
)
) Docket No. 2016-0571
)
)
)
)

**MEMORANDUM IN SUPPORT OF DEFENDANT THE PENNSYLVANIA
STATE UNIVERSITY'S PRELIMINARY OBJECTIONS
PURSUANT TO RULE 1028(a)(4)**

FILED FOR RECORD
2016 MAR 31 PM 2:01
REGISTRAR
PROCLERK
CENTRE COUNTY, PA

TABLE OF CONTENTS

	Page
I. INTRODUCTION	1
II. STATEMENT OF QUESTIONS INVOLVED	4
III. ARGUMENT.....	5
A. STANDARD FOR REVIEWING PRELIMINARY OBJECTIONS UNDER RULE 1028(a)(4).....	5
B. THE COMPLAINT FAILS TO PLEAD SUFFICIENT FACTS TO SUPPORT DR. SPANIER’S BREACH OF CONTRACT CLAIMS.....	6
1. The “Disparagement” Counts Should Be Dismissed.	6
2. Count VI for “Breach of Contract for Failure to Provide Administrative Support” Should Be Dismissed.....	21
3. Count VII for “Breach of Contract for Failure to Pay Legal Expenses” Should Be Dismissed.....	24
IV. CONCLUSION.....	26

TABLE OF AUTHORITIES

	Page(s)
Cases	
<u>220 P'ship v. Phila. Elec. Co.,</u> 650 A.2d 1094 (Pa. Super. Ct. 1994).....	2
<u>Baker v. Rangos,</u> 324 A.2d 498 (Pa. Super. Ct. 1974).....	12
<u>Binswanger v. Levy,</u> 457 A.2d 103 (Pa. Super. Ct. 1983).....	5
<u>Bykowski v. Chesed, Co.,</u> 625 A.2d 1256 (Pa. Super. Ct. 1993).....	2
<u>Clairton Slag, Inc. v. Dep't of Gen. Servs.,</u> 2 A.3d 765 (Pa. Commw. Ct. 2010)	10
<u>CoreStates Bank, N.A. v. Cutillo,</u> 723 A.2d 1053 (Pa. Super. Ct. 1999).....	6
<u>Espenshade v. Espenshade,</u> 729 A.2d 1239 (Pa. Super. Ct. 1999).....	10
<u>Feingold v. Hill,</u> 521 A.2d 33 (Pa. Super. Ct. 1987).....	12, 13
<u>Genaeya Corp. v. Harco Nat'l Ins. Co.,</u> 991 A.2d 342 (Pa. Super. Ct. 2010).....	16
<u>Lerner v. Lerner,</u> 954 A.2d 1229 (Pa. Super. Ct. 2008).....	5, 6, 12
<u>St. Hill. & Assocs., P.C. v. Capital Asset Research Corp.,</u> No. 5035, 2000 WL 33711023 (Pa. Com. Pl. Sept. 7, 2000)	25
<u>Thebes v. Hazen,</u> 7 Pa. D. & C.5th 376 (Pa. Com. Pl. 2009).....	12
<u>Wiernik v. PHH U.S. Mortgage Corp.,</u> 736 A.2d 616 (Pa. Super. Ct. 1999).....	5

Youndt v. First Nat’l Bank of Port Allegany,
868 A.2d 539 (Pa. Super Ct. 2005)..... 13

ZA Consulting, L.L.C. v. Wittman,
No. 3941, 2001 WL 1807402 (Pa. Com. Pl. Aug. 28, 2001) 8, 9

Rules

Pa. R. Civ. P. 1019(b) 13

Pa. R. Civ. P. 1028(a)(4)..... *passim*

I. INTRODUCTION

This is the most recent piece of litigation flowing from the sex crimes perpetrated by former Penn State football coach Jerry Sandusky. As the Court undoubtedly knows, in November 2011 Sandusky was charged with sexual abuse of numerous young boys, over a period of at least 10 years, both on and off Penn State's campus, and two senior Penn State officials, Athletic Director Tim Curley and Senior Vice President Gary Schultz, were simultaneously charged with perjury and failure to report child abuse. Shortly thereafter, plaintiff Graham B. Spanier was terminated from his position as President of Penn State, while continuing as a paid member of the faculty, and a Separation Agreement ("SA") between Dr. Spanier and the University was negotiated and executed. Ex. A to Complaint.

A week later, the University retained the law firm of Freeh, Sporkin & Sullivan ("the Freeh firm"), headed by former FBI Director and Judge Louis J. Freeh, to investigate and to report publicly on the allegations of sexual abuse at Penn State's facilities and the response of University officials to any knowledge of Sandusky's conduct, as well as to make recommendations for changes and improvements in policies and procedures. See Complaint ¶¶ 8-9, 14. Meanwhile, the Pennsylvania Attorney General's investigation into Sandusky's crimes and the response to Sandusky's conduct by University officials continued, the United States Department of Education began its investigation of possible failure to report

sexual abuse under the “Clery Act,”¹ and the NCAA expressed its interest in an investigation of possible violations of its rules. Id. ¶ 74.

In the course of his investigation, Judge Freeh identified various emails and other documents from 1998 and 2001 dealing with Sandusky’s behavior with young boys, some of which had been sent to or by Dr. Spanier. See id. ¶¶ 99, 100, 115. Judge Freeh completed his investigation and issued his report (“the Freeh Report”) on July 12, 2012. See id. ¶ 9. On November 1, 2012, the Grand Jury brought additional charges against Curley and Schultz and Dr. Spanier was charged with obstruction of justice, perjury, failure to report suspected child abuse, and child endangerment. See id. ¶¶ 66, 171; Grand Jury’s presentment (Ex. A hereto).²

¹ See Press Release, “U.S. Department of Education to Investigate Penn State’s Handling of Sexual Misconduct Allegations” (Nov. 9, 2011), at <http://www.ed.gov/news/press-releases/us-department-education-investigate-penn-states-handling-sexual-misconduct-alleg> (last visited Mar. 28, 2016).

² The Court may consider this fact under Rule 1028(a)(4) because Dr. Spanier acknowledges in the Complaint that he was “criminally charged” (Complaint ¶ 66) and also refers to “his prosecution.” Complaint ¶ 171. The Court may also take judicial notice of the grand jury presentment attached hereto as Exhibit A. See 220 P’ship v. Phila. Elec. Co., 650 A.2d 1094, 1097 (Pa. Super. Ct. 1994) (“It is appropriate for a court to take [judicial] notice of a fact which the parties have admitted or which is incorporated into the complaint by reference to a prior court action”); Bykowski v. Chesed, Co., 625 A.2d 1256, 1258 n.1 (Pa. Super. Ct. 1993) (noting that a court “has the right to take judicial notice of public documents”). Certain of the charges against Dr. Spanier have been set aside by a Panel of the Superior Court, but at least one felony charge remains pending. See Docket in

In this lawsuit Dr. Spanier seeks to recover for alleged harm to his reputation, flowing not from the Sandusky related emails he sent or received in 1998 and 2001; and not because of his own conduct or lack thereof in response to what he knew or had been told about Sandusky's behavior; and not because of the Grand Jury's detailed and public description of his alleged crimes; and not because of Dr. Spanier's own public statements and interviews; and not because of the negative press coverage triggered by all of the above. Rather, he now sues Penn State to recover for "reputational" harm he says has resulted from a handful of "negative" comments he alleges were made by the University or its Trustees, in breach of the mutual non-disparagement provisions in the SA.

The SA is the sole basis of Dr. Spanier's 81 page, 245 paragraph Complaint, much of which parrots the complaint in his case against Judge Freeh and his law firm. It is indisputable that while negotiating the SA in November 2011, Dr. Spanier owed fiduciary duties to the University. During those negotiations, and prior to agreeing to the terms of the SA, the University did not know of the 1998 and 2001 emails sent to or from Dr. Spanier, or the events documented therein, regarding his knowledge of and involvement in decisions related to Sandusky's conduct with young boys, which formed in part the basis for the subsequent criminal charges against Dr. Spanier.

Commonwealth v. Spanier, No. 304 MDA 2015 (Pa. Super. Ct.) (Exhibit B hereto).

The University is not contesting on its Preliminary Objections the validity or enforceability of the SA, or raising other defenses that rest on facts outside the Complaint. Rather, as shown below, even assuming the SA is valid, Dr. Spanier's Complaint, as filed, plainly fails to state any viable claim for breach of contract and for that reason alone it should be dismissed under Pennsylvania Rule of Civil Procedure 1028(a)(4).

II. STATEMENT OF QUESTIONS INVOLVED

1. Should Counts I-V, alleging breach of contract based on certain "negative statements," be dismissed pursuant to Rule 1028(a)(4)?

Suggested Answer: Yes

2. Should Count VI, alleging breach of contract for failure to provide administrative support, be dismissed pursuant to Rule 1028(a)(4)?

Suggested Answer: Yes

3. Should Count VII, alleging breach of contract for failure to pay legal fees and expenses, be dismissed pursuant to Rule 1028(a)(4)?

Suggested Answer: Yes

III. ARGUMENT

A. **STANDARD FOR REVIEWING PRELIMINARY OBJECTIONS UNDER RULE 1028(a)(4)**

The adequacy of a complaint for purposes of a demurrer must be judged on the facts as pled. Lerner v. Lerner, 954 A.2d 1229, 1234 (Pa. Super. Ct. 2008) (explaining that the test is whether “on the facts averred, the law says with certainty that no recovery is possible”) (quoted case omitted). In reviewing preliminary objections in the nature of a demurrer, only well-pleaded facts and *reasonable* inferences arising from those facts are accepted as true. Wiernik v. PHH U.S. Mortgage Corp., 736 A.2d 616, 619 (Pa. Super. Ct. 1999). The court is free to disregard “conclusions of law, unwarranted inferences from facts, opinions, or argumentative allegations.” Id. Importantly, the court “may consider only such matters as arise out of the complaint itself; it cannot supply a fact missing in the complaint.” Binswanger v. Levy, 457 A.2d 103, 104 (Pa. Super. Ct. 1983). A preliminary objection in the nature of a demurrer should be sustained where, on the facts as pled, the plaintiff fails to state a valid cause of action. Lerner, 954 A.2d at 1235.

B. THE COMPLAINT FAILS TO PLEAD SUFFICIENT FACTS TO SUPPORT DR. SPANIER’S BREACH OF CONTRACT CLAIMS.

This is a breach of contract case. It is axiomatic that the plaintiff in such a case must plead facts which, if proven, would be sufficient to establish defendant’s liability. See Lerner, 954 A.2d at 1236 (noting that a complaint must contain allegations “of all of the facts the plaintiff will eventually have to prove in order to recover”). To sustain a breach of contract claim, a plaintiff must plead facts to support each of the following elements: (1) the existence of a contract; (2) a breach of a duty imposed by the contract; and (3) damages. CoreStates Bank, N.A. v. Cutillo, 723 A.2d 1053, 1058 (Pa. Super. Ct. 1999). The Complaint filed in this case fails to plead facts that, even if true, would be sufficient to support a finding of a breach of a duty imposed by the SA, and it should therefore be dismissed under Rule 1028 (a)(4).

1. The “Disparagement” Counts Should Be Dismissed.

Counts I-V purport to allege breaches by Penn State of the “non-disparagement” provision in paragraph 13 of the SA. See Complaint ¶ 64. The Complaint repeatedly asserts that Penn State promised not to make “any negative comments about Dr. Spanier” and to “use reasonable efforts” to cause its Trustees to refrain from making any such comments. See id. ¶ 2 (the SA prohibits “any negative statements”); ¶ 158 (the SA prohibits “any negative statements”); ¶ 177

(the SA prohibits “any negative comments”); ¶ 178 (Trustees not to make “any negative comments”); ¶¶ 186-87 (SA prohibits “any negative comments”); ¶¶ 196-97 (SA prohibits “any negative comments”); ¶¶ 208-09 (SA prohibits “any negative comments”); ¶¶ 219-20 (SA prohibits “any negative comments”).

The plain language of the SA, however, does not provide for a blanket prohibition regarding negative statements. Rather, it provides as follows:

The University will not, and will use reasonable efforts to cause the members of the Board of Trustees not to, make any negative comments about Dr. Spanier to the media, to their professional colleagues or to any other members of the public, unless required by law or to comply with legal obligations and/or to provide truthful information in connection with ongoing or forthcoming investigations.

SA ¶ 13 (Ex. A to Complaint) (emphasis added). First, only negative statements actually made by “[t]he University” are within the scope of this provision. The University’s Trustees are under no contractual duty to refrain from making negative or other statements; rather, there is only a duty on the part of the University to use “reasonable efforts” to cause the Trustees not to make certain negative statements. Second, and more importantly, the SA explicitly authorizes the making of negative statements if they are “required by law” or “to comply with legal obligations” and/or “to provide truthful information in connection with ongoing or forthcoming investigations.”

As noted above, at the time the SA was being negotiated, the Pennsylvania Attorney General’s investigation into Sandusky’s sexual abuse crimes and the

response to Sandusky's conduct by University officials was continuing, leading to Dr. Spanier's prosecution the following year. Judge Freeh's investigation was about to commence, and other investigations, including those by the NCAA and the Department of Education, were threatened or had already begun. It was under these circumstances that the University explicitly preserved its right to make "truthful statements in connection with" any and all such investigations.

Any statement made by Penn State or by its Trustees "in connection with ongoing or forthcoming investigations" is wholly outside the scope of the SA's non-disparagement language, unless it is not only negative, but also not "truthful." But the Complaint -- in its repeated but mistaken assertion that the contract prohibits "any" negative statements -- fails to allege that any statement made by Penn State itself or by any Trustee was unrelated to "ongoing or forthcoming investigations" or that it was not "truthful." Therefore, the Complaint fails to allege a breach of the SA.

ZA Consulting, L.L.C. v. Wittman, No. 3941, 2001 WL 1807402 (Pa. Com. Pl. Aug. 28, 2001), is instructive on the obligation of a plaintiff to plead facts sufficient to allege a breach. There, the plaintiff filed suit against a former employee alleging breach of a non-competition agreement. 2001 WL 1807402, at *2. By its terms, the agreement prohibited the former employee from working for clients of the plaintiff but only on activities in which plaintiff was also engaged.

Id. While the complaint alleged that the former employee accepted employment with a client of the plaintiff, the complaint was devoid of any allegation that the former employee was providing the same services as his former employer. Id. On the facts as pled, the court concluded that the complaint did not allege a breach of the non-competition agreement because it left the court “without any grounds to conclude that [defendant] is engaged in the same business or activity as [plaintiff].”

Id. Accordingly, the defendant’s preliminary objection was sustained. Id. at *3.

The Complaint in this case suffers from the same defect. It, too, fails to allege facts to support a breach. If a truthful, even if “negative,” statement is allowed by the SA -- while a negative and false statement is prohibited -- then a Complaint which fails to allege falsity does not sufficiently allege a breach. For this and the reasons set forth below, each non-disparagement count is legally insufficient and should be dismissed.

a. Count I

Count I purports to impose liability on Penn State for negative statements not even made by Penn State or any of its Trustees, but instead made by Judge Freeh in the Freeh Report and in a press conference at which he was the only speaker. Judge Freeh and his law firm had been retained just days after the SA was executed to conduct an investigation into the University’s awareness and handling of Sandusky’s conduct and to recommend improvements in policies and

procedures. There is nothing in the SA in which Penn State promised Dr. Spanier that any independent investigator would, in the course of his investigation, refrain from making negative findings about Dr. Spanier or about anyone else. Indeed, the notion that Penn State would somehow promise Dr. Spanier that he would be immune from “negative” commentary by an independent investigator -- no matter what evidence might emerge in the course of the investigation -- is simply preposterous. See Clairton Slag, Inc. v. Dep’t of Gen. Servs., 2 A.3d 765, 773 (Pa. Commw. Ct. 2010) (noting well-established principle that a contract not be construed in a manner leading to an absurd result). Indeed, any agreement that conduct by Dr. Spanier relating to Sandusky would somehow be kept secret would be void as a matter of public policy. See Espenshade v. Espenshade, 729 A.2d 1239, 1246 (Pa. Super. Ct. 1999) (under Pennsylvania law, a contract is “unenforceable if its formation or performance is criminal, tortious or otherwise opposed to public policy”). In any event, it is clear that the non-disparagement language, as written, covers only statements made by the University itself, and not statements by a third party such as Judge Freeh.

Dr. Spanier apparently recognizes this, so in Count I he attempts to suggest that Judge Freeh’s words were not really his. According to Dr. Spanier, Judge Freeh was simply a University mouthpiece -- not an independent outside lawyer and investigator -- writing and saying whatever it was the University told him to

say and then lying about his independence. See, e.g., Complaint ¶ 180 (“Penn State breached the Separation Agreement by ... directing Freeh ... to publicly accuse Penn State administrators of concealing Sandusky’s criminal activities” and to make other “negative comments about Dr. Spanier”). The wholly conclusory allegation that Penn State did not retain Judge Freeh to conduct a legitimate investigation, but instead “directed” him to condemn the University itself and its senior officials, including specifically Dr. Spanier, through a phony investigation, is illogical on its face and devoid of any particularized facts. It is therefore insufficient to state a cause of action.

The Freeh Report, which Dr. Spanier quotes from and references extensively throughout the Complaint, was publicly presented as the result of an independent investigation. Dr. Spanier’s conclusory declaration to the contrary is unsupported by any pled facts. The Complaint cites no facts or particularized allegations that any negative comment about Dr. Spanier made by Judge Freeh in the Freeh Report was “directed” by the University. His claim that Judge Freeh and the University have perpetrated some sort of massive public fraud in characterizing the investigation and report as the work of Judge Freeh, his law firm, and his team of lawyers and investigators -- as opposed to the University’s own work -- is nothing more than wild and wholly self-serving speculation untethered to any facts pled in the Complaint, to any reasonable inferences, or to reality.

Under Pennsylvania law, the particular facts giving rise to a claim must be pled. See Lerner, 954 A.2d at 1235 (“Pennsylvania is a fact-pleading state.”); Thebes v. Hazen, 7 Pa. D. & C.5th 376, 383 (Pa. Com. Pl. 2009) (“The Trial Court has broad discretion in determining amount of detail which must be averred however, as a minimum, pleader must set forth facts upon which cause of action is based.”) (Kistler, J.). It is not enough to lay out grand conclusions, devoid of factual support. See Feingold v. Hill, 521 A.2d 33, 38 (Pa. Super. Ct. 1987) (explaining that “[b]lind suspicions and unsupported accusations” fail to state a claim under any theory of recovery).

The requirement to plead facts is set forth in Pennsylvania Rule of Civil Procedure 1019(a). The Rule specifically requires:

the pleader to disclose the material facts sufficient to enable the adverse party to prepare his case. A complaint therefore must do more than give the defendant fair notice of what the plaintiff’s claim is and the grounds upon which it rests. It should formulate the issues by fully summarizing the material facts. Material facts are ultimate facts, *i.e.* those facts essential to support the claim. Evidence from which such facts may be inferred not only need not but should not be alleged.... Allegations will withstand challenge under [Rule] 1019(a) if (1) they contain averments of all of the facts the plaintiff will eventually have to prove in order to recover, and (2) they are sufficiently specific so as to enable defendant to prepare his defense.

Lerner, 954 A.2d at 1235 -36 (quoting Baker v. Rangos, 324 A.2d 498, 505-06 (Pa. Super. Ct. 1974)).

Moreover, claims that amount to “fraud” are subject to heightened scrutiny and an even higher duty to plead specific facts. See Youndt v. First Nat’l Bank of Port Allegany, 868 A.2d 539, 544-45 (Pa. Super Ct. 2005) (noting that fraud must be alleged with particularity and that the particularity standard requires that pleadings must “adequately explain the nature of the claim to the opposing party” and “be sufficient to convince the court that the averments are not merely subterfuge”) (quoted case omitted); Pa. R. Civ. P. 1019(b) (fraud “shall be averred with particularity”).

There are no specifically pled facts in the Complaint which could be read to remotely support the conspiracy theory that Penn State hired Judge Freeh, just days after agreeing not to falsely disparage Dr. Spanier, with secret instructions to disparage him regardless of what his investigation might find and regardless of what Judge Freeh’s own opinions might be upon completing his investigation. Nor are there any facts pled to support Dr. Spanier’s fanciful claim that the University directed Judge Freeh and his team to make the allegedly negative statements on which Count I of the Complaint is based. Particularly where, as here, the conclusory allegations are so far-fetched and inherently implausible, the need to aver specific facts is paramount. See Feingold, 521 A.2d at 38 (affirming dismissal on preliminary objections where complaint pleaded only boilerplate conclusions of law without any material facts to support those claims). In sum,

there are no specific facts pled to support the “blind suspicions,” “unsupported accusations,” and outright “subterfuge” inherent in the assertion that Judge Freeh was simply the tool of the University and his statements were in reality somehow the University’s own statements.

For all the above reasons, Count I is legally insufficient and should be dismissed.

b. Count II

Count II purports to impose liability on Penn State for facilitating public disclosure of the Freeh Report, without excising anything “negative” about Dr. Spanier. Again, Dr. Spanier seems to believe that it was the intent of the SA to make him -- and him alone -- immune from the investigation into the University’s handling of Sandusky’s crimes. As with Count I, if Penn State had promised Dr. Spanier that anything unfavorable to him that might be discovered in an independent investigation would be concealed from the public -- which the SA does not do -- such a promise would have been void as a matter of public policy. Jerry Sandusky’s crimes, and the University’s or its officials’ involvement, if any, were matters of enormous and legitimate public interest. In hiring a former FBI Director and Judge to investigate those matters and then to publicly disclose his findings -- allowing the chips to fall where they may -- the University acted

honorably and responsibly and in doing so it did not violate any promises to Dr. Spanier.

In putting the Freeh Report and the Freeh press conference on the Penn State website, neither Penn State nor its Trustees were making actionable, negative comments about Dr. Spanier. If Penn State was making any “statement” at all, it was simply making the undeniably true and not “negative” statement that “this is what the investigation found.” Because it is not a “negative” statement about Dr. Spanier and because it is, in any event, squarely within the explicit contract language allowing the University to provide “truthful information in connection with ongoing or forthcoming investigations,” it cannot be the basis for an alleged breach of Penn State’s obligations. Even if, as Dr. Spanier claims, the Freeh Report itself contains false statements or unsupported opinions about him, that does not make the University’s honest and responsible disclosure of what was found and reported to be either negative or untruthful.³

For all the above reasons, Count II is legally deficient and should be dismissed.

³ Dr. Spanier has a separate defamation lawsuit in which, as a public figure, he can seek relief if he can meet the legal requirements for such a claim. Spanier v. Freeh, et al., No. 2013-2707 (Centre County Court of Common Pleas).

c. Count III

Count III rests entirely on the erroneous assertion that the language of the SA barred Penn State itself from making “any” negative statement and imposed on the University an obligation to use “reasonable efforts” to cause Trustees not to make “any” such statements. See Complaint ¶¶ 196-97. As discussed above, however, the plain language of the contract belies that interpretation and explicitly permits not only negative statements “required by law or to comply with legal obligations” but also “truthful information in connection with ongoing or forthcoming investigations.” See Genaeya Corp. v. Harco Nat’l Ins. Co., 991 A.2d 342, 347 (Pa. Super. Ct. 2010) (noting hornbook principle that “the plain language of the agreement is the best evidence of the parties’ intent”).

Count III complains of statements made by Karen Peetz as Chair of the Board of Trustees and by Trustee Kenneth Frazier, as head of the Board’s investigative task force, on the day of, and the day after, the release of the Freeh Report. But nothing in Count III alleges that anything said by either of them was other than a truthful statement made about the findings of the Freeh investigation and the contents of the Freeh Report. Since the statements alleged were made “in connection with ... investigations,” no breach can be alleged without -- at a minimum -- an averment that Ms. Peetz and Mr. Frazier were not “truthful,” in

what they said, as distinct from what the Freeh Report said. Because no such allegation is pled, no breach of the SA has been pled.

For all the above reasons, Count III is legally deficient and should be dismissed.

d. Count IV

Count IV complains of a single statement made to a reporter by Trustee Keith Masser during Sandusky's criminal trial, in the late stages of the Freeh investigation, and while the Attorney General's investigation was continuing. It, too, rests entirely on the erroneous assertion that the SA covered "any" negative statements, even if truthful and even if made in connection with an ongoing investigation. As with the statements by Trustees Peetz and Frazier, the Complaint does not allege that any statement by Mr. Masser was not truthful, and therefore it does not adequately allege a breach of the contract.

Mr. Masser's statement is quoted in an article about the Sandusky trial, published on June 16, 2012 and titled "Testimony at Sandusky Trial Shows Missed Chances." Ex. C to the Complaint.⁴ Mr. Masser made it clear he was "speaking for himself," that he wanted to be careful not to draw "premature conclusions," and that at the time Dr. Spanier's role as President ended there was no belief or suspicion that he had been "involved in a cover-up." But, he added, based on the

⁴ A legible copy of this article is attached hereto as Exhibit C.

emails that had been discovered by and “in connection with” the Freeh investigation, and which were the subject of public press reports, it now appeared to him that “top administration officials ... were involved in making the decision not to inform the proper authorities.” Not only is there no allegation in the Complaint that Mr. Masser was not telling the truth as to his personal suspicions and opinions concerning the meaning and significance of the emails to and from Dr. Spanier which had by then been publicly reported, but the Complaint explicitly admits that Dr. Spanier was indeed directly involved in the plan to address Sandusky’s conduct and that such plan did not include any report to government authorities about whatever he and others knew, or had heard, of Sandusky’s behavior with a child in the shower of the football building in 2001. See Complaint ¶¶ 114-16.

Nothing said by Trustee Masser could possibly be alleged to be false when Dr. Spanier admits he was ultimately at the center of the decision and plan that did not include reporting Sandusky to any government authorities in 2001. Whether or not Dr. Spanier believes he had good reasons for this decision is irrelevant. Dr. Spanier was admittedly involved in the decision, and nothing said by Mr. Masser as to what Mr. Masser personally perceived based on public news accounts of the emails discovered in the Freeh investigation has been, or could be, alleged to be false. Even if a personal expression of a suspicion based on publicly reported facts

could be considered “negative” -- and that is doubtful -- the Complaint fails to allege (nor could it plausibly do so) that any statement by Mr. Masser of his own views was false and thus outside the “truthful information” provision.

For all the above reasons, Count IV is legally deficient and should be dismissed.

e. Count V

Count V complains of statements made by certain Trustees in being interviewed for a *New York Times* article entitled “Penn State’s Trustees Recount Painful Decision to Fire Paterno.” Ex. D to Complaint. While centering on the Trustees’ decision to remove Joe Paterno as football coach, the article contains certain quotes regarding Dr. Spanier, none of which are alleged to be false. Most of them are simply true and honest statements by the Trustees as to how they felt about the way they learned of the investigation of Sandusky’s crimes:

“The trustees described how they had felt blindsided by Spanier’s failure to keep them informed of the nature and scope of the Pennsylvania attorney general’s investigation of Sandusky...”

“According to the trustees, Spanier never informed them of [Sandusky’s 2001 conduct] before Sandusky’s arrest...”

“Many [Trustees] were irked that Spanier had released a statement in full support of Curley and Schultz, who were indicted for perjury.”

“The trustees ... said that they were disappointed that Spanier ... did not brief the board on the nature of the questions by the grand jury about the [2001] episode.”

“He should have told us a lot more...”

“Part of being a leader at that level is to be a risk manager and to think through what might happen...”

Ex. D to Complaint.

Even assuming that these statements by various members of Penn State’s Board of Trustees could be characterized as “negative,” under the meaning of the SA, there is no evidence – and, more importantly, no allegation in the Complaint -- that the individual Trustees were not complying with their legal obligations in explaining truthfully how they had fulfilled their duties as Trustees in response to, and in connection with, the Attorney General’s ongoing investigation. Nothing in the language of the SA could reasonably be interpreted to prevent individual Trustees from giving honest and truthful information to the public to “comply with [their] legal obligations” as Trustees and to address matters relating to the ongoing criminal investigation. The notion that the SA gave Dr. Spanier the right to be perpetually shielded from such truthful information has no support in the language of the SA or common sense. There is no prohibition or limit of any sort on Penn State or its Trustees fulfilling their “legal obligations” as Trustees or providing “truthful information” about the impact of, and their reactions to, the Attorney General’s then still ongoing investigation. The Complaint fails to allege that any

of the Trustees' statements were not made pursuant to their obligations as trustees or not "in connection with" the ongoing criminal investigation or outside the "truthful information" provision.

For all the above reasons, Count IV is legally insufficient and should be dismissed.

2. Count VI for "Breach of Contract for Failure to Provide Administrative Support" Should Be Dismissed.

While the Complaint seems to allege at various places that Penn State "has not provided" Dr. Spanier with specified "administrative support" at any time since the execution of the SA (See, e.g., Complaint ¶¶ 232-34), his claim is more precisely articulated in paragraphs 168-69, where he specifies that the relevant "administrative support" was withdrawn in November 2012, a full year after the SA had been signed. This is significant.

What Dr. Spanier never clearly says in his Complaint -- but which this Court can consider under Rule 1028(a)(4) -- is that Dr. Spanier was criminally charged with failure to report child abuse, endangerment of a child, and perjury on November 1, 2012, almost a year after he was terminated as President.⁵ The termination of his administrative support a few days later was a direct and immediate consequence of those criminal charges.

⁵ The Complaint acknowledges that Dr. Spanier has been criminally charged for his conduct related to Sandusky. Complaint ¶¶ 66, 171; see Exhibit A hereto.

In demanding that he be provided with “administrative support,” Dr. Spanier does not -- and cannot -- identify any provision in the SA that would prevent the University from putting him on a paid leave of absence for circumstances that arose during his employment and seriously undermined his ability to perform his job. First, nothing in the SA purports to address what would happen if Dr. Spanier were to be charged, as he was, with multiple felonies. Such a drastic change in circumstances entitled the University, while continuing to pay him his promised compensation of \$600,000 per year (which continues to this day), to take reasonable and modest steps to protect its interests by suspending his employment duties, making the office and support to which he might have been entitled if not so suspended, unnecessary. The Complaint does not cite to any provision in the SA that allegedly prevents the University, in the case of a post-contract indictment, from taking this action.

Moreover, all the SA does is provide that Dr. Spanier be treated in a manner similar to those similarly situated. See SA ¶ 4(d) (providing for “administrative support commensurate with that provided ... other tenured faculty members”). But Dr. Spanier does not allege that his post-indictment treatment was not “commensurate” with how similarly situated faculty members would be treated, i.e., those who might be charged with one or more felonies, or that the University

has singled him out in withdrawing administrative support during the pendency of a criminal indictment or other comparable change in circumstances.

That Dr. Spanier's criminal charges permit removal of his administrative support is evident in the terms of his Employment Agreement which he relies upon in the Complaint (¶¶ 53-57, 61-63) and which, in part, is incorporated into the SA. See SA ¶¶ 3, 4, 6. The Employment Agreement contemplated that in the event of his being "formally indicted in a court of law of any felony" he would "not be entitled to any further compensation or benefits as President ... nor shall he be entitled to continuing employment as a member of the University faculty, including the Post-Presidency Faculty Position set forth in Section E.6 of this Agreement." See Employment Agreement at p. 12 (Exhibit D hereto).

Dr. Spanier's claim to "administrative support" is founded directly on terms of his Employment Agreement, as incorporated into the SA. See Complaint ¶¶ 61-62. But as noted above, nothing in the SA or the Employment Agreement prohibits the University from taking steps to deal with an employee who is charged with multiple serious crimes, including perjury and child endangerment. Indeed, as shown above, the terms of the Employment Agreement explicitly contemplated that Dr. Spanier would forfeit all entitlement to administrative support or other benefits if charged with one or more felonies. Even though the Complaint gives

short shrift to Dr. Spanier's criminal prosecution, the fact that administrative support was not withdrawn until *after* he was charged negates his claim.

For all the above reasons, Count VI is legally insufficient and should be dismissed.

3. Count VII for "Breach of Contract for Failure to Pay Legal Expenses" Should Be Dismissed.

Count VII claims Penn State has breached paragraphs 4(f) and 6 of the SA. Paragraph 4(f) provides that Dr. Spanier would be reimbursed for "attorneys' fees and expenses" which "he has incurred" with respect to "the grand jury presentment and his termination from the position of President of the University." SA ¶ 4(f) (emphasis added). This provision says nothing about fees and expenses he might incur going forward, and there is no allegation in the Complaint that Penn State failed to reimburse him for any fees and expenses which he had incurred with respect to either the then existing grand jury presentment or his termination as President.

Paragraph 6 of the SA more broadly provides that Penn State would "indemnify" Dr. Spanier "in accordance with the terms of Section J of the Employment Agreement and with the by-laws of the University." SA ¶ 6. Section J, and the related by-laws, provide for the University to indemnify and hold him harmless, even "subsequent to termination . . . as President," with respect to "acts or omissions occurring while he was serving as President." Ex. D hereto.

The Complaint identifies only two expenses allegedly incurred by Dr. Spanier as the basis for his claim of breach. First, he claims that Penn State has failed to reimburse him for some sort of undisclosed consultant he apparently hired to defend his “reputation.” Complaint ¶ 242. Second, he claims that Penn State has failed to reimburse him for the costs of a “federal lawsuit” which he allegedly filed against Penn State “to gain access to his emails.”⁶ Id.

Neither of these expenses gives rise to any viable claim of breach. Nothing in the SA or the Employment Agreement or the University’s by-laws provides for reimbursement of what are apparently public relations expenses. Nor is there any basis for him to claim reimbursement for fees he unilaterally chose to incur in suing the University.

In addition, Dr. Spanier does not even allege that he ever sent a bill to the University or made any demand on the University for reimbursement of these bills or what amounts are allegedly owed. Where a plaintiff fails to allege a prior demand for monies allegedly due, the complaint does not allege a breach of contract. See, e.g., St. Hill. & Assocs., P.C. v. Capital Asset Research Corp., No. 5035, 2000 WL 33711023, at *2 (Pa. Com. Pl. Sept. 7, 2000) (even where plaintiff

⁶ Penn State believes the reference to a “federal lawsuit” may be in error. The only similar suit filed by Dr. Spanier was a state court lawsuit. That action was voluntarily dismissed by him shortly after it was filed. See Docket in Spanier v. Pennsylvania State Univ., No. 2012-2065 (Centre County Court of Common Pleas) (Exhibit E hereto).

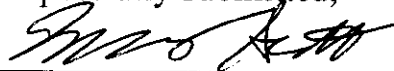
alleged he submitted invoices to the defendant for payment, the failure to allege when the invoices were sent or when payment was due was insufficient to support a breach of contract claim).

For all the above reasons, Count VII is legally insufficient and should be dismissed.

IV. CONCLUSION

For all the reasons set forth above, Penn State respectfully requests that the Court sustain its preliminary objections to all Counts of the Complaint and dismiss the Complaint with prejudice.

Respectfully submitted,



Daniel I. Booker (PA 10319)
Donna M. Doblack (PA 75394)

REED SMITH LLP

225 Fifth Avenue

Suite 1200

Pittsburgh, PA 15222

(412) 288-3131

(412) 288-3063 (fax)

dbooker@reedsmith.com

ddoblack@reedsmith.com

Michael T. Scott (PA 23882)

REED SMITH LLP

Three Logan Square

Suite 3100

1717 Arch Street

Philadelphia, PA 19103

(215) 851-8100

(215) 851-1420 (fax)

mscott@reedsmith.com

Joseph P. Green (PA 19238)
LEE, GREEN & REITER, INC.
115 East High Street
P.O. Box 179
Bellefonte, PA 16823
(814) 355-4769
(814) 355-5024 (fax)
jgreen@lmgrlaw.com

*Attorneys for Defendant The
Pennsylvania State University*

Dated: March 31, 2016

EXHIBIT A

FINDINGS OF FACT

This investigation commenced as a result of allegations of sexual assaults of minor male children by Gerald R. Sandusky ("Sandusky") over a period of years while Sandusky was a football coach with the Pennsylvania State University ("Penn State") football team and after he retired from coaching. The Thirty-Third Statewide Investigating Grand Jury issues this Presentment in furtherance of its ongoing investigation of this matter and hereby incorporates all of its previous findings from Presentments No. 12 and 13 herein as if fully set forth.

1998 Incident Involving Victim 6

In the spring of 1998, Sandusky was a very prominent defensive coordinator/assistant football coach at Penn State. Sandusky had garnered national acclaim for the quality of his coaching and was widely looked upon as the mastermind of defenses that led to two national championships in the 1980's. He was revered in much of the State College area not only for his coaching success, but also his work with youth through a non-profit organization he founded known as the Second Mile.

Sandusky started the Second Mile in the 1970's, principally as a foster home that would focus on assisting troubled boys. Over time, the Second Mile developed into a much broader-based regional charity that focused its efforts primarily on young boys between the ages of eight and sixteen. By 1998, Sandusky was clearly the established "name" behind the charity, utilizing his broad array of contacts both at Penn State and around the region to raise money and create highly recognized events for the charity.

On May 3, 1998, Sandusky contacted Victim 6, then eleven years old, about going to work out with him at Penn State facilities. Victim 6 met Sandusky about four weeks prior at a Second Mile youth activity. Sandusky picked the boy up around 7:00 p.m., and they went to the East Area Locker Room on campus. At the time, it contained workout facilities, showers, and football team locker room.

The "workout" session consisted of a brief wrestling episode in which Sandusky tried to pin Victim 6, followed by a short period of using exercise machines. Afterwards, Sandusky kissed Victim 6 on the head and told him he loved him. Sandusky then took the boy to a coach's locker room and suggested they shower together. Victim 6 testified that he found this odd because the workout was brief and he had not even begun sweating, and therefore he felt he did not need a shower. Despite feelings of embarrassment and discomfort, Victim 6 did enter the shower room with Sandusky.

Upon entering the showers, Victim 6 immediately went to the side of the room opposite where Sandusky was showering. Sandusky coaxed Victim 6 over to the shower next to him. Sandusky placed his hands around the boy and told him he was going to "squeeze his guts out." Victim 6 testified that this made him very uncomfortable. He then lifted Victim 6 up to "get soap out of his hair" and at that point the boy's face was right in Sandusky's chest.

Sandusky took the boy home at around 9:00 p.m. and left the area. Victim 6's mother noticed that his hair was wet and she inquired why. He informed her of the shower activity and she became quite concerned and upset. The next morning, she made a report to the University Park Police. Detective Ronald Schreffler was assigned

to the case and almost immediately began an investigation into Sandusky's contact with the boy.

Initially, Centre County Children and Youth Services (CYS) were also notified of the complaint made by Victim 6's mother. Centre County CYC referred the case, however, to the Pennsylvania Department of Public Welfare (DPW), citing a conflict of interest due to their heavy involvement in placement and foster care activities with Sandusky's Second Mile charity. Normally, the case would have been referred to a neighboring county child welfare agency but, due to Sandusky's high-profile status in the community, the case was sent directly to the state DPW in Harrisburg.

Detective Schreffler conducted the investigation over a four-week period in May and early June 1998. It included not only interviews of Victim 6 and his mother, but also of a second child, B.K., also 11, who described very similar contact with Sandusky in a shower on a different occasion. Schreffler testified that, twice in mid-May, he and University Police Detective Ralston listened in on two conversations Victim 6's mother had with Sandusky at her home. She confronted Sandusky about his conduct with her son in the shower and he admitted his private parts may have touched her son when he bear-hugged the boy. When informed that he was not to contact Victim 6 anymore, Sandusky responded, "I understand. I was wrong. I wish I could get forgiveness. I know I won't get it from you. I wish I were dead." Schreffler, Ralston, and Victim 6's mother all confirmed these conversations before the Grand Jury.

Sandusky was never interrogated about the incident or the statements made to Victim 6's mother. Then Centre County District Attorney Ray Gricar decided there would be no criminal charges. It was only after this decision was made that Schreffler

and Jerry Lauro, an investigator with DPW, interviewed Sandusky on June 1, 1998. Lauro testified that Sandusky admitted to showering with and hugging Victim 6. He acknowledged that it was wrong. Schreffler told him not to shower with children anymore and Sandusky assured Schreffler that he would not.

Tom Harmon was the Chief of Police of the University Police Department in 1998 and a thirty-year veteran of the University Police Department. Chief Harmon testified that he was concerned when the initial report regarding Sandusky came to his Department on May 4, 1998. Chief Harmon received a rather extensive briefing from Detective Schreffler regarding his interview with Victim 6. Chief Harmon then called Gary Schultz, the Senior Vice President for Business and Finance at Penn State. Schultz oversaw the University Police Department as a part of his position. Chief Harmon testified that it was not unusual for him to keep Schultz informed of the status of investigations that could prove embarrassing to, or generate public scrutiny of, Penn State. Chief Harmon spoke in detail with Schultz on the evenings of May 4 and May 5 about specifics of the investigation.

Schultz took notes during his conversations with Harmon.¹ Schultz not only wrote down very detailed information about Sandusky's contact with Victim 6, but he also made several observations about the import of Sandusky's conduct. At one point Schultz noted that Sandusky's behavior toward Victim 6 was "at best inappropriate @ worst sexual improprieties." He further noted that during the bear hug between Sandusky and Victim 6 there "had to be genital contact because of size difference." He also clearly understood that Victim 6 had a friend (B.K.) and "claim[ed] same thing went

¹ 4 pages of notes kept by Schultz on 5/4 and 5/5/98 are Attached as Exhibit 1. It will be discussed later in this Presentment why these notes were not discovered by authorities until April of 2012.

on with him." Schultz appeared to analyze what could ultimately be important areas for police and prosecutors when he observed "critical issue – contact w genitals?" Finally, at the conclusion of his notes, he pondered two chilling questions when he wrote, "is this opening of pandoras box? Other children?"

The investigation by police and child welfare authorities into this incident was clearly a matter of considerable interest among high-ranking Penn State administrators. Sandusky was in many ways at the pinnacle of his career, enjoying tremendous stature both for his coaching ability and his work within the Second Mile. The filing of criminal charges or other legal action against Sandusky for having sexual contact with a young boy could have proven troublesome and embarrassing for Penn State, particularly in light of the fact that the incident occurred on campus. The Grand Jury reviewed a number of electronic communications from May and June of 1998 that reflect the concern that several University officials shared over the course and direction of the investigation.² Schultz very quickly updated Athletic Director Tim Curley and University President Graham Spanier following his conversations with Chief Harmon. Curley in fact sent an e-mail on May 5, 1998 and alerted Schultz, "I have touched base with the coach. Keep us posted. Thanks." Schultz responded to Curley on May 6 and copied the e-mail to Spanier, indicating the following: "Will do. Since we talked tonight I've learned that the Public Welfare people will interview the individual Thursday."³ In the first thirty-six hours after Victim 6's mother alerted the police, Schultz obtained detailed information from the Chief of Police about virtually every aspect of police contact with

² These electronic communications (e-mails) were not obtained by this Grand Jury until many months after the original Presentment on this matter in November of 2011, and therefore could not be considered or utilized in our evaluation at that time.

³ E-mail attached as Exhibit 2

the boy, and he was in both phone and e-mail contact with the Athletic Director (while alerting the school President by, at a minimum, copying him on communications).

As the police and child welfare investigation progressed through the month of May, there were a number of documented communications by Penn State officials regarding this matter. Curley anxiously asked Schultz for status updates on at least three occasions with phrases like "anything new in this department?" and "any further update?"⁴ The Grand Jury notes that these electronic communications clearly establish that Curley made a materially false statement under oath before the 30th Statewide Investigating Grand Jury when he testified he had no knowledge of this investigation or any recollection of his involvement.⁵ Schultz responded several times to Curley, informing him of investigatory decisions to have a child psychologist meet with Victim 6 and that police and DPW caseworkers planned to meet with Sandusky to discuss his behavior. Finally, on June 9, 1998, Schultz sent Curley an e-mail on which he copied Spanier and Chief Harmon. Schultz informed Curley and Spanier of the decision not to pursue charges and to close the investigation and, at the conclusion, he noted, "I think the matter has been appropriately investigated and I hope it is now behind us."⁶

Chief Harmon testified he was personally relieved by the decision of the Centre County District Attorney not to pursue criminal charges against Sandusky. He also understood Gary Schultz to be relieved by this decision. Chief Harmon also indicated he kept Schultz very informed of the investigation throughout May and spoke with him by telephone on about five occasions. Chief Harmon expected, as would be consistent

⁴ E-mail attached as Exhibit 3 and includes communication from Curley on 5/13, 5/18 and 5/30/98.

⁵ The Grand Jury notes these false statements are the subject of a criminal trial in the Dauphin County Court of Common Pleas in *Commonwealth v. Timothy Curley*, docketed at No. CP-22-CR-5165-2011.

⁶ See attached Exhibit 3

with his experience when there was an investigation of significant importance to both the Athletic Department and the University as a whole, that Schultz would inform both Spanier and Curley of what was happening. Numerous witnesses who were employed at Penn State testified that Schultz was a detailed, organized individual who adhered faithfully to the chain of command and the "no surprises" rule for his immediate boss, Graham Spanier.

Detective Schreffler testified that the ninety-eight page police report was not filed under a typical criminal investigation, but was instead assigned an Administrative number. This would make the report very difficult to locate unless someone specifically knew identifiers of the case. Detective Schreffler indicated that, in his experience, it was very unusual for a criminal investigation to be labeled in this manner within the University Police department. Chief Harmon agreed this was an unusual thing to do, and testified that it was done at his direction because there was a concern the media might make inquiries if the incident were placed on their regular police log.

Victim 6 testified along with Detective Schreffler at the criminal trial of Sandusky in Centre County. Victim 6 and Schreffler testified consistently with their appearance before this Grand Jury. As a result, Sandusky was convicted of Unlawful Contact with a Minor, Corrupting the Morals of a Minor, and Endangering the Welfare of a Child.⁷

⁷ The verdict was returned on June 22, 2012, and included forty-five total convictions spanning ten separate victims. Sandusky was sentenced on October 9, 2012 and received an aggregate sentence of thirty to sixty years in prison.

February 9, 2001 Incident

In December of 2010, Michael McQueary testified before the Grand jury about events he observed in the Lasch Building, on a Friday evening, on the Penn State campus. McQueary detailed how he observed Sandusky sexually assault a young boy in the shower at that facility.⁸

In February of 2001, McQueary was a graduate assistant football coach. He was working for head football coach Joseph V. Paterno, for whom McQueary had played the position of quarterback from 1993 to 1997. McQueary testified that he was sitting at home on a Friday night watching a football movie, "Rudy."⁹ He decided to go to the Lasch Building and do some work around nine o'clock in the evening. Earlier in the day, he had purchased a pair of sneakers and decided to bring them to place in his locker.

Upon entering the locker room, McQueary heard showers running and skin-on-skin smacking sounds. He became concerned about what he might be walking in on, and he proceeded quickly over to his locker. His initial view was through a mirror into the shower. He observed Jerry Sandusky, who had been an assistant football coach when McQueary played at Penn State, standing behind a pre-pubescent boy who was propped up against the shower. The boy's hands were up against the wall and he was naked, as was Sandusky. McQueary then stepped to the right and looked directly into the showers. Sandusky had his arms wrapped around the boy's midsection and

⁸ Sandusky was tried and convicted for this incident of four (4) criminal counts of Indecent Assault, Unlawful Contact with a Minor, Endangering the Welfare of Children, and Corruption of Minors as a result of a jury trial and verdict on June 22, 2012. McQueary was the sole witness utilized to establish these crimes beyond a reasonable doubt.

⁹ The original date of this incident was believed to have been in early March 2002. McQueary testified the incident happened in either 2001 or 2002. Subsequent evidence has confirmed the actual date of the incident as February 9, 2001.

was right up against the boy. There was no doubt in McQueary's mind that a sexual assault was taking place.

McQueary slammed his locker door shut and observed Sandusky and the boy separate from their original position. He was extremely shocked and alarmed. McQueary left the locker room area and went up to his office. He called his father, John McQueary, and provided him a brief description of what he had seen. His father asked him to drive over to his house, which McQueary did.

John McQueary testified that he had never seen his son as shaken and upset as he was that night. John McQueary also called a family friend, Dr. Jonathan Dranov, to come over to the house. Michael McQueary relayed some of what he had observed to his father and Dr. Dranov. They advised him to contact Coach Paterno early the next morning and report what he had seen.

Early on Saturday morning, February 10, 2001, Mike McQueary called his boss, Coach Paterno. McQueary made the phone call at approximately 7:00 a.m., and asked if he could come to meet with the coach. McQueary immediately went to Paterno's house, where he reported to Paterno what he witnessed between Sandusky and the boy the night before.

Joseph Paterno testified before a prior Grand Jury that he did in fact receive McQueary's information at his home on a Saturday morning.¹⁰ Paterno recognized that McQueary was very upset and assured him he did the right thing by coming to Paterno. Paterno informed the Grand Jury that McQueary described Sandusky fondling or doing something of a sexual nature to a young boy in the Lasch Building showers. He told

¹⁰ Joe Paterno unfortunately passed away on January 22, 2012.

McQueary he would pass the information along to his superiors. Paterno decided to provide the information to Tim Curley the very next day, Sunday, February 11, 2001.

February 11, 2001, was less than three years after the 1998 police investigation. Curley and Schultz both testified before the Thirtieth Statewide Investigating Grand Jury they met with Paterno on a Sunday. It would be at least another week before they decide to speak with McQueary about what he actually witnessed in the Lasch Building showers.¹¹ It is clear that the meeting with Paterno generated a flurry of activity. Paterno testified he relayed substantially the same information McQueary told to him to Curley and Schultz. Following their meeting with Paterno, Schultz almost immediately made contact with Wendell Courtney, an attorney with the law firm of McQuaide Blasko. McQuaide Blasko provided most of the outside counsel work to Penn State in 2001, with Courtney acting as one of the primary attorneys for the firm in their relationship with the University. Testimony from a number of sources before the Grand Jury suggested Schultz and Courtney had, and to this day have, a close personal friendship.

Schultz contacted Courtney that very Sunday regarding the information that Paterno provided. There was no delay or hesitation in seeking out Courtney. In fact, billing records from McQuaide Blasko show that Schultz and Courtney discussed the issue that Sunday, February 11. Courtney billed out 2.9 hours of time for what he described at the time as "Conference with G Schultz re reporting of suspected child abuse; Legal research re same; Conference with G Schultz."¹² Despite efforts by this Grand Jury, no Sandusky file containing information relevant to this inquiry was ever obtained from McQuaide Blasko.

¹¹ The exact date of the meeting between McQueary, Schultz and Curley is unknown. Based on known electronic communications, it was not any later than February 25, 2001.

¹² Billing record is attached as Exhibit 4.

The similarities between the 1998 and 2001 incidents are rather striking. Both involve Sandusky showering naked alone with pre-pubescent boys and having close physical contact with the children (although the nature of the 2001 contact is more severe and extreme with regard to the sexual contact). Both incidents occurred in the showers at Penn State. Chief Harmon testified that he received a call from Gary Schultz on February 12, 2001, inquiring into the status of the paperwork from the 1998 investigation and whether it was available as a record. Chief Harmon responded by e-mail during the late afternoon of Monday, February 12, and stated, "Regarding the incident in 1998 involving the former coach, I checked and the incident is documented in our imaged archives."¹³ At no point did Schultz inform Harmon, the Chief of Police at the University and a subordinate of Schultz, that there had been another report of shockingly similar behavior by Sandusky on campus. Schultz merely appeared to be concerned about the current existence of the 1998 investigatory files.

By the afternoon of Monday, February 12, 2001, Schultz and Curley formulate a plan (that was also communicated that afternoon to Graham Spanier) reflected in the handwritten notes of Gary Schultz.¹⁴ Schultz dated the note 2/12/01 with the header "Confidential." He indicated that he had "talked with TMC [Curley]" and that the following steps were to take place or have taken place, "reviewed 1998 history—agreed TMC will discuss with JVP [Paterno] and advise we think TMC should meet w JS [Sandusky] on Friday—unless he "confesses" to having a problem, TMC will indicate we need to have DPW review the matter as an independent agency concerned w Child Welfare – TMC will keep me posted." The plan, formulated many days before Curley

¹³ E-mail attached as Exhibit 5.

¹⁴ The handwritten note is attached as Exhibit 6.

and Schultz would even speak to the actual eyewitness, involved using their legal requirement to report this information as a bargaining chip with Sandusky to get him to "confess" his problem. Thus, if Sandusky agreed to a particular course of action, they would not notify the proper authorities, including apparently the police department Schultz himself supervised.

Schultz and Curley scheduled a meeting with McQueary at the Bryce Jordan Center, approximately seven to ten days after receiving the report from Paterno. McQueary indicated that the meeting lasted approximately fifteen minutes. Schultz and Curley asked no questions. McQueary described the extremely sexual nature of the incident and they told him they would get back to him.

After speaking to McQueary directly about the incident, Schultz sent an email to Curley on Monday, February 26, 2001. There appears to have been a change from the February 12th plan regarding contacting an outside child welfare agency. The email reads as follows: "Tim, I'm assuming that you've got the ball to 1) talk with the subject ASAP regarding the future appropriate use of the University facility; 2) contacting the chair of the Charitable Organization; and 3) contacting the Dept of Welfare. As you know I'm out of the office for the next two weeks, but if you need anything from me, please let me know."¹⁵ Schultz asked for confirmation from Curley about contacting DPW.

Curley responded on February 27, 2001, just after 8:00 p.m. Curley included Spanier on this communication.¹⁶ It reads as follows:

I had scheduled a meeting with you this afternoon about the subject we discussed on Sunday. After giving it more

¹⁵ Email attached as Exhibit 7.

¹⁶ Email attached as Exhibit 8.

thought and talking it over with Joe yesterday—I am uncomfortable with what we agreed were the next steps. I am having trouble with going to everyone, but the person involved. I think I would be more comfortable meeting with the person and tell him about the information we received. I would plan to tell him we are aware of the first situation. I would indicate we feel there is a problem and we want to assist the individual to get professional help. Also, we feel a responsibility at some point soon to inform his organization and maybe the other one about the situation. If he is cooperative we would work with him to handle informing the organization. If not, we do not have a choice and will inform the two groups. Additionally, I will let him know that his guests are not permitted to use our facilities.

I need some help on this one. What do you think about this approach?

Curley used coded words to try to mask the true nature of this topic. He referred to Sandusky as the "individual" or "person". He referred to the Second Mile as the "organization". In addition, he referred to the 1998 investigation as the "first situation". He then discussed a similar type of deal that had been discussed on February 12. This deal would keep Sandusky from being reported to outside authorities if he was "cooperative" and followed the suggestions Curley put forth. Curley also indicated that he would inform Sandusky that his "guests" are not permitted to use Penn State facilities. These "guests" were actually the young boys that Sandusky would routinely bring onto the Penn State campus, often at odd hours when very few people were around to witness his actions with the children. Curley was undoubtedly seeking the blessing of his boss, Spanier, when he indicated, "I need some help on this one."

Spanier responded a couple of hours later as follows:

Tim: This approach is acceptable to me. It requires you to go a step further and means that your conversation will be all the more difficult, but I admire your willingness to do that and I am supportive. 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.

Spanier did not question the existence of the "first situation" or inquire as to what Curley was referring to. He instead endorsed the plan of action that involved circumventing any outside agency. He did recognize the potential consequences for their failure to report by suggesting they will be "vulnerable" if "the message isn't 'heard' and acted upon."

Schultz also endorsed this plan by responding the following day:

Tim and Graham, this is a more humane and upfront way to handle this. 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.

The Grand Jury would note that evidence was presented showing that no report of what Michael McQueary witnessed was ever made to a children and youth agency, DPW, or any police agency. The Grand Jury notes that the above electronic communications and other evidence clearly establish that Schultz made a materially false statement under oath before the Thirtieth Statewide Investigating Grand Jury when he testified numerous times that the McQueary incident had been turned over to DPW or other child welfare entities.¹⁷

Curley did in fact implement part of the plan that he, Spanier, and Schultz agreed to follow. Curley met with Sandusky in early March and instructed him not to bring children on campus. This ban was completely unenforceable. In fact, since only Schultz and Spanier also knew of this plan, no other individuals at Penn State or entities

¹⁷ The Grand Jury notes these false statements are the subject of a criminal trial in the Dauphin County Court of Common Pleas in *Commonwealth v. Gary Schultz*, docketed at CP-22-CR-5164-2011.

such as the police department would even be aware of the ban to try and enforce it. He also met with Dr. Jack Raykovitz, the Executive Director of the Second Mile, to advise him that Sandusky was prohibited from bringing youth onto the Penn State campus. Raykovitz testified before the Grand Jury he did not ask who the boy was in the shower or whether he was a Second Mile kid. He said Curley described the incident as mere horseplay that made someone uncomfortable.

There is no evidence that Curley, Spanier, or Schultz ever sought to get Sandusky the "professional help" to which Curley referred in the email. The only thing asked of Sandusky was that he not bring children on the campus anymore. This, of course, not only did not happen but evidence presented before this grand jury indicates Sandusky continued to have kids on campus with him with some regularity.

Curley did talk with McQueary several weeks after their initial meeting. McQueary was told that Sandusky's keys to the locker room had been taken away and the incident was reported to the Second Mile. No law enforcement investigators were notified to speak with McQueary about his observations until November of 2010.

John McQueary confronted Gary Schultz about what was being done regarding his son Mike's report. This took place several weeks later at the office building where McQueary worked. Dr. Dranov was also present during this meeting. Schultz assured McQueary he would look into the matter and that it was being investigated. McQueary, like his son Mike, was well aware of the fact that Schultz oversaw the police department. John McQueary never heard anything further from Gary Schultz about the matter.

Grand Jury Investigation and Attempts to Gather Evidence 2010-2012

After the disclosures by Michael McQueary to the Grand Jury, the investigation sought to: identify and encourage victims of abuse at the hands of Sandusky to reveal their ordeal to the Grand Jury; find events that supported and corroborated the testimony of Michael McQueary; reexamine the actions of Sandusky in May of 1998, and the investigation thereof, in light of the new evidence of Sandusky's criminal activities; search for evidence of Sandusky's known activities, and those potentially yet unknown, that may be in the possession of Penn State; and, determine whether or not any employees or officials at Penn State assisted Sandusky in his activities or sought to conceal or obscure these activities from the authorities and the public. Unfortunately, the Investigative Grand Jury's efforts to acquire pertinent and valuable evidence from Penn State were significantly thwarted and frustrated from 2010 to 2012.

Typical of this experience was Grand Jury Subpoena 1179. Subpoena 1179 was issued in December of 2010 yet would remain unfulfilled until April of 2012. This subpoena, authorized and signed by the Supervising Judge of the Investigating Grand Jury, required Penn State University to acquire and disclose to the Grand Jury: "Any and all records pertaining to Jerry Sandusky and incidents reported to have occurred on or about March 2002 and any other information concerning Jerry Sandusky in inappropriate contact with underage males on and off University property. Response shall include any and all correspondence directed to or regarding Jerry Sandusky." The University's response to this subpoena was due on January 10, 2011.

Upon service of this subpoena in December of 2010, Penn State's Legal Counsel, Cynthia Baldwin, immediately informed Spanier of the subpoena and the University's obligation to respond. At the same time, Curley, Schultz and Paterno had also been subpoenaed to appear before the Grand Jury scheduled in January of 2011. She informed Spanier about those subpoenas as well. Spanier told her that he would notify Curley and Schultz and that she was to contact Paterno. Soon thereafter, Legal Counsel Baldwin met with Spanier and with Athletic Director Tim Curley. At this meeting, Spanier directed, without discussion, that Baldwin would go with Curley and Shultz to their grand jury appearances. During this meeting, and at a number of other meetings, Baldwin sought to determine if any of the information required by Subpoena 1179 was known to Athletic Director Curley, Vice President Schultz, and President Spanier. Each personally and directly assured her that they knew of no information or documents involving alleged misconduct or inappropriate contact by Jerry Sandusky. They also assured her that they would look and see if they could find any such information or documentation. In the several weeks after the receipt of Subpoena 1179, all three individuals—Spanier, Shultz and Curley—assured Baldwin that they had investigated and determined that they possessed no information or documents that would be responsive to Subpoena 1179. She was specifically assured that they had searched through their emails and physical documents for any Sandusky-related materials. In addition, Athletic Director Curley informed Baldwin that the Athletic Department did not possess any applicable responsive materials.

The investigation also found that, contrary to what Schultz had told legal counsel Baldwin, Schultz had a file kept in his Penn State office containing notes and

documents directly related to the 1998 and 2001 sexual assault by Sandusky. These documents included hand-written notes prepared by Schultz from conversations he had with Penn State University Police Chief Thomas Harmon in 1998. Chief Harmon testified that, during the investigation of Sandusky from May and through part of June 1998, he provided frequent and detailed updates to Schultz. As part of this investigation, Chief Harmon reviewed the notes prepared by Schultz and identified them as reflective of their conversations at the time. Chief Harmon also detailed that the 1998 investigation of Sandusky was a "big deal" and clearly recognized as such. It was clear to Chief Harmon, from his extensive conversations with Schultz, that the University's hierarchy was extremely interested and concerned about this investigation. There was no question that it was recognized that this investigation had the potential to significantly damage and embarrass Penn State.

Also included in the notes kept in Schultz's office were notes that Schultz wrote regarding at least one conversation he had with Athletic Director Tim Curley about the McQueary observations in February of 2001. One note, recited above, written by Schultz and dated February 12, 2001, clearly stated that Schultz and Curley had "reviewed 1998 history" before discussing how to handle the latest allegations about Sandusky. In an email on that same date, February 12, 2001, Schultz was told by Chief Harmon that the 1998 investigative file still exists and "is documented in our imaged archives." Chief Harmon testified before the Grand Jury that he provided this response as a result of Schultz questioning him about whether the 1998 investigative file still existed. Chief Harmon stated that at no time during his contact with Schultz on this matter did Schultz reveal anything about a new allegation against Sandusky. Schultz,

despite being informed of McQueary's allegations within 48 hours of their occurrence on the night of February 9, 2001, and despite his having contact with the University Chief of Police about the 1998 investigation, never reported then, or at any other time, the new allegations of Sandusky assaults on a minor boy in a Penn State shower.

In January of 2011, only a handful of documents were provided in response to the subpoena. None of the documents provided were material or pertinent to the misconduct and crimes of Sandusky. Subsequent investigation into whether the University fully complied with the subpoena determined that no effort was made to search the Athletic Department, where Sandusky had been employed for over 30 years, or to search any of the electronically stored data at the University or emails or other documents pertinent to their responses to this subpoena.

It is also noteworthy that Penn State had in place a well-defined historical practice and procedure for responding to subpoenas. Subpoenas that might encompass electronically stored data (such as emails and documents stored on a computer or network drive) would routinely be sent to the specialized unit called the "SOS." These information technology professionals were trained and dedicated to assembling responsive electronically stored data in response to litigation needs or other legal process. None of the SOS professionals were ever shown subpoena 1179, nor were they directed to seek any of the information requested by subpoena 1179 before the arrests of Sandusky, Schultz and Curley. Likewise, investigators contacted the information technology employees of Penn State, who were not members of the SOS unit but had access to the electronically stored data likely to be searched to fulfill the requirements of subpoena 1179. These information technology employees likewise

stated that they were never requested to fulfill any requests for Sandusky related information. In addition, no independent efforts were made to search the paper files of the Athletic Director, Tim Curley, the Vice President of Finance and Business, Gary Schultz, or the President of the University, Graham Spanier.

The notes and documents concerning Sandusky's 1998 and 2001 crimes were in Schultz's Penn State office on November 5, 2011. The administrative assistant at the time, Kimberly Belcher, upon learning that Schultz was to be arrested and would not be returning to the office, removed these documents from a file drawer in Schultz's office and delivered them to his home.¹⁸ Joan Coble, who served as Schultz's administrative assistant until her retirement in 2005, testified that she was instructed by Schultz to never "look in" the "Sandusky" file he kept in his bookcase file drawer. She said it was a very unusual request and was made in a "tone of voice" she had never heard him use before.

It should be noted that, throughout the Grand Jury's investigation, Spanier continuously wanted to know about the actions of the Grand Jury and law enforcement investigators. He required specific updates and regularly checked with Baldwin for any new information about the investigation. Legal Counsel Baldwin relayed all known information directly to Spanier. She fully informed him of all Grand Jury subpoenas and investigative requests.¹⁹ Spanier also pressed Baldwin for information about Paterno's contacts with investigators and the Grand Jury. When she informed Spanier that

¹⁸ Before giving the original documents to Schultz, Belcher made a copy for herself. Belcher then lied about the existence and whereabouts of these documents whenever she was subsequently questioned by University representatives.

¹⁹ Legal Counsel Baldwin testified that it was not only her duty to inform the University President of such things, but that Spanier also specifically requested that she keep him informed of everything regarding this investigation. Spanier has repeatedly misrepresented the level of his knowledge about the investigation. He told Board members and others that he was ignorant of the investigation into the 1998 and 2001 crimes. Even after his termination as President, he sent a letter to the Board on July 23, 2012, reiterating these false claims.

Paterno had acquired his own lawyer, who was not affiliated with the University, Spanier seemed disturbed and questioned aloud why Paterno would not use the University's legal counsel. He also questioned Baldwin, on a number of occasions, about what she knew or could discover regarding the information Paterno was providing to authorities.

Legal counsel Baldwin testified before the Grand Jury that, by January of 2011, Spanier was well aware that the Grand Jury was investigating the May 1998 allegations against Sandusky and the McQueary allegations against Sandusky. In March of 2011, law enforcement investigators requested an interview with Spanier. Spanier agreed and directed Baldwin to accompany him to the interview. Baldwin testified that, before this interview, Spanier was well versed and prepared for questions about the May 1998 allegations, the McQueary allegations, and the allegations of a high school student in Clinton County. Baldwin specifically discussed all of these matters with Spanier before that interview. Baldwin also testified that it was absolutely clear from her discussion with Spanier that he had extensively discussed the substance of Curley and Schultz's grand jury testimonies from January 2011 with each of those individuals. Spanier was also knowledgeable on likely investigative topics due to the fact that Legal Counsel had been keeping him informed of all the information subpoenaed by the Grand Jury from the University.

On March 22, 2011, Spanier was interviewed by law enforcement authorities. Spanier was questioned extensively about his knowledge of, and involvement with, the May 1998 investigation of Sandusky and about his knowledge of the Michael McQueary allegations from early in the 2000's. Spanier stated that he was not aware of the 1998 incident involving Sandusky and allegations of inappropriate behavior, nor was he

aware of any police report involving that matter. Spanier repeatedly detailed that he was rarely informed of any Penn State University Police involvements or investigations. Spanier stated that sexual assault allegations would not be reported to him and that he only reviewed statistical summaries of the Penn State Police Department that did not contain case details. Spanier did say that, sometime between 2000 and 2002, although he was unsure of the date, he was informed that a staff member saw an incident involving Sandusky with a child in a Penn State shower. He stated that he was informed of this by Gary Shultz and Tim Curley, and then he was told that the staff member observed Sandusky "horse playing around" with a child in a Penn State locker room shower. He further explained that he was told the staff member only observed this from a distance and was not sure of what he saw and that the staff member may have misconstrued or misinterpreted what he observed. Spanier stated that he had never been told the name of the staff member and only learned it was McQueary a few weeks before Spanier's interview by law enforcement authorities. Spanier further stated that he told Curley that, if there were no other details of what was observed in the shower, then Curley should contact Sandusky and inform him that he should no longer bring children into the Penn State facilities. Spanier further stated that he, Schultz, and Curley also decided that the Second Mile should be contacted and told about the incident and Penn State's restriction. Spanier specifically stated that his only meeting with Curley and Schultz lasted five to fifteen minutes. Spanier also specifically stated that he never heard anything further about the matter or any other allegations of misconduct against Sandusky. Later in the interview, Spanier stated that he believed

Curley did inform him that he had successfully spoken with Sandusky and the Second Mile about the University's restrictions.

The Board of Trustees was never informed in 1998 or 2001 about the conduct of Jerry Sandusky. Likewise, Spanier failed to inform anyone on the Board of Trustees about: the Grand Jury investigation; the Grand Jury subpoenas issued to the University; or, the testimony before the Grand Jury of Curley, Schultz, Paterno, and other Penn State employees, until April of 2011. At that time, he was forced to address the matter when several members of the Board of Trustees contacted Spanier and the then-Chairman of the Board of Trustees, Steve Garban, in response to a news story about the Grand Jury investigation. When Garban and other members of the Board attempted to discuss the matter with Spanier, Spanier told them he could reveal very little because of the Grand Jury secrecy rules. Spanier would employ this excuse repeatedly to mask details of the investigation and the extent of his past involvement from the Board of Trustees. Legal counsel Baldwin testified that she repeatedly instructed Spanier that he was free to discuss the investigation and the substance of his testimony before the Grand Jury. Baldwin specifically related this to Spanier in April of 2011, in writing, when the Board requested information about the investigation.²⁰ Chairman of the Board Garban advised Spanier that he would need to advise the Board of Trustees, at least in executive session, about the newspaper story revealing a Grand Jury investigation of Sandusky. The next board meeting scheduled was in May 2011. Spanier directed Baldwin to speak to the Board in executive session about the structure, work, and

²⁰ When Spanier testified before the Investigating Grand Jury on April 13th of 2011, he was never instructed by the Grand Jury Judge that his testimony was secret or that he was prohibited from publically disclosing that testimony. In fact, he was specifically advised by the Supervising Judge of the Grand Jury that he was free to disclose his testimony.

procedures of an investigating grand jury. She believed, from her discussions with Spanier leading up to the May board meeting, that Spanier would inform the Board that the Grand Jury investigation not only involved allegations of sexual assault of a minor in Clinton County but also included the 1998 and 2001 incidents that had occurred in Penn State's facilities. Baldwin also believed that Spanier would inform the Board about the various Grand Jury subpoenas that had been issued to the University seeking testimony and evidence regarding Sandusky's acts of misconduct. Baldwin testified that Spanier was absolutely obligated to inform the Board of these matters and that he clearly understood this obligation.

At the executive session of the Board in May 2011, Legal Counsel Baldwin provided her report about Grand Jury practice and process to members of the Board. After she finished her presentation, she was stunned when Spanier immediately directed her to leave the room. In fact, she was so taken aback that, in gathering her papers and possessions to leave, she left her purse in the board room. She later had to ask someone to retrieve her personal possessions from the Board meeting. It was her understanding that Spanier was to address the Board members regarding the substance, known at that time, of the criminal investigation into Sandusky's activities. Members of the Board of Trustees who were in attendance at the executive session have all stated that Spanier never informed them of any connection between the Grand Jury investigation of Sandusky and Penn State. Quite to the contrary, Spanier specifically informed the Board that the investigation had nothing to do with Penn State and that the investigation was regarding a child in Clinton County without affiliation with Penn State. Spanier also told the Board that he could say little more about the matter

because of secrecy that had been imposed upon him by the Grand Jury. After the May 2011 executive session with the Board, Spanier provided no other information regarding the investigation, his involvement with 1998 and 2001 incidents, or Penn State's duties and responses to Grand Jury process. Spanier made no further mention of the matter to the Board until forced to address the issue when Sandusky, Curley, and Schultz were arrested in November 2011.

Numerous Board members testified that, when informed of the arrests, they were completely surprised and stunned. At a series of hastily called board meetings on Saturday and Sunday, November 5th & 6th, 2011, Spanier was still attempting to hide behind claims of grand jury secrecy when questioned about his knowledge of the investigation and his failure to disclose that knowledge to the Board.

The press release issued by Spanier on Saturday, November 5, 2011, read as follows:

STATEMENT FROM PRESIDENT SPANIER:

The allegations about a former coach are troubling, and it is appropriate that they be investigated thoroughly. Protecting children requires the utmost vigilance.

With regard to the other presentments, I wish to say that Tim Curley and Gary Schultz have my unconditional support. I have known and work daily with Tim and Gary for more than 16 years. I have complete confidence in how they have handled the allegations about a former university employee.

Tim Curley and Gary Schultz operate at the highest levels of honesty, integrity, and compassion. I am confident the record will show that these charges are groundless and that they conducted themselves professionally and appropriately.

GRAHAM SPANIER

Penn State has heard from the attorneys representing both Tim Curley and Gary Schultz, they have released the following statements:

ATTORNEY TOM FARRELL:

"Gary Schultz is innocent of all charges. We believe in the legal system, and we believe that it will vindicate him. We will fight these charges in court, and Gary Schultz will be proven innocent of all of them."

ATTORNEY CAROLINE ROBERTO:

"Tim Curley is innocent of all charges against him. We will vigorously challenge the charges in court and we are confident he will be exonerated."

By Sunday, most members of the Board had copies of the Grand Jury Presentment. Members were completely stunned by the extent of Sandusky's crimes and the extent to which these crimes involved Penn State and its facilities. Many Board members were completely dismayed at Spanier's attempt to downplay the charges and vouch for the innocence of Gary Schultz and Tim Curley. On Sunday, in what was described as often contentious and angry exchanges, Spanier was directed—without qualification—to issue a press release on behalf of the University that specifically did not comment on the nature or veracity of the charges and that focused on concern for the victims and provided assurances that the University would fully cooperate and take whatever measures necessary to prevent this from ever happening again. The Secretary of the Board of Trustees, Paula Ammerman, also corroborated the Board members regarding the explicit directions related to Spanier about the press release.

On Sunday evening, November 6, 2011, Spanier called together Penn State press officers and other senior members of his staff. They met in his office, whereupon he provided them with a draft press release that he had prepared. The primary focus of this press release was upon the proclaimed innocence of Tim Curley and Gary Schultz and the University's pledge to support them through this process. There was no mention of the victims or the criminal activities of Sandusky. When it was suggested that he put in at least one line about the victims, Spanier acquiesced and added a

sentence. Some of those staff members present, including Paula Ammerman, knew what the Board had directed Spanier to do in this press release. They were surprised by Spanier's vehemence in supporting Curley and Schultz and his willingness to directly ignore the directives of the Board of Trustees. However, there were no protests or attempts to remind Spanier of his duty and obligation to the Board of Trustees.²¹

In the early hours of November 7, 2011, Spanier released a statement that again reiterated his support for Curley and Schultz. The statement largely ignored the nature of the charges and the harm to the victims.

Reaction from members of the Board of Trustees began almost immediately after publication of this press release. Members were astonished and infuriated. The contents of this press release not only largely contradicted the Board's instruction to Spanier, but it continued to demonstrate an affiliation by Spanier and the University, not only with Schultz and Curley, but with their criminal defense.

Several more meetings would occur between Spanier and Board members over the next two days. Again, Spanier never disclosed to the Board, or of any of its members, despite continuous conversations about the crimes charged, that he was knowledgeable about and had been involved in both the 1998 and 2001 episodes. Legal counsel Baldwin testified that Spanier repeatedly informed her and others that he knew nothing about the 1998 activities of Sandusky or the University police investigation of Sandusky. However, as time went on, she observed that Spanier's discussions about the 1998 episode seemed increasingly detailed and knowledgeable. She

²¹ When asked why they remained silent, these senior staff members and Penn State officials all provided similar responses. They said that Graham Spanier was a controlling President who did not easily brook contrary advice or anything he might view as disloyalty.

eventually came to believe that Spanier not only had known of the 1998 episode but clearly recollected he had been involved with that matter.

On November 9, 2011, the Board of Trustees of Penn State terminated Graham Spanier as the President of the University. The Board of Trustees also directed that University personnel were to cooperate with the law enforcement investigation of Jerry Sandusky and Penn State. Almost immediately following those two events, actual compliance with the Grand Jury subpoenas (past and present) and cooperation with the investigation began to be realized. Law enforcement investigators, working in conjunction with Penn State IT staff, were able to access massive amounts of electronically stored data and began a lengthy process of review and analysis. For the first four months of 2012, large amounts of evidence and data—much of which had been sought and subpoenaed for more than a year prior—was uncovered and provided to investigators. This evidence included significant emails from 1998 reflecting knowledge of, and involvement with, the investigation into Sandusky's showering with two young boys in May of 1998. In addition, significant emails were discovered, reflecting direct evidence of involvement by Graham Spanier, Gary Schultz, and Tim Curley in the failure of Penn State to report to child welfare or law enforcement authorities the crimes reported by Michael McQueary in February of 2001. Additionally, searches conducted—*for the first time*—of the athletic facilities where Sandusky had had offices, revealed approximately 22 boxes of Sandusky documents, photographs, and other materials. Much of the evidence found in these stored boxes proved to be highly valuable and were utilized in the subsequent criminal trial of Sandusky. This evidence included copies of letters that Sandusky sent to a number of his victims, lists

of the children who attended the Second Mile camps with Sandusky's notations next to their names, and photographs of a number of Sandusky's victims.

Endangering the Welfare of Children

Graham Spanier, Tim Curley, and Gary Schultz engaged in a repeated pattern of behavior that evidenced a willful disregard for the safety and well-being of minor children on the Penn State campus. Jerry Sandusky utilized his unfettered access to Penn State facilities, both before his retirement in 1999 and after, to sexually abuse young boys. Spanier, Curley, and Schultz were all well aware of the extent to which Sandusky would use the campus in his connection with the Second Mile. This included Second Mile camps and other activities, as well as Sandusky's use of Penn State for his workout and shower sessions with young boys. The police investigation involving Victim 6 certainly provided an indication of the issues involved with Sandusky bringing children onto campus to use the facilities. When McQueary reported the assault in February of 2001, the first response should have been an immediate report to law enforcement and a child protective services agency. Instead, there was a frightening lack of concern for the yet to be identified child (Victim 2), and an interest in shielding a man who Curley recognized needed "professional help"²² and who Schultz indicated should "confess to having a problem".²³ The plan of action undertaken by these three administrators, who formed the very apex of decision making and power at Penn State,

²² See February 27, 2001 email marked as Exhibit 8.

²³ See handwritten notes of Schultz marked as Exhibit 6.

was created out of a desire to shield Sandusky from the criminal process and, perhaps most importantly, to spare the University tremendous negative publicity and embarrassment.

Chief Harmon testified that all Gary Schultz (or, for that matter, Tim Curley or Graham Spanier) need have done was to let him know an eyewitness observed Sandusky and a young boy in a shower together on campus and that there was observed physical contact (let alone the actual sexual assault McQueary described to them during the meeting). Chief Harmon pointed out in his testimony that the need to report should have been readily apparent given this was now the second episode, and he observed that it would have likely led to a reexamination of the 1998 incident.²⁴ Tragically, this did not happen. The conduct of the three administrators focused on only two things: not reporting this to any outside agency and taking steps (unenforceable as they may be) to limit Sandusky from bringing children onto the Penn State campus.

The Grand Jury concludes that Graham Spanier, Tim Curley and Gary Schultz endangered the welfare of children by failing to report the incident witnessed by Michael McQueary to any law enforcement or child welfare agency. There was never any effort made to locate, identify, or otherwise protect Victim 2 from foreseeable future harm. In fact, by notifying Sandusky they were aware of the incident and not informing the police or a child welfare agency, Spanier, Curley and Schultz placed Victim 2 in even greater danger. Sandusky was placed on notice that others had been informed of his abuse of Victim 2.

²⁴ This is in fact precisely what happened a decade later. Sandusky was convicted as a result of a fresh examination of the evidence in this case.

The continued cover up of this incident and the ongoing failure to report placed every minor male child who would come into contact with Sandusky in the future in grave jeopardy of being abused. The actual harm realized by this wanton failure is staggering. For example, a jury has convicted Sandusky of various sexual offenses for the following victims:

- Victim 1, between the years 2005 and 2008.
- Victim 2, for the 2001 assault witnessed by McQueary.
- Victim 3, who was abused between 1999 and December of 2001 (during the same time frame as the Victim 2 assault).
- Victim 5, who was abused in the Lasch Building in August of 2001, several months after Curley had supposedly "banned" Sandusky from bringing children on campus.
- Victim 9, between the years 2005 and 2008.

The depth of abuse and number of victims may never be fully realized. The Grand Jury witnessed firsthand the devastating effects of Sandusky's abuse on his victims. We find that Spanier, Curley, and Schultz had an ongoing duty to report this behavior and the overall supervisory responsibility for minor children they knew to frequent the campus with Sandusky. Their failure to report Sandusky to authorities from 2001 through 2011 directly endangered Victims 1, 2, 3, 5 and 9 and allowed Sandusky to abuse them between 2001 and 2008.

Spanier Perjury

Graham Spanier testified before this Grand Jury regarding his oversight of one of the largest and most complex universities in the United States. He testified that Curley and Schultz came to him around 2002 to report an incident in which a staff member of Curley's had witnessed Sandusky horsing around in the shower with a younger child. He stated the staff member was apparently a little uncomfortable with the activity, so he brought it to Curley's attention. Spanier stated Schultz and Curley never identified who made the report and Spanier still did not know who it was as of the date of his testimony. He testified that he told Schultz and Curley that, since that kind of behavior could be misconstrued, his advice would be they tell Sandusky not to bring kids into Penn State facilities and that they notify the Second Mile of the incident. Spanier testified this all occurred in a ten- to fifteen-minute meeting.

Spanier acknowledged there was no discussion about trying to locate the child. He also told the Grand Jury there was no discussion about reporting the matter to police or a child welfare agency. He also said he had no knowledge of the 1998 incident involving Victim 6 prior to 2011. He claimed the 1998 matter was never discussed between himself, Curley, and Schultz in deciding how to handle the incident reported by McQueary. Spanier denied he was ever given any indication the 2001 incident could have been sexual in nature.

The Grand Jury finds that Graham Spanier made materially false statements under oath in an official proceeding on April 13, 2011. Spanier claimed on multiple

occasions that he had no knowledge of the 1998 incident when it occurred, during the decision making process in 2001, or at any point up until 2011. We find this claim was made to mislead the Grand Jury. This claim conflicts with all of the evidence we received regarding how important matters were dealt with at Penn State. Gary Schultz would routinely keep Spanier apprised of significant police matters, particularly ones that involved the football team and generated media scrutiny. Spanier was obviously kept in the loop on this matter as Schultz copied him on emails that discussed the status and conclusion of the investigation. One need only look to the 2001 incident to see how Schultz would immediately seek out Spanier on an issue of importance. In 1998, Sandusky was arguably the most high profile individual on campus other than Joe Paterno. Sandusky was also a current employee being investigated by the police department for unlawful sexual contact with a minor in the football building. Schultz would have been negligent in his duties to not notify the Athletic Department and the President.

Spanier made a materially false statement when he denied that he, Curley, and Schultz ever discussed turning the 2001 incident over to a child protection agency. This was the course of action that was considered, at one point even suggested by Schultz, and ultimately rejected in an email exchange where Spanier extols the "humane" nature of an approach that did not include reporting Sandusky to outside authorities.

Spanier made a materially false statement when he described that he was only told by Curley and Schultz that the 2001 incident was horseplay and made someone uncomfortable. The previously discussed electronic communications between the three make clear they are discussing an event that involves the abuse of a child.

Obstruction of Justice and Criminal Conspiracy

Graham Spanier, Tim Curley, and Gary Schultz conspired among each other and did in fact engage in many acts to obstruct justice between 2001 and the present. The acts of obstruction and conspiracy include, but are not limited to the following:

- The actions taken by Spanier, Curley, and Schultz after the initial report is made by Joe Paterno on February 11, 2001, including plans to not tell DPW if Sandusky "confesses" to having a problem.
- The review and knowledge of the 1998 allegations.
- Schultz contacted Chief Harmon to determine the availability of the 1998 police report but never disclosed the information received by Paterno.
- The failure to report McQueary's eyewitness account of a sexual assault.
- Schultz informing John McQueary the matter was being investigated and looked into when it was not.
- The willful failure to alert anyone about Sandusky from February of 2001 through the course of this investigation.
- The numerous lies told by Spanier, Schultz, and Curley to this grand jury.
- The total lack of compliance with the Grand Jury's requests for information, such as Subpoena 1179.
- Schultz hid the existence of pertinent files and notes.

- Curley failed to conduct a search for pertinent documents and materials involving Sandusky.
- Spanier hid the existence of emails and other forms of communication.
- Spanier failed to disclose his role in the 2001 incident to the Board of Trustees.
- Spanier withheld key information from his senior staff charged with managing the Sandusky situation throughout 2011.²⁵

Spanier's Failure to Report

The sexual assault of Victim 2 should have been reported to the Pennsylvania Department of Public Welfare and/or a law enforcement agency. Graham Spanier, by virtue of his position within the University, had a legal obligation and responsibility to report or to cause a report to be made within forty-eight hours to a child services agency.

²⁵ It should be noted that Spanier continues to mislead with numerous public statements that contain demonstrably false statements.

EXHIBIT 1

William

5/4/98
5:00 PM

11 1/2 yr old son

N. Hwy. Gads

Truck on road 11/6

They picked up son & worked

to FBI back home

Behavior - at best inappropriate

constant sexual inappropriate

Police interviewed

- typed.

- May be coming at the issues

- by themselves, unaided

Give him other clothes -

Even though he was in shorts

- worked out on Treadmill etc
- Jerry - to take a shower -
undressed - ? no other
shower? 4 in here.

Shampoo

- Jerry came up behind &
gave him a bear hug -
squeezed towards squeeze
guts out - all.

- keep clothes - socks JUP's
hat

- took hand.

After concerned something
more - had took another
shower last night 4th a.m.

Mother asked how deal
to give him

had to be a good contact
because of age difference

but when asked of boy
he quickly said no

- Friend Brandon, age 10,

also @ N. Hwy candles -

James said thing went
on with him

- Mother also asked brother

- Children & Youth has been

notified & welcome to
tell to Brandon - tonight

- 4 -

Walter over meeting - 110

generally concerning

~~Admin. Peer Judgment~~

~~critical issue - content
w/ generals?~~

Assuming some experience
w/ Brachman? not assumed

Tom Harman

2/5

Last evening

- re interview 1 1/2 yr old
- only change: added what happened in shower demonstrated on chair how Jerry hugged - from back

hands around abdomen
& down to thighs - picked
him up & held him at
shower head - rinse

soap out of ears
obsessed w/ PSU FB +

- psychologist
- probably emotional problems but articulate & believable
- Mother to psychologist & said she would call child abuse hot line & will generate an incident no - with Dept of Public Welfare
- Other boy - interviewed last night
- similar act

wrestling
kissed on head.

Hoggy from behind
Shower

No allegation beyond that

Kids drew diagrams of
shower rooms.

He initially went down to
shower 3 yds stuck
away & Gary told
him to come down
to shower next to his.

Local child abuse people
Met at FOC today to
decide what to do.

-4-

Either way, case worker
felt they would interview
Jerry

box? v u
Other children?

EXHIBIT 2

OAG

From: Gary C. Schultz <gcs2@psu.edu>
Sent: Wednesday, May 06, 1998 2:06 PM
To: Tim Curley
Cc: Spanier-Graham (GBS)
Subject: Re: Joe Paterno

Will do. Since we talked tonight I've learned that the Public Welfare people will interview the individual Thursday.

At 05:24 PM 5/5/98 -0400, Tim Curley wrote:
>I have touched base with the coach. Keep us posted. Thanks.

>
>-----
>Tim Curley
>Tmc3@psu.edu
>
>
>

EXHIBIT 3

OAG

From: Gary C. Schultz <gcs2@psu.edu>
Sent: Tuesday, June 09, 1998 2:09 AM
To: Curley-Tim (TMC)
Cc: Spanier-Graham (GBS); Harmon-Thomas (TRH)
Subject: Re: Jerry

They met with Jerry on Monday and concluded that there was no criminal behavior and the matter was closed as an investigation. He was a little emotional and expressed concern as to how this might have adversely affected the child. I think the matter has been appropriately investigated and I hope it is now behind us.

>Date: Mon, 08 Jun 1998 21:59:42 -0400
>To: Tim Curley <tmc3@psu.edu>
>From: "Gary C. Schultz" <gcs2@psu.edu>
>Subject: Re: Jerry

>

>Tim, I don't have an update at this point. Just before I left for vac, Tom told me that the DPW and Univ Police services were planning to meet with him. I'll see if this has happened and get back to you.

>

>At 10:27 AM 5/30/98 -0400, Tim Curley wrote:
>>Any further update?

>>>
>>>
>>>
>>>

>>>At 09:46 AM 5/19/98 -0400, you wrote:

>>>>No, but I don't expect we'll hear anything prior to the end of this week.

>>>>

>>>>At 09:37 PM 5/18/98 -0400, Tim Curley wrote:
>>>>>Any update?

>>>>>
>>>>>

>>>>>At 04:11 AM 5/14/98 -0400, you wrote:

>>>>>>Tim, I understand that a DPW person was here last week; don't know
>>>>>>for sure if they talked with Jerry. They decided to have a child
>>>>>>psychologist talk to the boys sometime over the next week. We won't know anything before then.

>>>>>>

>>>>>>At 02:21 PM 5/13/98 -0400, Tim Curley wrote:

>>>>>>>Anything new in this department? Coach is anxious to know where it stands.

>>>>>>>

>>>>>>>Tim Curley
>>>>>>>Tmc3@psu.edu

>>>>>>>>
>>>>>>>>
>>>>>>>>

>>>>>>>>Gary C. Schultz
>>>>>>>>Sr. V.P. for Finance and Business/Treasurer
>>>>>>>>208 Old Main
>>>>>>>>Phone: 865-6574
>>>>>>>>Fax: 863-8685

>>>>>>>>>
>>>>>>>>>
>>>>>>>>>

>>>

>>>>Tim Curley

>>>>Tmc3@psu.edu

>>>>

>>>>

>>>>

>>>>Gary C. Schultz

>>>>Sr. V.P. for Finance and Business/Treasurer

>>>>208 Old Main

>>>>Phone: 865-6574

>>>>Fax: 863-8685

>>>

>>>

>>>

>>

>>Tim Curley

>>Tmc3@psu.edu

>>

>>

>>

>

EXHIBIT 4

Working Attorney(s): Select 9

Matter I.D.	Description	Task/Activity	Hours	
02-08-01				
4000-465063	PSU - Labor - Human Resources PS010		0.60	
	Conference with J Purdum re holiday pay issue; Conference with R Maney re same			
4000-490106	PSU - Personnel - Continuing & Distance Educat		0.50	
	Conference with J Elliott re J Marshall; Conference with G Schultz			
4000-490143	PSU - Personnel - Mont Alto Campus		2.20	
	Conference with J Leathers re D Goldenberg; Preparation of correspondence to G Spanier; Review of files; Preparation of correspondence to G Spanier et al; Conference with J Leathers			
4000-481582	PSU - Students - Student Affairs		2.90	
	Interoffice conference re camping policy; Legal research re same			
4000-481582	PSU - Students - Student Affairs		1.70	
	Study/analyze documents re LGB tenant; Interoffice conference re same; Legal research; Preparation of correspondence to G Spanier et al re same			
4000-490163	PSU - Personnel - Human Resources		0.30	
	Conference with R Maney re R Khaliq			
4000-465026	PSU - Labor - COM - General		1.50	
	Preparation of documents re HMC parking			
** Total for 2/8/2001 **			9.70	0.00
02-09-01				
4000-490143	PSU - Personnel - Mont Alto Campus		1.60	
	Review of documents re D Goldenberg; Preparation of correspondence to G Spanier; Preparation of correspondence to J Leathers; Legal research			
4000-451558	PSU - Gifts & Grants - Develop and Alumni Rela		0.20	
	Review of files re Hagan estate			
4000-490117	PSU - Personnel - College of Liberal Arts		1.10	
	Conference with J Battista re R Echemendia; Interoffice conference			
4000-425562	PSU - Contracts - Hershey Medical Center		0.80	
	Review of documents re Purchase of Services Agreement; Interoffice conference re same			
4000-465026	PSU - Labor - COM - General		2.60	
	Conference with L Kushner re HMC parking fees; Preparation of correspondence to L Kushner re same; Preparation of documents; Legal research			
4000-465063	PSU - Labor - Human Resources PS010		0.70	
	Review Schaeffer brief			
** Total for 2/9/2001 **			7.00	0.00
02-11-01				
4000-450061	PSU - General - Finance/Business - Central		2.90	
	Conference with G Schultz re reporting of suspected child abuse; Legal research re same; Conference with G Schultz			
02-12-01				

EXHIBIT 5

OAG

From: Thomas R. Harmon <HARMON@SAFETY-1.SAFETY.PSU.EDU>
Sent: Monday, February 12, 2001, 4:57 PM
To: gcs2@psu.edu
Subject: Incident in 1998

Regarding the incident in 1998 involving the former coach, I checked and the incident is documented in our imaged archives.

Thomas R. Harmon
Director, University Police
The Pennsylvania State University
30-B Eisenhower Parking Deck
University Park, PA 16802
(814) 865-1864
harmon@police.psu.edu

EXHIBIT 6

PENNS STATE

Confidential



Date: 2/12/01

From: Gary C. Schultz

To:

Talked w TMC

reviewed 1998 history

- agreed TMC will discuss w JUP & alone we think TMC should meet w JUP on Friday.

- unless he confesses to having a problem, TMC will insist we need to have DPW review the matter as an independent agency concerned w Child Welfare.

- TMC will keep me posted.

Senior Vice President for Finance and Business/Treasurer

The Pennsylvania State University
208 Old Main
University Park, PA 16802-1503
(814) 865-6574
Fax: (814) 863-7188

EXHIBIT 7

OAG

From: Gary C. Schultz <gcs2@psu.edu>
Sent: Monday, February 26, 2001 1:57 PM
To: TMC3@psu.edu
Cc: Coble-Joan (JLC)
Subject: Confidential

Tim, I'm assuming that you've got the ball to 1) talk with the subject ASAP regarding the future appropriate use of the University facility; 2) contacting the chair of the Charitable Organization; and 3) contacting the Dept of Welfare. As you know I'm out of the office for the next two weeks, but if you need anything from me, please let me know.

EXHIBIT 8

OAG

From: Gary C. Schultz <gcs2@psu.edu>
Sent: Wednesday, February 28, 2001 2:13 PM
To: Graham Spanier; Tim Curley
Subject: Re: Meeting

<html>

Tim and Graham, this is a more humane and upfront way to handle this. 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. At 10:18 PM 2/27/01 - 0500, Graham Spanier wrote: <blockquote type=cite cite>Tim: This approach is acceptable to me. It requires you to go a step further and means that your conversation will be all the more difficult, but I admire your willingness to do that and I am supportive. 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. At 08:10 PM 2/27/01 - 0500, Tim Curley wrote: <blockquote type=cite cite>I had scheduled a meeting with you this afternoon about the subject we discussed on Sunday. After giving it more thought and talking it over with Joe yesterday-- I am uncomfortable with what we agreed were the next steps. I am having trouble with going to everyone, but the person involved. I think I would be more comfortable meeting with the person and tell him about the information we received. I would plan to tell him we are aware of the first situation. I would indicate we feel there is a problem and we want to assist the individual to get professional help. Also, we feel a responsibility at some point soon to inform his organization and maybe the other one about the situation. If he is cooperative we would work with him to handle informing the organization. If not, we do not have a choice and will inform the two groups. Additionally, I will let him know that his guests are not permitted to use our facilities. I need some help on this one. What do you think about this approach?</blockquote>

Graham B. Spanier

President

The Pennsylvania State University

201 Old Main

University Park, Pennsylvania 16802

Phone: 814-865-7611
email: gspanier@psu.edu
</blockquote></html>

EXHIBIT B

Appeal Docket Sheet

Superior Court of Pennsylvania

Docket Number: 304 MDA 2015

Page 1 of 9

March 30, 2016



CAPTION

Commonwealth of Pennsylvania

v.

Graham B. Spanier
Appellant

CASE INFORMATION

Initiating Document: Notice of Appeal

Case Status: Decided/Active

Case Processing Status: March 30, 2016 Awaiting Remittal

Journal Number: J-A22011-15

Case Category: Criminal Case Type(s): Criminal

CONSOLIDATED CASES

RELATED CASES

Docket No / Reason	Type
280 MDA 2015 Co-Defendant Cases	Related - List Consecutively
299 MDA 2015 Co-Defendant Cases	Related - List Consecutively

SCHEDULED EVENT

Next Event Type: Record Remitted

Next Event Type: Record Remitted

Next Event Due Date: February 22, 2016

Next Event Due Date: April 29, 2016

COUNSEL INFORMATION

Appellant Spanier, Graham B.

Pro Se: No

IFP Status: No

Attorney: Ainslie, Elizabeth K.

Address: Schnader Harrison Segal & Lewis LLP
1600 Market St Ste 3600
Philadelphia, PA 19103-7286

Phone No: (215) 751-2359 Fax No:

Attorney: Hanlon, Emily Joan

Law Firm: Schnader Harrison Segal & Lewis LLP

Address: Schnader Harrison ET AL
1600 Market St
Philadelphia, PA 19103-7286

Phone No: (215) 751-2833 Fax No:

Attorney: Littleton, Judson O.

Address: Sullivan & Cromwell, LLP
1700 New York Avenue NW
Suite 700
Washington, DC 20006

Appeal Docket Sheet

Superior Court of Pennsylvania

Docket Number: 304 MDA 2015

Page 2 of 9

March 30, 2016



COUNSEL INFORMATION

Appellant Spanier, Graham B.

Pro Se: No

IFP Status: No

Attorney: Wall, Jeffrey B.
 Address: Sullivan & Cromwell, LLP
 1700 New York Avenue NW
 Suite 700
 Washington, DC 20006

Attorney: McIntosh, Brent J.
 Address: Sullivan & Cromwell, ILP
 1700 new York Avenue NW
 Suite 700
 Washington, DC 20006

Amicus Pennsylvania Association of Criminal Defense Lawyers

Pro Se: No

IFP Status: No

Attorney: Donato, Arthur T., Jr.
 Law Firm: Law Offices of Arthur Thomas Donato, Jr.
 Address: 216 W Front St 2nd Fl
 Media, PA 19063-3101
 Phone No: (610) 565-4747 Fax No:

Appellee Commonwealth of Pennsylvania

Pro Se: No

IFP Status:

Attorney: Zapp, Amy
 Law Firm: Pennsylvania Office of Attorney General
 Address: Ofc of Attorney General
 Strawberry Sq 16th Fl
 Harrisburg, PA 17120-0001
 Phone No: (717) 787-6348 Fax No:

Attorney: Beemer, Bruce Richard
 Law Firm: Pennsylvania Office of Attorney General
 Address: 16th Floor, Strawberry Square
 Harrisburg, PA 17120
 Phone No: (717) 787-3391 Fax No:

Attorney: Peterson, Jennifer Anne
 Law Firm: Pennsylvania Office of Attorney General
 Address: PA Office of Attorney General
 Strawberry Sq Fl 16
 Harrisburg, PA 17120-0001
 Phone No: (717) 783-0158 Fax No:

FEE INFORMATION

Fee Dt	Fee Name	Fee Amt	Receipt Dt	Receipt No	Receipt Amt
02/13/2015	Notice of Appeal	85.50	02/19/2015	2015-SPR-M-000155	85.50
02/05/2016	Petition for Reargument	15.00	02/05/2016	2016-SPR-M-000106	15.00

Appeal Docket Sheet

Superior Court of Pennsylvania

Docket Number: 304 MDA 2015

Page 3 of 9

March 30, 2016



AGENCY/TRIAL COURT INFORMATION

Court Below: Dauphin County Court of Common Pleas
 County: Dauphin Division: Dauphin County Criminal Division
 Order Appealed From: January 14, 2015 Judicial District: 12
 Documents Received: February 19, 2015 Notice of Appeal Filed: February 13, 2015
 Order Type: Order Entered
 OTN(s):
 Lower Ct Docket No(s): CP-22-CR-0003615-2013
 Lower Ct Judge(s): Hoover, Todd A.
 Judge

ORIGINAL RECORD CONTENT

Original Record Item	Filed Date	Content Description
Original Record (SEALED)	April 10, 2015	2 parts
Transcript(s)	April 10, 2015	1
Envelopes	April 10, 2015	40
Supplemental Record	April 20, 2015	1 part w/Opinion
Supplemental Record	June 08, 2015	3 Sealed Envelopes
Supplemental Record	June 08, 2015	1 part
Supplemental Record	June 22, 2015	1 expandable folder
Comment: Recieved with loose & clipped papers		
Supplemental Record	July 02, 2015	1 part

Date of Remand of Record:

BRIEFING SCHEDULE

Amicus	Appellee
Pennsylvania Association of Criminal Defense Lawyers Brief	Commonwealth of Pennsylvania Brief
Due: June 19, 2015 Filed: May 27, 2015	Due: June 19, 2015 Filed: June 22, 2015

Appellant
Spanier, Graham B.
Brief
 Due: May 20, 2015 Filed: May 20, 2015

Reply Brief
 Due: July 6, 2015 Filed: July 9, 2015

Reproduced Record
 Due: May 20, 2015 Filed: May 20, 2015

DOCKET ENTRY

Filed Date	Docket Entry / Representing	Participant Type	Filed By
February 19, 2015	Notice of Appeal Docketed	Appellant	Spanier, Graham B.
February 19, 2015	Docketing Statement Exited (Criminal)		Middle District Filing Office

Appeal Docket Sheet

Superior Court of Pennsylvania

Docket Number: 304 MDA 2015

Page 4 of 9

March 30, 2016



DOCKET ENTRY

Filed Date	Docket Entry / Representing	Participant Type	Filed By
March 5, 2015	Docketing Statement Received (Criminal)	Appellant	Spanier, Graham B.
March 9, 2015	Related Cases - List Consecutively		Middle District Filing Office
	Comment: Commonwealth v. Gary Charles Schultz, 280 MDA CP-22-CR-0003616-2013 and CP-22-CR-0005164-2011);		2015 (C.P. Dauphin Co. Nos.
	Commonwealth v. Timothy M. Curley, 299 MDA CP-22-CR-0003614-2013 and CP-22-CR-0005165-2011) and		2015 (C.P. Dauphin Co. Nos.
	Commonwealth v. Graham B. Spanier, 304 MDA CP-22-CR-0003615-2013).		2015 (C.P. Dauphin Co. No.
April 10, 2015	Trial Court Record Received		Dauphin County Special Education Appeals Panel
	Comment: No Opinion		
	Opinion Received 4-20-15		
April 14, 2015	Entry of Appearance - Private Spanier, Graham B.	Appellant	Sheehan, Christian David
April 17, 2015	Praecipe for Appearance - Attorney General Commonwealth of Pennsylvania	Appellee	Zapp, Amy
April 21, 2015	Application to Stay Briefing Schedule	Appellant	Spanier, Graham B.
April 23, 2015	Order		Per Curiam
	Comment: The certified records in the above-captioned appeals were submitted to this Court under seal, in compliance with the trial court's orders. The seals on the certified record are LIFTED on a temporary basis, for the limited purpose of permitting this Court's Central Legal Staff, and judicial staff of the Panel Judges assigned to decide the case on the merits, to review the pertinent materials. Employees of this Court are PROHIBITED from disclosing the contents of the previously sealed documents to anyone outside of this Court. This Court's Prothonotary is directed to again place the certified record under seal upon completion of review by this Court.		
April 23, 2015	Order Denying Application to Stay Briefing Schedule		Per Curiam
	Comment: Upon consideration of the application by Graham B. Spanier to stay the briefing schedule in the appeal at docket number 304 MDA 2015, the application is hereby DENIED. No further applications for stay or extension of the briefing schedules shall be granted in the appeals at the above-captioned docket numbers.		
May 1, 2015	Application for Relief	Appellant	Spanier, Graham B.

Appeal Docket Sheet

Superior Court of Pennsylvania

Docket Number: 304 MDA 2015

Page 5 of 9

March 30, 2016



DOCKET ENTRY

Filed Date	Docket Entry / Representing	Participant Type	Filed By
May 4, 2015	Order Granting Application for Relief		Per Curiam
	Comment: Upon consideration of the May 1, 2015 application by appellant, Graham B. Spanier, for permission to review the certified record in the above-captioned case, the application is hereby GRANTED.		
May 18, 2015	Petition for Admission Pro Hac Vice Spanier, Graham B.	Appellant	Ainslie, Elizabeth K.
May 18, 2015	Petition for Admission Pro Hac Vice Spanier, Graham B.	Appellant	Ainslie, Elizabeth K.
May 18, 2015	Petition for Admission Pro Hac Vice Spanier, Graham B.	Appellant	Ainslie, Elizabeth K.
May 19, 2015	Order Granting Application to be Admitted Pro Hac Vice		Per Curiam
	Comment: Upon consideration of the petition of Elizabeth K. Ainslie, Esquire, on behalf of appellant, for admission pro hac vice of Judson O. Littleton, Esquire, having satisfied requirements of Pa.R.Civ.P. 1012.1, the motion is hereby GRANTED as follows: Judson O. Littleton, Esquire is permitted to appear before this Court limited to the above-captioned appeal, but shall not act as attorney of record. See Pa.B.A.R. 301(a) and (b).		
May 19, 2015	Order Granting Application to be Admitted Pro Hac Vice		Per Curiam
	Comment: Upon consideration of the petition of Elizabeth K. Ainslie, Esquire, on behalf of appellant, for admission pro hac vice of Jeffrey B. Wall, Esquire, having satisfied requirements of Pa.R.Civ.P. 1012.1, the motion is hereby GRANTED as follows: Jeffrey B. Wall, Esquire is permitted to appear before this Court limited to the above-captioned appeal, but shall not act as attorney of record. See Pa.B.A.R. 301(a) and (b).		
May 19, 2015	Order Granting Application to be Admitted Pro Hac Vice		Per Curiam
	Comment: Upon consideration of the petition of Elizabeth K. Ainslie, Esquire, on behalf of appellant, for admission pro hac vice of Brent J. McIntosh, Esquire, having satisfied requirements of Pa.R.Civ.P. 1012.1, the motion is hereby GRANTED as follows: Brent J. McIntosh, Esquire is permitted to appear before this Court limited to the above-captioned appeal, but shall not act as attorney of record. See Pa.B.A.R. 301(a) and (b).		
May 20, 2015	Reproduced Record Filed	Appellant	Spanier, Graham B.
	Document Name: Under Seal		
May 20, 2015	Application to Seal	Appellant	Spanier, Graham B.

Appeal Docket Sheet

Superior Court of Pennsylvania

Docket Number: 304 MDA 2015

Page 6 of 9

March 30, 2016



DOCKET ENTRY

Filed Date	Docket Entry / Representing	Participant Type	Filed By
May 20, 2015	Reproduced Record Filed	Appellant	Spanier, Graham B.
	Document Name: Redacted		
May 20, 2015	Application to Seal	Appellant	Spanier, Graham B.
May 20, 2015	Appellant's Brief Filed	Appellant	Spanier, Graham B.
	Document Name: Under Seal		
May 20, 2015	Application to Seal	Appellant	Spanier, Graham B.
May 20, 2015	Appellant's Brief Filed	Appellant	Spanier, Graham B.
	Document Name: Redacted		
May 20, 2015	Application to Seal	Appellant	Spanier, Graham B.
May 21, 2015	Reply Letter(s) Printed		Superior Court of Pennsylvania
May 26, 2015	Reply Received (Argument)	Appellant	Spanier, Graham B.
May 26, 2015	Other	Appellant	Spanier, Graham B.
	Comment: Copy of t/c order dated 5/20/15.		
May 26, 2015	Order		Per Curiam
	Comment: Upon consideration of appellant's May 20, 2015 application for leave to file the brief and reproduced record under seal, filed and docketed four separate times, this Court confirms that all filings and the certified record are under seal. Therefore the applications are hereby DENIED as moot.		
May 27, 2015	Amicus Curiae Brief	Amicus	Pennsylvania Association of Criminal Defense Lawyers
May 29, 2015	Entry of Appearance - Attorney General Commonwealth of Pennsylvania	Appellee	Peterson, Jennifer Anne
June 8, 2015	Other	Appellant	Spanier, Graham B.
	Comment: Copy of t/c order dtd 5/28/15		
June 22, 2015	Appellee's Brief Filed	Appellee	Commonwealth of Pennsylvania
	Comment: Timely filed per 3-day mail rule		

Appeal Docket Sheet

Superior Court of Pennsylvania

Docket Number: 304 MDA 2015

Page 7 of 9

March 30, 2016



DOCKET ENTRY

Filed Date	Docket Entry / Representing	Participant Type	Filed By
June 24, 2015	Order		Per Curiam
	Comment: Upon consideration of the supplemental record, filed in this Court on June 22, 2015, the following is hereby ORDERED: The supplemental record shall be REMANDED to the trial court for a period of time not to exceed 10 days, during which time counsel for appellant shall organize and label the documents therein. Once counsel has organized and labeled the supplemental record, the trial court shall certify it and notify this Court that it is ready to be returned. Jurisdiction is retained.		
July 8, 2015	Argument Letter Sent		Middle District Filing Office
July 8, 2015	Argument Letter Sent		Superior Court of Pennsylvania
July 8, 2015	Acknowledgement of Argument Notice	Appellee	Commonwealth of Pennsylvania
July 9, 2015	Appellant's Reply Brief	Appellant	Spanier, Graham B.
	Comment: Timely filed per 3 day rule		
July 9, 2015	Acknowledgement of Argument Notice		
	Spanier, Graham B.	Appellant	Ainslie, Elizabeth K.
	Spanier, Graham B.	Appellant	Littleton, Judson O.
	Spanier, Graham B.	Appellant	McIntosh, Brent J.
	Spanier, Graham B.	Appellant	Sheehan, Christian David
	Spanier, Graham B.	Appellant	Wall, Jeffrey B.

Appeal Docket Sheet

Superior Court of Pennsylvania

Docket Number: 304 MDA 2015

Page 8 of 9

March 30, 2016



DOCKET ENTRY

Filed Date	Docket Entry / Representing	Participant Type	Filed By
August 5, 2015	Order		Per Curiam
Document Name: Decorum Order			
Comment: AND NOW, to wit, this 5th day of August 2015, the following Order is entered.			
<p>In order to maintain the dignity and decorum of the judicial proceedings, this order shall apply to guests and representatives of the media observing the A22 panel of the Superior Court sitting in Harrisburg, Pennsylvania on August 11 and August 12, 2015.</p> <p>1. Electronic Devices:</p> <p>a. Guests and media may not utilize laptop computers in the courtroom. Anyone improperly utilizing such a device will be removed and refused reentry. EXCEPTION: Attorneys appearing before this Court are permitted to use laptops as necessary for argument.</p> <p>b. Guests and media may possess cell phones, smart phones, tablets, and other communicative electronic devices. All devices are to be silent and nondisruptive.</p> <p>c. No device may be used in the courtroom to take photographs or to record, broadcast, or transmit the argument proceedings or any account of the proceedings. This includes, but is not limited to, live blogging and tweeting, publishing stories in online periodicals, or posting photographs and quotations. Improper or disruptive use of technology will result in immediate removal from the courtroom. Reentry will be refused.</p> <p>2. Conduct: To minimize disruption, observers are asked to remain in their seats until the argument at bar is concluded. They are then free to leave the courtroom as the next case is called.</p> <p>3. Media Interviews: No media interviews shall be conducted in the courtroom or in the antechamber to the courtroom.</p> <p>4. Sanctioning Improper Conduct: Guests and representatives of the media causing disruption to the proceedings will be removed from the courtroom. Further misconduct or intentional disruption by a guest or representative of the media may subject that person to the penalties of contempt under applicable statute, order, or rule.</p>			
August 11, 2015	Argued		Superior Court of Pennsylvania
December 29, 2015	Praecipe for Withdrawal of Appearance - Private Spanier, Graham B.	Appellant	Sheehan, Christian David
December 29, 2015	Entry of Appearance - Private Spanier, Graham B.	Appellant	Hanlon, Emily Joan
January 22, 2016	Reversed		Bowes, Mary Jane
Comment: Jurisdiction relinquished.			
February 5, 2016	Application for Reargument	Appellee	Commonwealth of Pennsylvania
February 22, 2016	Answer to Application for Reargument	Appellant	Spanier, Graham B.
March 30, 2016	Order Denying Application for Reargument		Per Curiam
Comment: IT IS HEREBY ORDERED: THAT the application filed February 5, 2016, requesting reargument of the decision dated January 22, 2016, is DENIED.			

Appeal Docket Sheet

Superior Court of Pennsylvania

Docket Number: 304 MDA 2015

Page 9 of 9

March 30, 2016



SESSION INFORMATION

Journal Number: J-A22011-15
 Consideration Type: Oral Argument - Panel
 Listed/Submitted Date: August 11, 2015

Panel Composition:

The Honorable Mary Jane Bowes	Judge
The Honorable Patricia H. Jenkins	Judge
The Honorable William H. Platt	Judge

DISPOSITION INFORMATION

Final Disposition:	Yes	Judgment Date:	January 22, 2016
Related Journal No:	J-A22011-15	Disposition Author:	Bowes, Mary Jane
Category:	Decided	Disposition Date:	January 22, 2016
Disposition:	Reversed	Filing Author:	Bowes, Mary Jane
Disposition Comment:	Jurisdiction relinquished.		
Dispositional Filing:	Opinion		
Filed Date:	1/22/2016 12:00:00AM		

REARGUMENT / RECONSIDERATION / REMITTAL

Filed Date: February 5, 2016
 Disposition: Order Denying Application for Reargument
 Disposition Date: March 30, 2016
 Record Remittal:

EXHIBIT C

LOGIN

Search foxnews.com

MENU



U.S. HOME CRIME TERRORISM ECONOMY IMMIGRATION DISASTERS MILITARY EDUCATION ENVIRONMENT PERSONAL FREEDOMS
REGIONS

SPORTS

Testimony at Sandusky trial shows missed chances

Published June 16, 2012

0 0

Associated Press

The eyewitness testimony that confronted jurors in Jerry Sandusky's child-molestation trial this week was disturbing not only for its graphic descriptions of sex with boys, but for what it said about the people who surrounded and maybe even protected the once-revered Penn State assistant coach.

Eight accusers took the witness stand and described how Sandusky molested them in campus showers, hotel bathrooms, a basement bedroom, a sauna used by the football team — right under the noses of his friends, colleagues, family members and acquaintances.

The Sandusky story, the way authorities have framed it, is one littered with missed chances to stop a rapist who preyed on children for years.

Prosecutors have hinted that top university officials knew far more about Sandusky's alleged proclivities than they have let on, submitting a document Monday that says Penn State's former vice president — himself facing charges related to the scandal — maintained a file on Sandusky a decade ago. A Penn State trustee told The Associated Press he now suspects a cover-up.

Yet evidence and testimony from the trial also show there were plenty of people, not just those at the highest levels of the university, who had ample opportunity to stop a man accused of violating 10 boys over 15 years:

— A janitor failed to tell authorities he allegedly caught Sandusky performing oral sex on a boy in a campus shower a dozen years ago.

— A district attorney with a reputation for prosecuting cases involving children and sexual abuse victims declined to charge Sandusky over a 1998 molestation allegation even though the detective who investigated thought it was a solid case. The DA, Ray Gricar, disappeared in 2005 and was declared legally dead last year.

— School district officials were skeptical of abuse claims brought by the young man known in court papers as Victim 1 because, the accuser testified, Sandusky was considered to have a "heart of gold." Victim 1's allegations eventually triggered the state investigation that produced charges.

— One accuser testified he screamed out for help at least once when Sandusky's wife, Dottie, was in the house. He doesn't know whether she heard his cries.

— And, famously, coaching assistant Mike McQueary saw Sandusky having what he believed to be anal sex with a young boy in 2001. But his report to Athletic Director Tim Curley and Vice President Gary Schultz went nowhere. McQueary's dad testified that during a conversation, Schultz said he was suspicious of Sandusky, and NBC reported this week that emails between former university President Graham Spanier and Schultz aiming to keep McQueary's allegation from going further were turned over to the attorney general.

— Others also saw Sandusky engaging in behavior that was at least odd, if not criminal. Longtime assistant coach Tom Bradley walked into the shower when one boy was with Sandusky, the accuser testified, and a wrestling coach told jurors he saw Sandusky and a child rolling on the floor.

— Several accusers said their parents or caregivers failed to grasp what was happening to them. Victim 4 testified that one weekend he did not want to go with Sandusky and told his mother, "I'm pretty sure he's gay," but she dismissed the idea. "She said, oh, whatever, this is just one of your lies," he told jurors. He also said at one point he told his grandmother to tell Sandusky he wasn't home when he called.

Victim 1 testified that when he asked his mother about "a website for people who do things to children," and she asked why, he said it was "to see if Jerry was on there." He said he didn't think she totally understood. And Victim 9 told jurors he described Sandusky to his mother as "a touchy-feely type of a person," but she pressured him to spend time with the former coach.

Keith Masser, a Penn State trustee, said in an interview that he initially thought the scandal was about a failure of administrative oversight of the football program. Now he suspects it goes deeper.

When the board of trustees ousted Spanier on Nov. 9, four days after Sandusky's arrest, it was "because we didn't have confidence in his ability to lead us through this crisis," Masser said. "We had no idea (at the time) he would be involved in a cover-up."

Masser stressed he was speaking for himself and not the board at large, and said he wants to be careful not to draw premature conclusions. But he said it now appears like "top administration officials and top athletic officials were involved in making the decision to not inform the proper authorities."

With prosecutors focused on the sex-abuse allegations against Sandusky, the trial isn't intended to yield evidence of a possible cover-up. That's the job of Louis Freeh, the former FBI director hired by the board of trustees to investigate the scandal. His report could be released in late summer.

Spanier, who has not been charged with any crime, did not respond to email and phone messages. His attorney did not return a phone call.

The law firm defending Curley and Schultz against charges they lied in their grand jury testimony and failed to report suspect abuse said in a statement this week they "conscientiously considered" McQueary's account and "deliberated about how to responsibly deal with the conduct and handle the situation properly." They did not respond to follow-up questions posed by the AP.

Masser said the Freeh investigation is helping Penn State get to the bottom of the scandal.

"I hope the truth comes out, and from a board standpoint it was Judge Freeh's investigation that found these emails that relate Spanier, Curley and Schultz to the suspected cover-up," he said. "I want the alumni to understand and the stakeholders to understand that this independent investigation is uncovering this information."

Sandusky was charged in November and December with more than 50 counts of abuse. The scandal brought disgrace to Penn State and led to the ousters of both Spanier and Paterno, the Hall of Fame coach who died in January at age 85.

The testimony of eight of the 10 alleged victims named in a grand jury report prompted disgust and revulsion from Penn State alumni and others who took to Twitter last week to express their dismay — and to call for the heads of anyone involved in concealing abuse. "Anyone who knew and didn't report should burn!" tweeted one.

The grim depictions of abuse also hit at least one former player hard.

The accuser known as Victim 4 told jurors that Sandusky let him wear star linebacker LaVar Arrington's jersey and gave him a magazine autographed by the former NFL All-Pro, who played at Penn State in the late 1990s.

Arrington apologized to the man a day after his testimony, writing in *The Washington Post* that he felt awful for having missed the warning signs.

"He always seemed mad or kind of distant. I remember distinctly asking him: 'Why are you always walking around all mad, like a tough guy?'" Arrington wrote. "I guess with everything that I had going on, it certainly wasn't a priority for me to try to figure him out."

Arrington continued, "I hate everything that has happened, and now I must admit I feel even worse, knowing what allegedly was happening so close to me, and that I was unaware."

Ann Tenbrunsel, a professor of business ethics at the University of Notre Dame, attributes the failure to stop Sandusky to a phenomenon she calls "motivated blindness," a tendency, whether subconscious or deliberate or sometimes both, to ignore unethical or even criminal behavior by others when you perceive it to be in your best interest to do so. Motivated blindness "means I don't probe, I don't ask, I don't believe," Tenbrunsel said. "I have evidence in front of me but choose to disregard facts."

Some people could have kept quiet about their suspicions because they wanted to protect Penn State and its beloved — and highly lucrative — football program, or their own jobs, she said. Others might not have wanted to believe the sainted Sandusky capable of the abuse he's now charged with.

"You have all kinds of examples of people who either did not notice, or when they did notice didn't engage in behaviors that would have stopped it because it wasn't in their best interests to do so," said Tenbrunsel, co-author of "Blind Spots," a book that explores why otherwise decent people sometimes fail to do the right thing.

Some of the alleged assaults appear to have been interrupted, if unwittingly. One young man said Sandusky coerced him into engaging in oral sex in a hotel bathroom in Texas around the time of the 1999 Alamo Bowl — Sandusky's last game before retiring — stopping only when the coach's wife entered the hotel room. The same accuser, Victim 4, testified about another occasion in which Bradley was showering in the team headquarters while the alleged victim and Sandusky were behind a curtain in another stall.

"I can't say what (Bradley's) thoughts were, but I think he was suspicious of something because he stayed in the shower until everything was done," the man testified without elaborating.

Bradley did not return several messages from *The Associated Press*.

A wrestling coach told jurors that he found Victim 1 and Sandusky rolling around on the floor in the high school weight room one evening.

Joseph Miller said that while he found it odd, he gave the famed coach a pass. "It was Jerry. Jerry Sandusky. He's a saint. What he's doing with kids, it's fantastic," Miller recalled thinking. "So I didn't think anything of it."

The trial is scheduled to enter its fifth day Monday as prosecutors near the end of their case. Sandusky denies all the charges, saying that while he showered with boys, he never touched them sexually. His attorney has suggested the accusers are twisting the truth because they intend to sue.

—

Associated Press writers Mark Scoloro and Genaro C. Armas in Bellefonte, Pa., contributed to this report.

EXHIBIT D

EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT ("Agreement"), entered into by and between The Pennsylvania State University, the only land grant university chartered in the Commonwealth of Pennsylvania, and Graham B. Spanier, Ph.D., is to take effect July 1, 2010.

WITNESS

WHEREAS, Graham B. Spanier, Ph.D. ("Dr. Spanier" or the "President") has been employed by The Pennsylvania State University (the "University") as President of the University since September 1, 1995; and

WHEREAS, the University wishes to continue the employment of Dr. Spanier as President of the University in recognition of his extraordinary achievements, and Dr. Spanier wishes to continue to serve as the President and be its employee, subject to the terms and conditions of this Agreement; and

WHEREAS, The University desires to make further arrangements which will suitably recognize the extraordinary responsibilities and duties of Dr. Spanier and will reward him for his many unique accomplishments thus far during his tenure as President of the University; and

WHEREAS, both the University and Dr. Spanier intend this Agreement to supersede any and all prior agreements with respect to Dr. Spanier's employment relationship, with the exception of Section D.3 of the Employment Agreement effective July 1, 2007 (the "Prior Agreement"); and

WHEREAS, both the University and Dr. Spanier desire to set forth their respective rights

and obligations in this Agreement; and

WHEREAS, by Resolution of January 23, 1982, the Board of Trustees of the University (the "Board of Trustees") authorized the President of the Board of Trustees (the "President of the Board") to enter into employment agreements with certain senior employees in accordance with the terms of said Resolution; and

NOW, THEREFORE, in consideration of the mutual promises, covenants, and conditions contained herein, and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

A. Term.

The University shall continue the employment of Dr. Spanier as its President for a term from July 1, 2010 through June 30, 2015 (the "Term"), except as provided in Section H ("Termination"). Dr. Spanier hereby accepts such employment upon the terms and conditions set forth in this Agreement.

B. Powers and Duties.

During the Term of this Agreement, Dr. Spanier shall serve as President and perform such duties and responsibilities that are consistent with his position as President of the University under the Corporate Charter, the Corporate Bylaws, and the Standing Orders of the Board of Trustees, as may be amended from time to time, or which may be assigned to him by or under the authority of the Board of Trustees consistent with his position as President of the University, including those duties as are set forth in the Resolution of the Board of Trustees adopted on June 11, 1970, as amended on November 19, 1971, May 30, 1975 and September 23, 1977, and as the same may be amended from time to time during the term of this Agreement (collectively, the

“Duties”). Dr. Spanier shall devote his full business time attention, skill and efforts to the faithful performance of the Duties for the University.

Dr. Spanier and the Board of Trustees acknowledge and agree that the Duties hereunder shall be limited to those duties customarily performed by presidents of universities comparable in size and mission to the University, such as educational leadership, faculty and community relations, budgeting, long range planning, fund raising, development, public relations, student services, recruitment and retention of personnel, and such other duties as may be authorized or directed, from time to time, by the Board.

Dr. Spanier shall serve as a member of the Board of Trustees of the University and as a corporate officer of the University so long as such service is provided for in the Corporate Charter or Bylaws of the University.

C. Compensation.

1. Annual Base Salary. As compensation for the services to be performed by Dr. Spanier pursuant to this Agreement and in accordance with industry norms, the University shall pay to Dr. Spanier an annualized base salary of \$700,000 from July 1, 2010 through June 30, 2011 (the “Base Salary”), less applicable deductions. Any increases in Base Salary shall be based upon the President’s performance during the preceding fiscal year in connection with the annual evaluation of his performance, set forth in Section D of this Agreement. During the Term of this Agreement, Dr. Spanier’s Base Salary may be increased, but not decreased.

2. Signing Bonus. In consideration of executing this Agreement, Dr. Spanier shall receive a one-time signing bonus of \$200,000 within sixty (60) days of the execution of this Agreement by both parties.

3. Retention Incentive. Beginning with the 2011-12 contract year, Dr. Spanier shall be eligible to receive an annual retention incentive provided that he completes service as President to the University through the end of each contract year (June 30). The amount of the retention incentive, if any, shall be at the sole discretion of the Compensation Council in accordance with the 1982 resolution of the Board of Trustees authorizing the Council regarding such compensation matters, but shall not exceed twenty percent (20%) of Dr. Spanier's then-current annual base salary. Any retention incentive awarded to Dr. Spanier shall be paid within sixty (60) days of the conclusion of the contract year to which it relates.

4. Retirement Contribution. In addition, the University shall contribute, at its normal Alternate Retirement Plan (the "Retirement Plan") contribution rate (currently 9.29%), to the purchase of an annuity contract within the meaning of Section 403(b) of the Internal Revenue Code and in accordance with the terms of the Retirement Plan as managed by TIAA-CREF.

Further, in the event that:

- a. limitations of the Internal Revenue Code do not permit the University to contribute on a tax-sheltered basis to the Retirement Plan at its normal contribution rate; or
- b. less than fifteen (15%) percent of Dr. Spanier's Base Salary is contributed to Dr. Spanier's Retirement Plan, the University shall pay to Dr. Spanier, as current compensation, an amount equal to the difference between the amount actually contributed to the Retirement Plan and the greater of: (1) the amount that the University cannot contribute to the Retirement Plan because of

Internal Revenue Code limitations; or (2) fifteen (15%) percent of Dr. Spanier's Base Salary.

5. Retirement Plan Equivalency. The Retirement Plan Equivalency referenced in Section D.3 of the Prior Agreement shall continue during this Agreement. The Retirement Plan Equivalency shall be amended such that Dr. Spanier shall be required to remain available to perform services for the University pursuant to Sections B, E.5 and E.6 of this Agreement through June 30, 2017 to vest in the benefits of the plan. Dr. Spanier shall also become vested in the Retirement Plan Equivalency if his employment as President is earlier terminated without Cause, or his death or disability. Dr. Spanier shall not receive the benefits of the Retirement Plan Equivalency if his employment as President is terminated for Cause, or if he voluntarily resigns from his employment as President, or if following the conclusion of his service as President, his faculty appointment is terminated in accordance with the University's rules for tenured members of the faculty. A document separate and apart from this Agreement shall govern the five year extension of the Retirement Plan Equivalency to June 30, 2017.

D. Annual Evaluation.

No later than the week of the May 2011 meeting of the Board of Trustees, and each year thereafter, Dr. Spanier shall provide to the President of the Board of Trustees, the Vice President of the Board, the immediate past President of the Board and the Chairperson of the Committee on Finance and Physical Plant of the Board (the "Review Group") an assessment of his performance as President measured against the goals and objectives for the then-current fiscal year, as well as his proposed goals and objectives for the next fiscal year. The Review Group will review and provide appropriate feedback and direction with respect to Dr. Spanier's past

performance and future goals and objectives. To aid the Review Group in its annual evaluation, Dr. Spanier agrees to furnish to the President of the Board such additional oral or written reports as the Review Group may request.

E. Benefits and Reimbursements.

1. Standard Benefits. Dr. Spanier shall be eligible to participate in all of the employee benefit plans of the University applicable to senior executives.

2. Supplemental Life Insurance.

- a. In addition to life insurance provided as a standard benefit in Section E.1, the University has provided a life insurance death benefit of \$1,000,000 for Dr. Spanier since September 1, 1997. The death benefit of this life insurance policy has escalated, and shall continue to be escalated annually on each July 1 during the Term of this Agreement, by the percentage increase in the Consumer Price Index (CPI-U, All Items, for All Urban Consumers, 1984=100) by multiplying the amount of life insurance in force for the contract year then ending by the sum of: one (1), plus the cumulative percentage increase in the Consumer Price Index between July 1 of the prior year and June 30 of the current year. There will be no diminution of this life insurance benefit at the conclusion of the Term of this Agreement. Provided, however, CPI increases in the death benefit shall cease as of the conclusion of the Term of this Agreement. In all other respects,

this life insurance coverage shall be maintained in accordance with the terms and conditions of the University's plan of life insurance for its senior executives.

3. Supplemental Health Insurance. The University's policy relating to age and service eligibility requirements for continuation of health insurance coverage shall be waived for Dr. Spanier at the conclusion of his presidency.

4. Disability Coverage. In the event of Dr. Spanier's permanent disability during the Term of this Agreement, the University shall provide Dr. Spanier with disability coverage, having a total disability benefit of (a) not less than eighty percent (80%) of his Base Salary for the contract year in which he becomes disabled through the end of the Term of this Agreement, and (b) thereafter not less than sixty-five percent (65%) of his Base Salary for the contract year in which he becomes disabled until age 70. Any amounts received by Dr. Spanier under the terms of any long term disability plan applicable to senior executives shall be offset against the amounts payable to Dr. Spanier pursuant to the disability coverage provided in this Section E.4.

5. Professional Development and Post-Presidency Transition. Upon the completion of the Term of this Agreement (June 30, 2015) or if this Agreement is terminated without Cause, Dr. Spanier shall be entitled to a paid one year professional development and post-presidency transition period at the level of his then presidential Base Salary plus the benefits provided in Sections E.1, E.2, E.3 and E.4 of this Agreement. The post-presidency transition period shall commence immediately upon the completion of the Term, or the effective date of termination if this Agreement is terminated without Cause. During said period, Dr. Spanier shall

perform scholarly activities in preparation to assume active duties as a tenured member of the University's faculty and shall also be available to assist with various University efforts (such as fundraising and recruiting) as requested by the new President. As a condition of his eligibility for compensation and benefits under this Section E.5, Dr. Spanier shall refrain from performing any type of professional services for any other institution of higher education that will conflict with his duties with Penn State University. Notwithstanding the foregoing, any professional services performed by Dr. Spanier for a non-profit entity, government service, or for-profit boards that do not materially detract from his University responsibilities shall not be considered a conflict with his duties for the University. The Base Salary and benefits that Dr. Spanier receives under this Section E.5 shall not be reduced by the amounts he receives from other earnings. The terms of this Section E.5 shall survive the expiration of this Agreement.

6. Post-Presidency Faculty Position. Following his service as President, Dr. Spanier shall have the title of President Emeritus. In addition, Dr. Spanier shall continue to hold a tenured faculty position as a Professor in the Department of Human Development and Family Studies of the College of Health and Human Development of the University. He may continue to use his current academic title of Professor of Human Development and Family Studies, Sociology, Demography, and Family and Community Medicine. Upon the conclusion of Dr. Spanier's service as President, he may, at his option, elect to assume the title of University Professor. Dr. Spanier's Base Salary following his services as President shall be paid on a twelve month basis and shall be \$600,000 annually. Dr. Spanier's compensation at this level shall be limited to five (5) years following the conclusion of his professional development transition period subsequent to the termination of his presidency on June 30, 2015 or the earlier

termination of his presidency without Cause. Dr. Spanier's employment as Professor subsequent to this period, including his eligibility for annual salary adjustments, shall be governed by the University's policies, rules and regulations applicable to other tenured members of the University faculty and not by this Agreement. Dr. Spanier's office location, academic responsibilities, and salary after the five year post-presidency period shall be determined in consultation with the Provost of the University.

The University shall provide Dr. Spanier with administrative support, including an office and a staff assistant to assist him with his responsibilities following the conclusion of his presidency. The terms of this Section E.6 shall survive the expiration of this Agreement.

7. Travel and Other Business Expenses. Dr. Spanier's reasonable travel and other business expenses incurred in his capacity as President of the University shall be paid on a cost reimbursement basis through the University's annual operating budget. When Dr. Spanier's spouse accompanies him on travel for University purposes, the University shall cover the costs of her reasonable travel expenses. The expenses of Dr. Spanier and his spouse shall be reviewed on an annual basis by the President of the Board of Trustees or his/her designee who does not report to the President.

8. Professional Memberships. The University shall pay the annual dues and membership fees for the President in professional associations of benefit to the University.

9. Automobile. The University shall continue to provide Dr. Spanier with a recent model automobile suitable for his role as President, to be owned or leased by the University, for his exclusive use. The University shall provide or reimburse Dr. Spanier for

insurance, maintenance, and other operating costs of the vehicle, including but not limited to, the cost of fuel, taxes, licenses, registration, and other similar operating expenses. On an annual basis, Dr. Spanier shall report all personal use in writing to the Senior Vice President for Finance and Business of the University.

F. Housing.

During the Term of this Agreement, for the benefit and convenience of the University in having the functions of the Office of President efficiently discharged and, in order to enable Dr. Spanier to fully perform the extensive duties of his position, he shall, as a condition of his employment as President of the University, continue to reside at the Schreyer House, an on-campus residence owned by the University for this purpose, located at University Park, Centre County, Pennsylvania, or such other residence as may be determined by the University (the "President's Residence"). The University shall pay for all costs of utilities and maintenance of the structures and grounds of the President's Residence.

For the benefit and convenience of the University, the President's residence shall be available, and shall be used, for University-related business on a regular and continuing basis. Costs associated with such University events shall be borne by the University.

In the event of Dr. Spanier's death during the Term of this Agreement (including all renewals and extensions), Dr. Spanier's family shall be permitted to occupy the President's Residence under the same terms and conditions for no less than 90 calendar days from the date of Dr. Spanier's death.

In the event of Dr. Spanier's permanent disability during the Term of this Agreement (including all renewals and extensions), Dr. Spanier and his family shall be permitted to occupy the President's Residence under the same terms and conditions for no less than 90 calendar days from the date of Dr. Spanier's permanent disability.

Dr. Spanier and his family shall vacate the President's Residence no later than thirty (30) calendar days following the effective date of termination or expiration of this Agreement (including all renewals and extensions).

Upon the termination of this Agreement, the University shall reimburse Dr. Spanier for the reasonable and necessary expenses of moving his personal property from State College, Pennsylvania to a location of his choice in the continental United States.

G. Tax Reporting.

The University shall include in the W-2 issued to Dr. Spanier all payments, benefits, allowances, and reimbursements that are defined as income or otherwise required to be reported by federal, state or local governments. Except as provided in this Agreement, Dr. Spanier shall be responsible for the payment of all personal taxes due and shall make such payments on a "when due" basis.

H. Termination.

1. Termination For Cause. The University may terminate this Agreement at any time for cause upon written notice to Dr. Spanier as provided in this Section H.1. For purposes of this Agreement, the term "Cause" shall mean conduct reasonably determined by a two-thirds majority of the Board of Trustees to be: (a) gross negligence or willful malfeasance by Dr. Spanier in the performance of his Duties that materially harm the University; (b) actions or

omissions by Dr. Spanier that are undertaken or omitted knowingly and are criminal or fraudulent and involve material dishonesty or moral turpitude; or (c) Dr. Spanier being formally indicted in a court of law of any felony, or any other crime involving misuse or misappropriation of University funds. In the event the President is terminated for Cause, Dr. Spanier's employment as President shall cease immediately, and he shall not be entitled to any further compensation or benefits as President, except as set forth in the University's various benefit plans with respect to vesting and rights after termination of employment, nor shall he be entitled to continuing employment as a member of the University faculty, including the Post-Presidency Faculty Position set forth in Section E.6 of this Agreement.

2. Termination Without Cause. The University may terminate this Agreement without Cause upon a majority vote by the Board of Trustees at any time for the convenience of the University upon ninety (90) calendar days prior written notice to the President. Termination of this Agreement by virtue of the President's permanent disability or death (as set forth in Sections H.4 and H.5 of this Agreement, respectively) shall not be construed as termination without Cause. If the University terminates this Agreement without Cause prior to the expiration of the Term of this Agreement, Dr. Spanier shall be entitled to receive payments equal to his then existing Base Salary and benefits for eighteen (18) months from the effective date of his termination of employment as President, plus the Equivalency payment referenced in Section C.5 of this Agreement. In the event of such termination without Cause, Dr. Spanier and his family shall vacate the President's Residence no later than thirty (30) calendar days following the effective date of termination.

3. Resignation. Dr. Spanier may resign as President by providing at least ninety (90) calendar days written notice to the President of the Board of Trustees. Dr. Spanier's employment as President shall cease on the effective date of his resignation, and he shall not be entitled to any further compensation or benefits as President, except as set forth in the University's various benefit plans with respect to vesting and rights after termination of employment.

4. Permanent Disability. If Dr. Spanier shall become permanently disabled during his service as President, this Agreement shall terminate effective on the date of permanent disability and he shall receive all benefits to which he is entitled pursuant to the University's disability coverage referenced in Section E.4, plus the Equivalency payment referenced in Section C.5 of this Agreement.

For purposes of this Agreement and based upon Section 409A of the Internal Revenue Code, "Permanent Disability" shall mean Dr. Spanier is (i) unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or can be expected to last for a continuous period of not less than 12 months or (ii) by reason of any medically determinable physical or mental impairment which can be expected to result in death or can be expected to last for a continuous period of not less than 12 months, receiving income replacement benefits for a period of not less than 3 months under an accident and health plan covering the University's employees.

5. Death. In the event of Dr. Spanier's death during the Term of this Agreement, Dr. Spanier's Base Salary shall cease immediately and this Agreement shall

terminate effective on the date of death, provided however that the Equivalency payment referenced in Section C.5 of this Agreement shall be paid to Dr. Spanier's estate no later than thirty (30) days from the date of death.

I. Outside Activities.

The University recognizes that it is both appropriate and beneficial for Dr. Spanier, in his capacity as President to engage in outside activities, such as serving on for-profit and nonprofit boards of directors, consulting, delivering speeches, and writing. However, the President shall seek prior approval from the President of the Board of Trustees before agreeing to serve on the board of directors of any for-profit entities. Dr. Spanier may not engage in any outside activity that conflicts with his Duties under this Agreement.

All income or other compensation earned by Dr. Spanier in connection with his outside activities shall be paid to and retained by Dr. Spanier and reported in accordance with applicable tax law and established University policy. Such income, if any, shall have no effect on the amount of salary, benefits, or other compensation to which Dr. Spanier may be entitled to under this Agreement.

J. Indemnification. The University shall indemnify Dr. Spanier and hold him harmless against legal fees, expenses, judgments, and other financial amounts incurred while serving in his capacity as President of the University to the extent permitted by law. Dr. Spanier shall continue to be indemnified subsequent to termination of employment as President with

respect to acts or omissions occurring while he was serving as President. The terms of this Section J shall survive the expiration of this Agreement.

K. Mediation. The parties agree that any controversy or claim that either party may have against the other arising out of or relating to the construction, application or enforcement of this Agreement, as well as any controversy or claim based upon the alleged breach of any legal right relating to or arising from Dr. Spanier's employment and/or termination of his employment shall be submitted to non-binding mediation. Within fifteen (15) days after delivery of a written notice of request for mediation from one party to the other, the dispute shall be submitted to a single mediator located in the Commonwealth of Pennsylvania chosen by the parties, and the venue for such mediation shall be in University Park or State College, Pennsylvania, as mutually agreed by the parties. The costs and fees associated with mediation, excluding attorney's fees for Dr. Spanier, shall be borne by the University.

L. Notice.

Any notice or other communication contemplated by this Agreement shall be deemed to be given when given in writing and mailed, registered or certified, postage prepaid with return receipt requested, to a party at the address set forth below or such other address as may hereafter be designated in writing:

To Dr. Spanier:

Dr. Graham B. Spanier
Schreyer House
Pennsylvania State University
University Park, PA 16802

To the University:

The Pennsylvania State University
Office of the Board of Trustees
205 Old Main
University Park, PA 16802
Attention: President of the Board of Trustees

M. Severability and Waivers.

If any portion of this Agreement shall be held to invalid, inoperative, or unenforceable, then, so far as possible, effect shall be given to the intent manifested by the portion held invalid, inoperative, or unenforceable, and the remainder of this Agreement not found invalid, inoperative, or unenforceable shall remain in full force and effect. No waiver or failure to enforce any or all rights under this Agreement by either party on any occasion shall constitute a waiver of that party's right to assert the same or any other rights on that or any other occasion.

N. Governing Law.

This Agreement shall be governed by, construed and enforced in accordance with the laws of the Commonwealth of Pennsylvania, excluding its choice of laws rules.

O. Counterparts.

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which shall constitute but one of the same instrument. Signatures delivered by facsimile and by email shall be deemed to be an original signature for all purposes, including for purposes of applicable Rules of Evidence.

P. Complete Agreement.

This Agreement fully supersedes any and all prior agreements or understandings, written or oral, with the exception of Section D.3 of the Prior Agreement as amended by Section C.5 of

this Agreement. This Agreement shall not be amended, modified, or changed other than by express written agreement of Dr. Spanier and the President of the Board of Trustees.

Q. Personal Contract.

The obligations and duties of Dr. Spanier shall be personal and not assignable or delegable in any manner whatsoever. This Agreement shall be binding upon and inure to the benefit of Dr. Spanier and his executors, administrators, heirs, successors, and permitted assigns, and upon the University and its successors and assigns.

R. No Trust Fund.

Nothing contained in this Agreement and no action taken pursuant to the provisions of this Agreement shall create or be construed to create a trust of any kind. To the extent that the President acquires a right to receive payments from the University under this Agreement, such rights shall be no greater than the right of any unsecured, general creditor to the University.

S. Miscellaneous.

The headings in this Agreement are for convenience only and shall not be used in construing or interpreting this Agreement. The terms "Board," "Board of Trustees," and "University" as used in this Agreement, where applicable or appropriate, shall be deemed to include or refer to any duly authorized board, committee, officer, or employee of said entity. Whenever the context requires, the masculine shall include the feminine and neuter, the singular shall include the plural, and conversely.

IN WITNESS WHEREOF, the parties have executed this Employment Agreement as of the day and year written below.

ATTEST:

THE PENNSYLVANIA STATE UNIVERSITY

Joseph J. Donney
Witness

By: Steve G. Larkin
President, Board of Trustees

June 2, 2010
Date

ATTEST:

Joseph J. Donney
Witness

Graham B. Spanier
Graham B. Spanier, Ph.D.

June 2, 2010
Date

EXHIBIT E

Prothonotary Search Results

Case **CIVIL OTHER** Docket **GENERAL FEES**

Docket # Filing Date and Time Sat/Dis/Gntd Vol Page Sealed

12-2065 5/25/2012 03:53 7/18/2012

Plaintiff(s)	Lien	lawyer(s)
<u>SPANIER, GRAHAM B.</u>		<u>VAIRA, PETER F.</u>
		<u>RILEY, JOHN E.</u>

Defendant(s)	Lien	lawyer(s)
<u>PENNSYLVANIA STATE UNIVERSITY, THE</u>		<u>MUSTOKOFF, MICHAEL M.</u>
		<u>WALWORTH, DANIEL R.</u>

Proceedings #

View Image	<u>7/18/2012</u> BY PAPER FILED, THE ABOVE CAPTIONED MATTER IS VOLUNTARY
View Image	<u>7/6/2012</u> SCHEDULING ORDER, FILED. (ARGUMENT ON PRELIMINARY OBJECTIONS
View Image	<u>7/2/2012</u> PLAINTIFF GRAHAM B. SPANIER'S RESPONSE TO THE PRELIMINARY
View Image	<u>9/14/2012</u> BY PAPER FILED, MICHAEL M. MUSTOKOFF, ESQ. AND R. WALWORTH,
View Image	<u>8/14/2012</u> MEMORANDUM OF LAW IN SUPPORT OF PRELIMINARY OBJECTIONS OF
View Image	<u>8/14/2012</u> PRELIMINARY OBJECTIONS OF DEFENDANT THE PENNSYLVANIA STATE
View Image	<u>6/1/2012</u> SHERIFF'S RETURN, FILED. (SERVED ON 5/31/2012)
View Image	<u>5/25/2012</u> COMPLAINT IN EQUITY (REPLEVIN) WITH NOTICE TO DEFEND, FILED.

EXHIBIT C

LOGIN

Search foxnews.com

MENU

U.S. HOME CRIME TERRORISM ECONOMY IMMIGRATION DISASTERS MILITARY EDUCATION ENVIRONMENT PERSONAL FREEDOMS
REGIONS

SPORTS

Testimony at Sandusky trial shows missed chances

Published June 16, 2012

0 0

Associated Press

The eyewitness testimony that confronted jurors in Jerry Sandusky's child-molestation trial this week was disturbing not only for its graphic descriptions of sex with boys, but for what it said about the people who surrounded and maybe even protected the once-revered Penn State assistant coach.

Eight accusers took the witness stand and described how Sandusky molested them in campus showers, hotel bathrooms, a basement bedroom, a sauna used by the football team — right under the noses of his friends, colleagues, family members and acquaintances.

The Sandusky story, the way authorities have framed it, is one littered with missed chances to stop a rapist who preyed on children for years.

Prosecutors have hinted that top university officials knew far more about Sandusky's alleged proclivities than they have let on, submitting a document Monday that says Penn State's former vice president — himself facing charges related to the scandal — maintained a file on Sandusky a decade ago. A Penn State trustee told The Associated Press he now suspects a cover-up.

Yet evidence and testimony from the trial also show there were plenty of people, not just those at the highest levels of the university, who had ample opportunity to stop a man accused of violating 10 boys over 15 years:

— A janitor failed to tell authorities he allegedly caught Sandusky performing oral sex on a boy in a campus shower a dozen years ago.

— A district attorney with a reputation for prosecuting cases involving children and sexual abuse victims declined to charge Sandusky over a 1998 molestation allegation even though the detective who investigated thought it was a solid case. The DA, Ray Gricar, disappeared in 2005 and was declared legally dead last year.

— School district officials were skeptical of abuse claims brought by the young man known in court papers as Victim 1 because, the accuser testified, Sandusky was considered to have a "heart of gold." Victim 1's allegations eventually triggered the state investigation that produced charges.

— One accuser testified he screamed out for help at least once when Sandusky's wife, Dottie, was in the house. He doesn't know whether she heard his cries.

— And, famously, coaching assistant Mike McQueary saw Sandusky having what he believed to be anal sex with a young boy in 2001. But his report to Athletic Director Tim Curley and Vice President Gary Schultz went nowhere. McQueary's dad testified that during a conversation, Schultz said he was suspicious of Sandusky, and NBC reported this week that emails between former university President Graham Spanier and Schultz aiming to keep McQueary's allegation from going further were turned over to the attorney general.

— Others also saw Sandusky engaging in behavior that was at least odd, if not criminal. Longtime assistant coach Tom Bradley walked into the shower when one boy was with Sandusky, the accuser testified, and a wrestling coach told jurors he saw Sandusky and a child rolling on the floor.

— Several accusers said their parents or caregivers failed to grasp what was happening to them. Victim 4 testified that one weekend he did not want to go with Sandusky and told his mother, "I'm pretty sure he's gay," but she dismissed the idea. "She said, oh, whatever, this is just one of your lies," he told jurors. He also said at one point he told his grandmother to tell Sandusky he wasn't home when he called.

Victim 1 testified that when he asked his mother about "a website for people who do things to children," and she asked why, he said it was "to see if Jerry was on there." He said he didn't think she totally understood. And Victim 9 told jurors he described Sandusky to his mother as "a touchy-feely type of a person," but she pressured him to spend time with the former coach.

Keith Masser, a Penn State trustee, said in an interview that he initially thought the scandal was about a failure of administrative oversight of the football program. Now he suspects it goes deeper.

When the board of trustees ousted Spanier on Nov. 9, four days after Sandusky's arrest, it was "because we didn't have confidence in his ability to lead us through this crisis," Masser said. "We had no idea (at the time) he would be involved in a cover-up."

Masser stressed he was speaking for himself and not the board at large, and said he wants to be careful not to draw premature conclusions. But he said it now appears like "top administration officials and top athletic officials were involved in making the decision to not inform the proper authorities."

With prosecutors focused on the sex-abuse allegations against Sandusky, the trial isn't intended to yield evidence of a possible cover-up. That's the job of Louis Freeh, the former FBI director hired by the board of trustees to investigate the scandal. His report could be released in late summer.

Spanier, who has not been charged with any crime, did not respond to email and phone messages. His attorney did not return a phone call.

The law firm defending Curley and Schultz against charges they lied in their grand jury testimony and failed to report suspect abuse said in a statement this week they "conscientiously considered" McQueary's account and "deliberated about how to responsibly deal with the conduct and handle the situation properly." They did not respond to follow-up questions posed by the AP.

Masser said the Freeh investigation is helping Penn State get to the bottom of the scandal.

"I hope the truth comes out, and from a board standpoint it was Judge Freeh's investigation that found these emails that relate Spanier, Curley and Schultz to the suspected cover-up," he said. "I want the alumni to understand and the stakeholders to understand that this independent investigation is uncovering this information."

Sandusky was charged in November and December with more than 50 counts of abuse. The scandal brought disgrace to Penn State and led to the ousters of both Spanier and Paterno, the Hall of Fame coach who died in January at age 85.

The testimony of eight of the 10 alleged victims named in a grand jury report prompted disgust and revulsion from Penn State alumni and others who took to Twitter last week to express their dismay — and to call for the heads of anyone involved in concealing abuse. "Anyone who knew and didn't report should burn!" tweeted one

The grim depictions of abuse also hit at least one former player hard.

The accuser known as Victim 4 told jurors that Sandusky let him wear star linebacker LaVar Arrington's jersey and gave him a magazine autographed by the former NFL All-Pro, who played at Penn State in the late 1990s.

Arrington apologized to the man a day after his testimony, writing in *The Washington Post* that he felt awful for having missed the warning signs.

"He always seemed mad or kind of distant. I remember distinctly asking him: 'Why are you always walking around all mad, like a tough guy?'" Arrington wrote. "I guess with everything that I had going on, it certainly wasn't a priority for me to try to figure him out."

Arrington continued, "I hate everything that has happened, and now I must admit I feel even worse, knowing what allegedly was happening so close to me, and that I was unaware."

Ann Tenbrunsel, a professor of business ethics at the University of Notre Dame, attributes the failure to stop Sandusky to a phenomenon she calls "motivated blindness," a tendency, whether subconscious or deliberate or sometimes both, to ignore unethical or even criminal behavior by others when you perceive it to be in your best interest to do so. Motivated blindness "means I don't probe, I don't ask, I don't believe," Tenbrunsel said. "I have evidence in front of me but choose to disregard facts."

Some people could have kept quiet about their suspicions because they wanted to protect Penn State and its beloved — and highly lucrative — football program, or their own jobs, she said. Others might not have wanted to believe the sainted Sandusky capable of the abuse he's now charged with.

"You have all kinds of examples of people who either did not notice, or when they did notice didn't engage in behaviors that would have stopped it because it wasn't in their best interests to do so," said Tenbrunsel, co-author of "Blind Spots," a book that explores why otherwise decent people sometimes fail to do the right thing.

Some of the alleged assaults appear to have been interrupted, if unwittingly. One young man said Sandusky coerced him into engaging in oral sex in a hotel bathroom in Texas around the time of the 1999 Alamo Bowl — Sandusky's last game before retiring — stopping only when the coach's wife entered the hotel room. The same accuser, Victim 4, testified about another occasion in which Bradley was showering in the team headquarters while the alleged victim and Sandusky were behind a curtain in another stall.

"I can't say what (Bradley's) thoughts were, but I think he was suspicious of something because he stayed in the shower until everything was done," the man testified without elaborating.

Bradley did not return several messages from *The Associated Press*.

A wrestling coach told jurors that he found Victim 1 and Sandusky rolling around on the floor in the high school weight room one evening.

Joseph Miller said that while he found it odd, he gave the famed coach a pass. "It was Jerry. Jerry Sandusky. He's a saint. What he's doing with kids, it's fantastic," Miller recalled thinking. "So I didn't think anything of it."

The trial is scheduled to enter its fifth day Monday as prosecutors near the end of their case. Sandusky denies all the charges, saying that while he showered with boys, he never touched them sexually. His attorney has suggested the accusers are twisting the truth because they intend to sue.

Associated Press writers Mark Scoloro and Genaro C. Armas in Bellefonte, Pa., contributed to this report.

EXHIBIT D

EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT ("Agreement"), entered into by and between The Pennsylvania State University, the only land grant university chartered in the Commonwealth of Pennsylvania, and Graham B. Spanier, Ph.D., is to take effect July 1, 2010.

WITNESS

WHEREAS, Graham B. Spanier, Ph.D. ("Dr. Spanier" or the "President") has been employed by The Pennsylvania State University (the "University") as President of the University since September 1, 1995; and

WHEREAS, the University wishes to continue the employment of Dr. Spanier as President of the University in recognition of his extraordinary achievements, and Dr. Spanier wishes to continue to serve as the President and be its employee, subject to the terms and conditions of this Agreement; and

WHEREAS, The University desires to make further arrangements which will suitably recognize the extraordinary responsibilities and duties of Dr. Spanier and will reward him for his many unique accomplishments thus far during his tenure as President of the University; and

WHEREAS, both the University and Dr. Spanier intend this Agreement to supersede any and all prior agreements with respect to Dr. Spanier's employment relationship, with the exception of Section D.3 of the Employment Agreement effective July 1, 2007 (the "Prior Agreement"); and

WHEREAS, both the University and Dr. Spanier desire to set forth their respective rights

and obligations in this Agreement; and

WHEREAS, by Resolution of January 23, 1982, the Board of Trustees of the University (the "Board of Trustees") authorized the President of the Board of Trustees (the "President of the Board") to enter into employment agreements with certain senior employees in accordance with the terms of said Resolution; and

NOW, THEREFORE, in consideration of the mutual promises, covenants, and conditions contained herein, and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

A. Term.

The University shall continue the employment of Dr. Spanier as its President for a term from July 1, 2010 through June 30, 2015 (the "Term"), except as provided in Section H ("Termination"). Dr. Spanier hereby accepts such employment upon the terms and conditions set forth in this Agreement.

B. Powers and Duties.

During the Term of this Agreement, Dr. Spanier shall serve as President and perform such duties and responsibilities that are consistent with his position as President of the University under the Corporate Charter, the Corporate Bylaws, and the Standing Orders of the Board of Trustees, as may be amended from time to time, or which may be assigned to him by or under the authority of the Board of Trustees consistent with his position as President of the University, including those duties as are set forth in the Resolution of the Board of Trustees adopted on June 11, 1970, as amended on November 19, 1971, May 30, 1975 and September 23, 1977, and as the same may be amended from time to time during the term of this Agreement (collectively, the

"Duties"). Dr. Spanier shall devote his full business time attention, skill and efforts to the faithful performance of the Duties for the University.

Dr. Spanier and the Board of Trustees acknowledge and agree that the Duties hereunder shall be limited to those duties customarily performed by presidents of universities comparable in size and mission to the University, such as educational leadership, faculty and community relations, budgeting, long range planning, fund raising, development, public relations, student services, recruitment and retention of personnel, and such other duties as may be authorized or directed, from time to time, by the Board.

Dr. Spanier shall serve as a member of the Board of Trustees of the University and as a corporate officer of the University so long as such service is provided for in the Corporate Charter or Bylaws of the University.

C. Compensation.

1. Annual Base Salary. As compensation for the services to be performed by Dr. Spanier pursuant to this Agreement and in accordance with industry norms, the University shall pay to Dr. Spanier an annualized base salary of \$700,000 from July 1, 2010 through June 30, 2011 (the "Base Salary"), less applicable deductions. Any increases in Base Salary shall be based upon the President's performance during the preceding fiscal year in connection with the annual evaluation of his performance, set forth in Section D of this Agreement. During the Term of this Agreement, Dr. Spanier's Base Salary may be increased, but not decreased.

2. Signing Bonus. In consideration of executing this Agreement, Dr. Spanier shall receive a one-time signing bonus of \$200,000 within sixty (60) days of the execution of this Agreement by both parties.

3. Retention Incentive. Beginning with the 2011-12 contract year, Dr. Spanier shall be eligible to receive an annual retention incentive provided that he completes service as President to the University through the end of each contract year (June 30). The amount of the retention incentive, if any, shall be at the sole discretion of the Compensation Council in accordance with the 1982 resolution of the Board of Trustees authorizing the Council regarding such compensation matters, but shall not exceed twenty percent (20%) of Dr. Spanier's then-current annual base salary. Any retention incentive awarded to Dr. Spanier shall be paid within sixty (60) days of the conclusion of the contract year to which it relates.

4. Retirement Contribution. In addition, the University shall contribute, at its normal Alternate Retirement Plan (the "Retirement Plan") contribution rate (currently 9.29%), to the purchase of an annuity contract within the meaning of Section 403(b) of the Internal Revenue Code and in accordance with the terms of the Retirement Plan as managed by TIAA-CREF. Further, in the event that:

- a. limitations of the Internal Revenue Code do not permit the University to contribute on a tax-sheltered basis to the Retirement Plan at its normal contribution rate; or
- b. less than fifteen (15%) percent of Dr. Spanier's Base Salary is contributed to Dr. Spanier's Retirement Plan, the University shall pay to Dr. Spanier, as current compensation, an amount equal to the difference between the amount actually contributed to the Retirement Plan and the greater of: (1) the amount that the University cannot contribute to the Retirement Plan because of

Internal Revenue Code limitations; or (2) fifteen (15%) percent of Dr. Spanier's Base Salary.

5. Retirement Plan Equivalency. The Retirement Plan Equivalency referenced in Section D.3 of the Prior Agreement shall continue during this Agreement. The Retirement Plan Equivalency shall be amended such that Dr. Spanier shall be required to remain available to perform services for the University pursuant to Sections B, E.5 and E.6 of this Agreement through June 30, 2017 to vest in the benefits of the plan. Dr. Spanier shall also become vested in the Retirement Plan Equivalency if his employment as President is earlier terminated without Cause, or his death or disability. Dr. Spanier shall not receive the benefits of the Retirement Plan Equivalency if his employment as President is terminated for Cause, or if he voluntarily resigns from his employment as President, or if following the conclusion of his service as President, his faculty appointment is terminated in accordance with the University's rules for tenured members of the faculty. A document separate and apart from this Agreement shall govern the five year extension of the Retirement Plan Equivalency to June 30, 2017.

D. Annual Evaluation.

No later than the week of the May 2011 meeting of the Board of Trustees, and each year thereafter, Dr. Spanier shall provide to the President of the Board of Trustees, the Vice President of the Board, the immediate past President of the Board and the Chairperson of the Committee on Finance and Physical Plant of the Board (the "Review Group") an assessment of his performance as President measured against the goals and objectives for the then-current fiscal year, as well as his proposed goals and objectives for the next fiscal year. The Review Group will review and provide appropriate feedback and direction with respect to Dr. Spanier's past

performance and future goals and objectives. To aid the Review Group in its annual evaluation, Dr. Spanier agrees to furnish to the President of the Board such additional oral or written reports as the Review Group may request.

E. Benefits and Reimbursements.

1. Standard Benefits. Dr. Spanier shall be eligible to participate in all of the employee benefit plans of the University applicable to senior executives.

2. Supplemental Life Insurance.

- a. In addition to life insurance provided as a standard benefit in Section E.1, the University has provided a life insurance death benefit of \$1,000,000 for Dr. Spanier since September 1, 1997. The death benefit of this life insurance policy has escalated, and shall continue to be escalated annually on each July 1 during the Term of this Agreement, by the percentage increase in the Consumer Price Index (CPI-U, All Items, for All Urban Consumers, 1984=100) by multiplying the amount of life insurance in force for the contract year then ending by the sum of: one (1), plus the cumulative percentage increase in the Consumer Price Index between July 1 of the prior year and June 30 of the current year. There will be no diminution of this life insurance benefit at the conclusion of the Term of this Agreement. Provided, however, CPI increases in the death benefit shall cease as of the conclusion of the Term of this Agreement. In all other respects,

this life insurance coverage shall be maintained in accordance with the terms and conditions of the University's plan of life insurance for its senior executives.

3. Supplemental Health Insurance. The University's policy relating to age and service eligibility requirements for continuation of health insurance coverage shall be waived for Dr. Spanier at the conclusion of his presidency.

4. Disability Coverage. In the event of Dr. Spanier's permanent disability during the Term of this Agreement, the University shall provide Dr. Spanier with disability coverage, having a total disability benefit of (a) not less than eighty percent (80%) of his Base Salary for the contract year in which he becomes disabled through the end of the Term of this Agreement, and (b) thereafter not less than sixty-five percent (65%) of his Base Salary for the contract year in which he becomes disabled until age 70. Any amounts received by Dr. Spanier under the terms of any long term disability plan applicable to senior executives shall be offset against the amounts payable to Dr. Spanier pursuant to the disability coverage provided in this Section E.4.

5. Professional Development and Post-Presidency Transition. Upon the completion of the Term of this Agreement (June 30, 2015) or if this Agreement is terminated without Cause, Dr. Spanier shall be entitled to a paid one year professional development and post-presidency transition period at the level of his then presidential Base Salary plus the benefits provided in Sections E.1, E.2, E.3 and E.4 of this Agreement. The post-presidency transition period shall commence immediately upon the completion of the Term, or the effective date of termination if this Agreement is terminated without Cause. During said period, Dr. Spanier shall

perform scholarly activities in preparation to assume active duties as a tenured member of the University's faculty and shall also be available to assist with various University efforts (such as fundraising and recruiting) as requested by the new President. As a condition of his eligibility for compensation and benefits under this Section E.5, Dr. Spanier shall refrain from performing any type of professional services for any other institution of higher education that will conflict with his duties with Penn State University. Notwithstanding the foregoing, any professional services performed by Dr. Spanier for a non-profit entity, government service, or for-profit boards that do not materially detract from his University responsibilities shall not be considered a conflict with his duties for the University. The Base Salary and benefits that Dr. Spanier receives under this Section E.5 shall not be reduced by the amounts he receives from other earnings. The terms of this Section E.5 shall survive the expiration of this Agreement.

6. Post-Presidency Faculty Position. Following his service as President, Dr. Spanier shall have the title of President Emeritus. In addition, Dr. Spanier shall continue to hold a tenured faculty position as a Professor in the Department of Human Development and Family Studies of the College of Health and Human Development of the University. He may continue to use his current academic title of Professor of Human Development and Family Studies, Sociology, Demography, and Family and Community Medicine. Upon the conclusion of Dr. Spanier's service as President, he may, at his option, elect to assume the title of University Professor. Dr. Spanier's Base Salary following his services as President shall be paid on a twelve month basis and shall be \$600,000 annually. Dr. Spanier's compensation at this level shall be limited to five (5) years following the conclusion of his professional development transition period subsequent to the termination of his presidency on June 30, 2015 or the earlier

termination of his presidency without Cause. Dr. Spanier's employment as Professor subsequent to this period, including his eligibility for annual salary adjustments, shall be governed by the University's policies, rules and regulations applicable to other tenured members of the University faculty and not by this Agreement. Dr. Spanier's office location, academic responsibilities, and salary after the five year post-presidency period shall be determined in consultation with the Provost of the University.

The University shall provide Dr. Spanier with administrative support, including an office and a staff assistant to assist him with his responsibilities following the conclusion of his presidency. The terms of this Section E.6 shall survive the expiration of this Agreement.

7. Travel and Other Business Expenses. Dr. Spanier's reasonable travel and other business expenses incurred in his capacity as President of the University shall be paid on a cost reimbursement basis through the University's annual operating budget. When Dr. Spanier's spouse accompanies him on travel for University purposes, the University shall cover the costs of her reasonable travel expenses. The expenses of Dr. Spanier and his spouse shall be reviewed on an annual basis by the President of the Board of Trustees or his/her designee who does not report to the President.

8. Professional Memberships. The University shall pay the annual dues and membership fees for the President in professional associations of benefit to the University.

9. Automobile. The University shall continue to provide Dr. Spanier with a recent model automobile suitable for his role as President, to be owned or leased by the University, for his exclusive use. The University shall provide or reimburse Dr. Spanier for

insurance, maintenance, and other operating costs of the vehicle, including but not limited to, the cost of fuel, taxes, licenses, registration, and other similar operating expenses. On an annual basis, Dr. Spanier shall report all personal use in writing to the Senior Vice President for Finance and Business of the University.

F. Housing.

During the Term of this Agreement, for the benefit and convenience of the University in having the functions of the Office of President efficiently discharged and, in order to enable Dr. Spanier to fully perform the extensive duties of his position, he shall, as a condition of his employment as President of the University, continue to reside at the Schreyer House, an on-campus residence owned by the University for this purpose, located at University Park, Centre County, Pennsylvania, or such other residence as may be determined by the University (the "President's Residence"). The University shall pay for all costs of utilities and maintenance of the structures and grounds of the President's Residence.

For the benefit and convenience of the University, the President's residence shall be available, and shall be used, for University-related business on a regular and continuing basis. Costs associated with such University events shall be borne by the University.

In the event of Dr. Spanier's death during the Term of this Agreement (including all renewals and extensions), Dr. Spanier's family shall be permitted to occupy the President's Residence under the same terms and conditions for no less than 90 calendar days from the date of Dr. Spanier's death.

In the event of Dr. Spanier's permanent disability during the Term of this Agreement (including all renewals and extensions), Dr. Spanier and his family shall be permitted to occupy the President's Residence under the same terms and conditions for no less than 90 calendar days from the date of Dr. Spanier's permanent disability.

Dr. Spanier and his family shall vacate the President's Residence no later than thirty (30) calendar days following the effective date of termination or expiration of this Agreement (including all renewals and extensions).

Upon the termination of this Agreement, the University shall reimburse Dr. Spanier for the reasonable and necessary expenses of moving his personal property from State College, Pennsylvania to a location of his choice in the continental United States.

G. Tax Reporting.

The University shall include in the W-2 issued to Dr. Spanier all payments, benefits, allowances, and reimbursements that are defined as income or otherwise required to be reported by federal, state or local governments. Except as provided in this Agreement, Dr. Spanier shall be responsible for the payment of all personal taxes due and shall make such payments on a "when due" basis.

H. Termination.

1. Termination For Cause. The University may terminate this Agreement at any time for cause upon written notice to Dr. Spanier as provided in this Section H.1. For purposes of this Agreement, the term "Cause" shall mean conduct reasonably determined by a two-thirds majority of the Board of Trustees to be: (a) gross negligence or willful malfeasance by Dr. Spanier in the performance of his Duties that materially harm the University; (b) actions or

omissions by Dr. Spanier that are undertaken or omitted knowingly and are criminal or fraudulent and involve material dishonesty or moral turpitude; or (c) Dr. Spanier being formally indicted in a court of law of any felony, or any other crime involving misuse or misappropriation of University funds. In the event the President is terminated for Cause, Dr. Spanier's employment as President shall cease immediately, and he shall not be entitled to any further compensation or benefits as President, except as set forth in the University's various benefit plans with respect to vesting and rights after termination of employment, nor shall he be entitled to continuing employment as a member of the University faculty, including the Post-Presidency Faculty Position set forth in Section E.6 of this Agreement.

2. Termination Without Cause. The University may terminate this Agreement without Cause upon a majority vote by the Board of Trustees at any time for the convenience of the University upon ninety (90) calendar days prior written notice to the President. Termination of this Agreement by virtue of the President's permanent disability or death (as set forth in Sections H.4 and H.5 of this Agreement, respectively) shall not be construed as termination without Cause. If the University terminates this Agreement without Cause prior to the expiration of the Term of this Agreement, Dr. Spanier shall be entitled to receive payments equal to his then existing Base Salary and benefits for eighteen (18) months from the effective date of his termination of employment as President, plus the Equivalency payment referenced in Section C.5 of this Agreement. In the event of such termination without Cause, Dr. Spanier and his family shall vacate the President's Residence no later than thirty (30) calendar days following the effective date of termination.

3. Resignation. Dr. Spanier may resign as President by providing at least ninety (90) calendar days written notice to the President of the Board of Trustees. Dr. Spanier's employment as President shall cease on the effective date of his resignation, and he shall not be entitled to any further compensation or benefits as President, except as set forth in the University's various benefit plans with respect to vesting and rights after termination of employment.

4. Permanent Disability. If Dr. Spanier shall become permanently disabled during his service as President, this Agreement shall terminate effective on the date of permanent disability and he shall receive all benefits to which he is entitled pursuant to the University's disability coverage referenced in Section E.4, plus the Equivalency payment referenced in Section C.5 of this Agreement.

For purposes of this Agreement and based upon Section 409A of the Internal Revenue Code, "Permanent Disability" shall mean Dr. Spanier is (i) unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or can be expected to last for a continuous period of not less than 12 months or (ii) by reason of any medically determinable physical or mental impairment which can be expected to result in death or can be expected to last for a continuous period of not less than 12 months, receiving income replacement benefits for a period of not less than 3 months under an accident and health plan covering the University's employees.

5. Death. In the event of Dr. Spanier's death during the Term of this Agreement, Dr. Spanier's Base Salary shall cease immediately and this Agreement shall

terminate effective on the date of death, provided however that the Equivalency payment referenced in Section C.5 of this Agreement shall be paid to Dr. Spanier's estate no later than thirty (30) days from the date of death.

I. Outside Activities.

The University recognizes that it is both appropriate and beneficial for Dr. Spanier, in his capacity as President to engage in outside activities, such as serving on for-profit and nonprofit boards of directors, consulting, delivering speeches, and writing. However, the President shall seek prior approval from the President of the Board of Trustees before agreeing to serve on the board of directors of any for-profit entities. Dr. Spanier may not engage in any outside activity that conflicts with his Duties under this Agreement.

All income or other compensation earned by Dr. Spanier in connection with his outside activities shall be paid to and retained by Dr. Spanier and reported in accordance with applicable tax law and established University policy. Such income, if any, shall have no effect on the amount of salary, benefits, or other compensation to which Dr. Spanier may be entitled to under this Agreement.

J. Indemnification. The University shall indemnify Dr. Spanier and hold him harmless against legal fees, expenses, judgments, and other financial amounts incurred while serving in his capacity as President of the University to the extent permitted by law. Dr. Spanier shall continue to be indemnified subsequent to termination of employment as President with

respect to acts or omissions occurring while he was serving as President. The terms of this Section J shall survive the expiration of this Agreement.

K. Mediation. The parties agree that any controversy or claim that either party may have against the other arising out of or relating to the construction, application or enforcement of this Agreement, as well as any controversy or claim based upon the alleged breach of any legal right relating to or arising from Dr. Spanier's employment and/or termination of his employment shall be submitted to non-binding mediation. Within fifteen (15) days after delivery of a written notice of request for mediation from one party to the other, the dispute shall be submitted to a single mediator located in the Commonwealth of Pennsylvania chosen by the parties, and the venue for such mediation shall be in University Park or State College, Pennsylvania, as mutually agreed by the parties. The costs and fees associated with mediation, excluding attorney's fees for Dr. Spanier, shall be borne by the University.

L. Notice.

Any notice or other communication contemplated by this Agreement shall be deemed to be given when given in writing and mailed, registered or certified, postage prepaid with return receipt requested, to a party at the address set forth below or such other address as may hereafter be designated in writing:

To Dr. Spanier:

Dr. Graham B. Spanier
Schreyer House
Pennsylvania State University
University Park, PA 16802

To the University:

The Pennsylvania State University
Office of the Board of Trustees
205 Old Main
University Park, PA 16802
Attention: President of the Board of Trustees

M. Severability and Waivers.

If any portion of this Agreement shall be held to invalid, inoperative, or unenforceable, then, so far as possible, effect shall be given to the intent manifested by the portion held invalid, inoperative, or unenforceable, and the remainder of this Agreement not found invalid, inoperative, or unenforceable shall remain in full force and effect. No waiver or failure to enforce any or all rights under this Agreement by either party on any occasion shall constitute a waiver of that party's right to assert the same or any other rights on that or any other occasion.

N. Governing Law.

This Agreement shall be governed by, construed and enforced in accordance with the laws of the Commonwealth of Pennsylvania, excluding its choice of laws rules.

O. Counterparts.

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which shall constitute but one of the same instrument. Signatures delivered by facsimile and by email shall be deemed to be an original signature for all purposes, including for purposes of applicable Rules of Evidence.

P. Complete Agreement.

This Agreement fully supersedes any and all prior agreements or understandings, written or oral, with the exception of Section D.3 of the Prior Agreement as amended by Section C.5 of

this Agreement. This Agreement shall not be amended, modified, or changed other than by express written agreement of Dr. Spanier and the President of the Board of Trustees.

Q. Personal Contract.

The obligations and duties of Dr. Spanier shall be personal and not assignable or delegable in any manner whatsoever. This Agreement shall be binding upon and inure to the benefit of Dr. Spanier and his executors, administrators, heirs, successors, and permitted assigns, and upon the University and its successors and assigns.

R. No Trust Fund.

Nothing contained in this Agreement and no action taken pursuant to the provisions of this Agreement shall create or be construed to create a trust of any kind. To the extent that the President acquires a right to receive payments from the University under this Agreement, such rights shall be no greater than the right of any unsecured, general creditor to the University.

S. Miscellaneous.

The headings in this Agreement are for convenience only and shall not be used in construing or interpreting this Agreement. The terms "Board," "Board of Trustees," and "University" as used in this Agreement, where applicable or appropriate, shall be deemed to include or refer to any duly authorized board, committee, officer, or employee of said entity. Whenever the context requires, the masculine shall include the feminine and neuter, the singular shall include the plural, and conversely.

IN WITNESS WHEREOF, the parties have executed this Employment Agreement as of the day and year written below.

ATTEST:

THE PENNSYLVANIA STATE UNIVERSITY

Joseph J. Donney
Witness

By: Steve G. Larkin
President, Board of Trustees

June 2, 2010
Date

ATTEST:

Joseph J. Donney
Witness

Graham B. Spanier
Graham B. Spanier, Ph.D.

June 2, 2010
Date

EXHIBIT E

Prothonotary Search Results

Case CIVIL OTHER Docket GENERAL FEES

Docket # Filing Date and Time Sat/Dis/Gntd Vol Page Sealed

12-2065 5/25/2012 03:53 7/18/2012

<u>Plaintiff(s)</u>	<u>Lien</u>	<u>lawyer(s)</u>
<u>SPANIER, GRAHAM B.</u>		<u>VAIRA, PETER F.</u> <u>RILEY, JOHN E.</u>
<u>Defendant(s)</u>	<u>Lien</u>	<u>lawyer(s)</u>
<u>PENNSYLVANIA STATE UNIVERSITY, THE</u>		<u>MUSTOKOFF, MICHAEL M.</u> <u>WALWORTH, DANIEL R.</u>

Proceedings #

<u>View Image</u>	<u>7/18/2012</u> BY PAPER FILED, THE ABOVE CAPTIONED MATTER IS VOLUNTARY
<u>View Image</u>	<u>7/16/2012</u> SCHEDULING ORDER, FILED. (ARGUMENT ON PRELIMINARY OBJECTIONS
<u>View Image</u>	<u>7/2/2012</u> PLAINTIFF GRAHAM B. SPANIER'S RESPONSE TO THE PRELIMINARY
<u>View Image</u>	<u>8/14/2012</u> BY PAPER FILED, MICHAEL M. MUSTOKOFF, ESQ. AND R. WALWORTH,
<u>View Image</u>	<u>8/14/2012</u> MEMORANDUM OF LAW IN SUPPORT OF PRELIMINARY OBJECTIONS OF
<u>View Image</u>	<u>8/14/2012</u> PRELIMINARY OBJECTIONS OF DEFENDANT THE PENNSYLVANIA STATE
<u>View Image</u>	<u>6/1/2012</u> SHERIFF'S RETURN, FILED. (SERVED ON 5/31/2012)
<u>View Image</u>	<u>5/25/2012</u> COMPLAINT IN EQUITY (REPLEVIN) WITH NOTICE TO DEFEND, FILED.