

ORIGINAL



IN THE COURT OF COMMON PLEAS OF CENTRE COUNTY, PENNSYLVANIA  
CIVIL ACTION – LAW

ESTATE of JOSEPH PATERNO;

and

WILLIAM KENNEY and JOSEPH V. ("JAY")  
PATERNO,  
former football coaches at Pennsylvania State  
University

Plaintiffs,

v.

NATIONAL COLLEGIATE ATHLETIC  
ASSOCIATION ("NCAA"),

MARK EMMERT, individually and as President of the  
NCAA, and

EDWARD RAY, individually and as former Chairman  
of the Executive committee of the NCAA,

Defendants,

and

THE PENNSYLVANIA STATE UNIVERSITY,

Nominal Defendant.

) **Docket No.:** 2013-2082

) **Type of Case:**

) Declaratory Judgment Injunction

) Breach of Contract

) Tortious Interference with

) Contract

) Defamation

) Commercial Disparagement

) Conspiracy

) **Type of Pleading:**

) Appendix of Exhibits to

) NCAA's Brief in Support of

) NCAA's Motion to Compel the

) Production of Documents from

) Plaintiffs Jay Paterno and

) William Kenney

) **Filed on Behalf of:**

) National Collegiate Athletic

) Association, Mark Emmert,

) Edward Ray

) **Counsel of Record for this**

) **Party:**

) Thomas W. Scott, Esquire

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FILED FOR RECORD  
2015 JUL 10 PM 4:20  
CLERK OF COURT  
CENTRE COUNTY, PA

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

ESTATE of JOSEPH PATERNO, et al.,	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
NATIONAL COLLEGIATE ATHLETIC	)	Civil Division
ASSOCIATION, et al.,	)	
Defendants,	)	Docket No. 2013-2082
	)	
and	)	
	)	
THE PENNSYLVANIA STATE UNIVERSITY,	)	
Defendant.	)	

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**APPENDIX OF EXHIBITS TO**

**THE NATIONAL COLLEGIATE ATHLETIC ASSOCIATION'S BRIEF IN  
SUPPORT OF ITS MOTION TO COMPEL THE PRODUCTION OF  
DOCUMENTS FROM PLAINTIFFS  
JAY PATERNO AND WILLIAM KENNEY**

FILED FOR RECORD  
2015 JUL 10 PM 4:20  
JAY PATERNO  
WILLIAM KENNEY  
CENTRE COUNTY, PA

# **EXHIBIT 1**

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

GEORGE SCOTT PATERNO, as duly appointed representative  
of the ESTATE and FAMILY of JOSEPH PATERNO;

RYAN MCCOMBIE, ANTHONY LUBRANO,  
AL CLEMENS, and ADAM TALIAFERRO, members of the  
Board of Trustees of Pennsylvania State University;

PETER BORDI, TERRY ENGELDER,  
SPENCER NILES, and JOHN O'DONNELL,  
members of the faculty of Pennsylvania State University;

WILLIAM KENNEY and JOSEPH V. ("JAY") PATERNO,  
former football coaches at Pennsylvania State University; and

ANTHONY ADAMS, GERALD CADOGAN,  
SHAMAR FINNEY, JUSTIN KURPEIKIS,  
RICHARD GARDNER, JOSH GAINES, PATRICK MAUTI,  
ANWAR PHILLIPS, and MICHAEL ROBINSON, former  
football players of Pennsylvania State University,

Plaintiffs,

v.

NATIONAL COLLEGIATE ATHLETIC ASSOCIATION  
("NCAA"), MARK EMMERT, individually and as President of  
the NCAA, and EDWARD RAY, individually and as former  
Chairman of the Executive Committee of the NCAA,

Defendants,

and

THE PENNSYLVANIA STATE UNIVERSITY,

Nominal Defendant.

Civil Division

Docket No. 2013-  
2082

**THE NATIONAL COLLEGIATE ATHLETIC ASSOCIATION'S FIRST REQUESTS  
FOR PRODUCTION OF DOCUMENTS TO PLAINTIFF JOSEPH ("JAY") V.  
PATERNO**

The National Collegiate Athletic Association (the "NCAA"), by and through its counsel, hereby requests, pursuant to Pennsylvania Rules of Civil Procedure No. 4009.11, that Plaintiff Joseph ("Jay") V. Paterno produce documents in accordance with the Instructions and Definitions set forth herein for inspection and copying at the offices of Latham & Watkins LLP,



555 11th Street NW, Suite 1000, Washington D.C. 20004, within thirty (30) days of service of this request.

### **DEFINITIONS**

As used herein, the words and phrases set forth below shall have the broadest meaning or meanings permitted under Pennsylvania Rule of Civil Procedure. No. 4003.1. Unless defined, all words used in these Requests are to be given their plain and ordinary meaning.

1. “You” or “Your” shall mean Jay Paterno, and all other persons acting on behalf of Jay Paterno, including, but not limited to, attorneys and their associates, investigators, agents, directors, officers, employees, representatives, and others who may have obtained information for or on behalf of Jay Paterno.

2. The “NCAA” shall mean the National Collegiate Athletic Association.

3. “Defendants” shall mean the NCAA, Mark Emmert, Edward Ray, and the Pennsylvania State University.

4. “Plaintiffs” shall mean each of the individuals identified in the caption above, any representative of those individuals, and any representatives of the Estate and Family of Joseph Paterno.

5. “All” or “any” shall mean “each and every.”

6. “And” and “or” shall mean either disjunctively or conjunctively as necessary to bring within the scope of discovery request all responses that might otherwise be construed outside of its scope.

7. “Document” or “Documents” is defined to include originals and copies (including all non-identical copies or photocopies) as well as all draft and final versions of, without limitation: (a) All writings of any kind (including the originals and all non-identical copies,

whether different from the originals by reason of any notation made on such copies or otherwise), including, without limitation, correspondence, notes, statements, transcripts, books, diaries, intra-office communications, notations of any sort of conversations or interviews; (b) All graphic representations of any kind, including, without limitation, photographs, charts, graphs, plans, drawings, videos, and recordings; and (c) All electronically generated and/or stored correspondence, memoranda, communications, data compilations, or records of any sort.

8. “Communication(s)” means any act, action, oral speech, written correspondence, contact, expression of words, thoughts, ideas or transmission or exchange of data or other information to another person, whether orally, person-to-person, in a group, by telephone, letter, personal delivery, telex, facsimile, or any other process, electric, electronic or otherwise.

9. “Concerning” shall mean, without limitation, comprising, containing, embodying, referring to, relating to, regarding, alluding to, responding to, in connection with, commenting on, in response to, about, announcing, explaining, discussing, showing, describing, studying, supporting, reflecting, analyzing, or constituting.

10. “Person” shall mean any natural person or any business, legal or governmental entity, or association.

11. “Amended Complaint” shall mean the First Amended Complaint filed in the above-captioned matter on February 5, 2014.

12. “Penn State” shall mean The Pennsylvania State University.

13. “Sandusky” shall mean former Penn State assistant football coach, Gerald Sandusky.

14. “Coach Paterno” shall refer to Joseph Paterno, the decedent represented in this Action by George Scott Paterno, and Joseph Paterno’s Estate.

15. "FSS" shall mean the firm of Freeh Sporkin & Sullivan LLP.

15. The "Freeh Report" shall mean the July 12, 2012 Report of the Special Investigative Counsel Regarding the Actions of The Pennsylvania State University Related to the Child Sexual Abuse Committed by Gerald A. Sandusky, prepared by FSS.

16. The "Consent Decree" shall mean the July 23, 2012 Binding Consent Decree Imposed by The National Collegiate Athletic Association and Accepted by The Pennsylvania State University.

17. The "Athletics Integrity Agreement" shall mean the August 2012 Athletics Integrity Agreement Between The National Collegiate Athletic Association and The Big Ten Conference, and The Pennsylvania State University.

### **INSTRUCTIONS**

1. In accordance with the Pennsylvania Rules of Civil Procedure, in producing the requested Documents, furnish all Documents in Your actual or constructive possession, custody, or control including, without limitation, those Documents in the custody of any advisors, attorneys, investigators, agents, associates, representatives, and other person(s) or entities acting or purporting to act on Your behalf.

2. Documents shall be produced in the manner in which they are maintained in the ordinary course of business or shall be organized and labeled with a designation of the request for production to which they respond and produced along with any file folders or other bindings in which such Documents were found.

3. These Requests shall be deemed to be continuing in nature. If at any time additional responsive Documents come into Your possession, custody or control, then the responses to these requests shall be promptly supplemented.

4. Any Document or portion of any Document withheld from production based on a claim of privilege shall be identified by (1) the type of Document, (2) the general subject matter of the Document, (3) the date of the Document, and (4) such other information as is sufficient to identify the Document including the author of the Document, the addressee(s) and any copyee(s) or other recipients of the Document, and, where not apparent, the relationship of the author and the addressee(s) and copyee(s) to each other. The nature of each claim of privilege shall be set forth. Notwithstanding the assertion of any objection, any requested Document that contains non-objectionable information responsive to this request should be produced, but that portion of the Document for which the objection is asserted may be redacted, provided that the redacted portion is identified and described consistently according to the requirements listed herein.

5. Except as otherwise noted, this Request seeks the production of Documents created in, used, sent or received during the period from January 1, 2011 through present.

6. Any request for "Communications" shall be construed to include written or tangible Communications, as well as Documents referencing or reflecting oral or person-to-person Communications.

7. Pursuant to Pennsylvania Rule of Civil Procedure No. 4009.12, You must fully respond to each Request. Objections to any part of these requests shall be stated in full with a brief statement setting forth the grounds for such objections.

8. The fact that another party produces a Document or the availability or production of similar or identical Documents from another source does not relieve You of Your obligation to produce Your copy of the same Document, even if the two Documents are identical.

9. Any Document that cannot be produced in full shall be produced to the fullest extent possible.

10. Each paragraph, subparagraph, clause and word herein should be construed independently and not by reference to any other paragraph, subparagraph, clause or word herein for purposes of limitation.

11. Except as specifically provided herein, words imparting the singular shall include the plural and vice versa, where appropriate.

### **REQUESTS FOR PRODUCTION**

#### **REQUEST NO. 1:**

All Documents Concerning the Consent Decree, including but not limited to any of the sanctions set forth in the Consent Decree, any purported attempt to seek an appeal regarding the Consent Decree, or the Athletics Integrity Agreement.

#### **RESPONSE:**

#### **REQUEST NO. 2:**

All Documents Concerning the Freeh Report.

#### **RESPONSE:**

#### **REQUEST NO. 3:**

All Documents Concerning, and Communications with, Louis Freeh, FSS, Pepper Hamilton LLP, or FSS' current or former principals, representatives and/or employees,

including, without limitation, Documents Concerning the retention of FSS by the Special Investigations Task Force of the Penn State Board of Trustees, the investigation conducted by FSS, the Freeh Report, and Penn State.

**RESPONSE:**

**REQUEST NO. 4:**

All Documents Concerning Mr. Richard Thornburgh or research and preparation for, the drafting of, or the final version of Mr. Thornburgh's February 2013 *Review of the Freeh Report Concerning Joseph Paterno*, including, without limitation, all Communications with Mr. Thornburgh, all Communications regarding the basis for drafting it, compensation, research, drafts, and the final document.

**RESPONSE:**

**REQUEST NO. 5:**

All Documents Concerning King & Spalding's February 2013 *Critique of the Freeh Report: The Rush to Injustice Regarding Joe Paterno*, including, without limitation, all Documents regarding the basis for drafting it, compensation, research, drafts, and the final document.

**RESPONSE:**

**REQUEST NO. 6:**

All Documents Concerning James T. Clemente or the February 2013 *Analysis of the Special Investigative Counsel Report and the Crimes of Gerald A. Sandusky & Education Guide to the Identification and Prevention of Child Sexual Victimization* by James T. Clemente, including all Communications with James T. Clemente.

**RESPONSE:**

**REQUEST NO. 7:**

All Documents Concerning Fred S. Berlin or the February 6, 2013 letter from of the National Institute for the Study, Prevention and Treatment of Sexual Trauma to J. Sedwick Sollers, III, including all Communications with Fred S. Berlin.

**RESPONSE:**

**REQUEST NO. 8:**

From January 1, 2000 to present, All Documents Concerning Sandusky or The Second Mile.

**RESPONSE:**

**REQUEST NO. 9:**

All Documents from January 1, 1996 to present Concerning Sandusky's retirement, interaction or involvement with children, sexual abuse, and/or Penn State privileges and benefits.

**RESPONSE:**

**REQUEST NO. 10:**

All Communications between or among any of the Plaintiffs (including Coach Paterno and George Paterno) and one or more of the following: Sandusky, Graham Spanier, Tim Curley, Gary Schultz, former Penn State assistant coach Michael McQueary, or any other current or former Penn State Trustee.

**RESPONSE:**



**REQUEST NO. 11:**

All Communications with the Pennsylvania Attorney General's Office.

**RESPONSE:**

**REQUEST NO. 12:**

All Documents Concerning (i) institutional control over Penn State's football team, (ii) the level of deference or reverence provided to the Penn State football program, players, or coaches by Penn State students, faculty, staff, alumni, and fans, or (iii) the allegations in Paragraphs 99-101 of the Amended Complaint.

**RESPONSE:**

**REQUEST NO. 13:**

All Documents from January 1, 2000 to the present Concerning Your past and present efforts to secure employment or income as a football coach (whether as a head coach or in a subordinate role), media commentator, sports columnist, or any other position, including, without limitation, all draft and final job application materials such as cover letters and resumes, and any Communications with ESPN, CBS Sports, Fox Sports, the University of Colorado, Boston

College, the University of Connecticut, James Madison University, or any other prospective employer.

**RESPONSE:**

**REQUEST NO. 14:**

All Communications Concerning open football coaching positions or Communications with other universities or schools Concerning football coaching employment.

**RESPONSE:**

**REQUEST NO. 15:**

All Communications, contracts, and agreements with a head hunter or other individual who would receive a commission or other money if You obtained employment.

**RESPONSE:**

**REQUEST NO. 16:**

All Communications with a sports agent, sports agency, or other individual or company who is authorized to act on Your behalf in securing contracts or agreements or in obtaining employment, licensing opportunities, or other forms of income or revenue.

**RESPONSE:**

**REQUEST NO. 17:**

All Documents Concerning any efforts by a sports agent, sports agency, or other individual or company who is authorized to act on Your behalf to secure employment, licensing opportunities, or contracts, agreements, or any other arrangements that have the possibility of generating revenue or income for You.

**RESPONSE:**

**REQUEST NO. 18:**

Your Personnel file from any employment you have held from January 1, 2000 to present, including, without limitation, all reviews or evaluations of your performance as a football coach at Penn State.

**RESPONSE:**

**REQUEST NO. 19:**

All Documents Concerning your termination or departure from any employment, including from Penn State, from January 1, 2005 to present.

**RESPONSE:**

**REQUEST NO. 20:**

All Documents Concerning Your contract, salary, or benefits with or provided by Penn State from January 1, 2005 to present.

**RESPONSE:**

**REQUEST NO. 21:**

All Documents Concerning Your evaluation or consideration of whether to run for public office or withdraw from a public office election race.

**RESPONSE:**

**REQUEST NO. 22:**

All Documents Concerning any polls or surveys You conducted, were conducted on Your behalf, or pertained to You.

**RESPONSE:**

**REQUEST NO. 23:**

All Documents discussing the reputation or popularity of, or public support for, You, the Paterno family, Coach Paterno, George Scott Paterno, or Plaintiffs Al Clemens or William Kenney.

**RESPONSE:**

**REQUEST NO. 24:**

Invitations, contracts, agendas, speeches, awards, or information about payment received for any event in which You, Coach Paterno, Sue Paterno, or any other member of the Paterno family, was invited to speak or attend as a celebrity guest or honoree from January 1, 2008 to present.

**RESPONSE:**

**REQUEST NO. 25:**

All Documents Concerning Your upcoming book, Paterno Legacy, including, without limitation, all drafts, public statements, and Communications.

**RESPONSE:**

**REQUEST NO. 26:**

All Communications, commentary, or other content from Facebook, Twitter, an Internet “blog,” MySpace, Instagram, or any other social media source created, sent, received, forwarded, or otherwise transmitted by You Concerning this litigation, the allegations contained in the Amended Complaint, the Freeh Report, the Consent Decree, the Athletics Integrity Agreement, Coach Paterno, Sandusky, the NCAA, Edward Ray, Mark Emmert, or Rodney Erickson.

**RESPONSE:**

**REQUEST NO. 27:**

All text messages You sent or received Concerning this litigation, the allegations contained in the Amended Complaint, the Freeh Report, the Consent Decree, the Athletics Integrity Agreement, Sandusky, the NCAA, Edward Ray, Mark Emmert, or Rodney Erickson.

**RESPONSE:**

**REQUEST NO. 28:**

All Communications with a public relations or media consultant or specialist.

**RESPONSE:**

**REQUEST NO. 24:**

Your pay-stubs, federal and state income tax returns, and any statement or record of other income You received from January 1, 2006 to the present.

**RESPONSE:**

**REQUEST NO. 25:**

Any other Documents Concerning Your claim of pecuniary or financial loss from January 1, 2006 to the present.

**RESPONSE:**

**REQUEST NO. 26:**

All Documents Concerning the damages You are seeking in this action from the Defendants, including all Documents Concerning Your claims for emotional distress, mental anguish, and humiliation.

**RESPONSE:**

**REQUEST NO. 27:**

All non-privileged Communications between or among any of the Plaintiffs (including Coach Paterno and George Scott Paterno) Concerning this lawsuit, or any and all facts or circumstances related to the allegations in the Amended Complaint, including the Consent Decree, the Freeh Report, the reputation of any Plaintiff (including Coach Paterno and George Scott Paterno), Coach Paterno's termination or departure from Penn State, Sandusky, or Rodney Erickson.

**RESPONSE:**

**REQUEST NO. 28:**

All Communications with any current or former Penn State football coaches or players, or Penn State staff or faculty not party to this lawsuit Concerning this litigation, the allegations contained in the Amended Complaint, the Freeh Report, the Consent Decree, the Athletics Integrity Agreement, Coach Paterno, Sandusky, or Rodney Erickson.

**RESPONSE:**



**REQUEST NO. 29:**

All Documents that You believe support, confirm, rebut, or contradict any fact or conclusion in the Amended Complaint, including all Documents referred to or relied upon in the Amended Complaint.

**RESPONSE:**

Respectfully submitted,

/s/ Thomas W. Scott  
Thomas W. Scott (No. 15681)  
KILLIAN & GEPHART, LLP  
218 Pine Street  
P.O. Box 886  
Harrisburg, PA 17108-0886  
Telephone: (717) 232-1851  
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Everett C. Johnson, Jr. (admitted *Pro Hac Vice*,  
DC No. 358446)  
Brian E. Kowalski (*Pro Hac Vice* pending,  
DC No. 500064)  
Sarah M. Gragert (admitted *Pro Hac vice*,  
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*Counsel for Defendants*

**CERTIFICATE OF SERVICE**

I, Thomas W. Scott, hereby certify that I am serving the foregoing Defendant National Collegiate Athletics Association First Requests for Documents to Plaintiff Joseph V. Paterno on the following by First Class Mail and email:

Thomas J. Weber  
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Harrisburg, PA 17112  
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L. Joseph Loveland  
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Dated: May 21, 2014

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*/s/Thomas W. Scott*

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*Attorney for Defendants*

# **EXHIBIT 2**

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

GEORGE SCOTT PATERNO, as duly appointed representative of	)	
the ESTATE and FAMILY of JOSEPH PATERNO;	)	
RYAN MCCOMBIE, ANTHONY LUBRANO,	)	
AL CLEMENS, and ADAM TALIAFERRO, members of the	)	
Board of Trustees of Pennsylvania State University;	)	
PETER BORDI, TERRY ENGELDER,	)	
SPENCER NILES, and JOHN O'DONNELL,	)	
members of the faculty of Pennsylvania State University;	)	
WILLIAM KENNEY and JOSEPH V. ("JAY") PATERNO,	)	Civil Division
former football coaches at Pennsylvania State University; and	)	
ANTHONY ADAMS, GERALD CADOGAN,	)	Docket No. 2013-
SHAMAR FINNEY, JUSTIN KURPEIKIS,	)	2082
RICHARD GARDNER, JOSH GAINES, PATRICK MAUTI,	)	
ANWAR PHILLIPS, and MICHAEL ROBINSON, former	)	
football players of Pennsylvania State University,	)	
Plaintiffs,	)	
v.	)	
NATIONAL COLLEGIATE ATHLETIC ASSOCIATION	)	
("NCAA"), MARK EMMERT, individually and as President of	)	
the NCAA, and EDWARD RAY, individually and as former	)	
Chairman of the Executive Committee of the NCAA,	)	
Defendants.	)	

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**THE NATIONAL COLLEGIATE ATHLETIC ASSOCIATION'S FIRST REQUESTS  
FOR PRODUCTION OF DOCUMENTS TO PLAINTIFF WILLIAM KENNEY**

Defendant the National Collegiate Athletics Association (the "NCAA"), by and through its counsel, hereby requests, pursuant to Pennsylvania Rule of Civil Procedure No. 4009.11, that Plaintiff William Kenney produce documents in accordance with the Instructions and Definitions set forth herein for inspection and copying at the offices of Latham & Watkins LLP, 555 11th Street NW, Suite 1000, Washington D.C. 2004, within thirty (30) days of service of this request.

## **DEFINITIONS**

As used herein, the words and phrases set forth below shall have the broadest meaning or meanings permitted under Pennsylvania Rule of Civil Procedure. No. 4003.1. Unless defined, all words used in these Requests are to be given their plain and ordinary meaning.

1. “You” or “Your” shall mean William Kenney and all other persons acting on behalf of William Kenney, including, but not limited to, attorneys and their associates, investigators, agents, directors, officers, employees, representatives, and others who may have obtained information for or on behalf of William Kenney.

2. The “NCAA” shall mean the National Collegiate Athletic Association.

3. “Defendants” shall mean the NCAA, Mark Emmert, Edward Ray, and the Pennsylvania State University.

4. “Plaintiffs” shall mean each of the individuals identified in the caption above, any representative of those individuals, and any representatives of the Estate and Family of Joseph Paterno.

5. “All” or “any” shall mean “each and every.”

6. “And” and “or” shall mean either disjunctively or conjunctively as necessary to bring within the scope of discovery request all responses that might otherwise be construed outside of its scope.

7. “Document” or “Documents” is defined to include originals and copies (including all non-identical copies or photocopies) as well as all draft and final versions of, without limitation: (a) All writings of any kind (including the originals and all non-identical copies, whether different from the originals by reason of any notation made on such copies or otherwise), including, without limitation, correspondence, notes, statements, transcripts, books,

diaries, intra-office communications, notations of any sort of conversations or interviews; (b) All graphic representations of any kind, including, without limitation, photographs, charts, graphs, plans, drawings, videos, and recordings; and (c) All electronically generated and/or stored correspondence, memoranda, communications, data compilations, or records of any sort.

8. “Communication(s)” means any act, action, oral speech, written correspondence, contact, expression of words, thoughts, ideas or transmission or exchange of data or other information to another person, whether orally, person-to-person, in a group, by telephone, letter, personal delivery, telex, facsimile, or any other process, electric, electronic or otherwise.

9. “Concerning” shall mean, without limitation, comprising, containing, embodying, referring to, relating to, regarding, alluding to, responding to, in connection with, commenting on, in response to, about, announcing, explaining, discussing, showing, describing, studying, supporting, reflecting, analyzing, or constituting.

10. “Person” shall mean any natural person or any business, legal or governmental entity, or association.

11. “Amended Complaint” shall mean the First Amended Complaint filed in the above-captioned matter on February 5, 2014.

12. “Penn State” shall mean The Pennsylvania State University.

13. “Sandusky” shall mean former Penn State assistant football coach, Gerald Sandusky.

14. “Coach Paterno” shall refer to Joseph Paterno, the decedent represented in this Action by George Scott Paterno, and Joseph Paterno’s Estate.

15. “FSS” shall mean the firm of Freeh Sporkin & Sullivan LLP.

15. The “Frech Report” shall mean the July 12, 2012 Report of the Special Investigative Counsel Regarding the Actions of The Pennsylvania State University Related to the Child Sexual Abuse Committed by Gerald A. Sandusky, prepared by FSS.

16. The “Consent Decree” shall mean the July 23, 2012 Binding Consent Decree Imposed by The National Collegiate Athletic Association and Accepted by The Pennsylvania State University.

17. The “Athletics Integrity Agreement” shall mean the August 2012 Athletics Integrity Agreement Between The National Collegiate Athletic Association and The Big Ten Conference, and The Pennsylvania State University.

### **INSTRUCTIONS**

1. In accordance with the Pennsylvania Rules of Civil Procedure, in producing the requested Documents, furnish all Documents in Your actual or constructive possession, custody, or control including, without limitation, those Documents in the custody of any advisors, attorneys, investigators, agents, associates, representatives, and other person(s) or entities acting or purporting to act on Your behalf.

2. Documents shall be produced in the manner in which they are maintained in the ordinary course of business or shall be organized and labeled with a designation of the request for production to which they respond and produced along with any file folders or other bindings in which such Documents were found.

3. These Requests shall be deemed to be continuing in nature. If at any time additional responsive Documents come into Your possession, custody or control, then the responses to these requests shall be promptly supplemented.

4. Any Document or portion of any Document withheld from production based on a claim of privilege shall be identified by (1) the type of Document, (2) the general subject matter of the Document, (3) the date of the Document, and (4) such other information as is sufficient to identify the Document including the author of the Document, the addressee(s) and any copyee(s) or other recipients of the Document, and, where not apparent, the relationship of the author and the addressee(s) and copyee(s) to each other. The nature of each claim of privilege shall be set forth. Notwithstanding the assertion of any objection, any requested Document that contains non-objectionable information responsive to this request should be produced, but that portion of the Document for which the objection is asserted may be redacted, provided that the redacted portion is identified and described consistently according to the requirements listed herein.

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9. Any Document that cannot be produced in full shall be produced to the fullest extent possible.



10. Each paragraph, subparagraph, clause and word herein should be construed independently and not by reference to any other paragraph, subparagraph, clause or word herein for purposes of limitation.

11. Except as specifically provided herein, words imparting the singular shall include the plural and vice versa, where appropriate.

### **REQUESTS FOR PRODUCTION**

#### **REQUEST NO. 1:**

All Documents Concerning the Consent Decree, including but not limited to any of the sanctions set forth in the Consent Decree, any purported attempt to seek an appeal regarding the Consent Decree, or the Athletics Integrity Agreement.

#### **RESPONSE:**

#### **REQUEST NO. 2:**

All Documents Concerning the Freeh Report.

#### **RESPONSE:**

#### **REQUEST NO. 3:**

All Documents Concerning, and Communications with, Louis Freeh, FSS, Pepper Hamilton LLP, or FSS' current or former principals, representatives and/or employees,

including, without limitation, Documents Concerning the retention of FSS by the Special Investigations Task Force of the Penn State Board of Trustees, the investigation conducted by FSS, the Freeh Report, and Penn State.

**RESPONSE:**

**REQUEST NO. 4:**

All Documents Concerning Mr. Richard Thornburgh or research and preparation for, the drafting of, or the final version of Mr. Thornburgh's February 2013 *Review of the Freeh Report Concerning Joseph Paterno*, including, without limitation, all Communications with Mr. Thornburgh, all Communications regarding the basis for drafting it, compensation, research, drafts, and the final document.

**RESPONSE:**

**REQUEST NO. 5:**

All Documents Concerning King & Spalding's February 2013 *Critique of the Freeh Report: The Rush to Injustice Regarding Joe Paterno*, including, without limitation, all Documents regarding the basis for drafting it, compensation, research, drafts, and the final document.

**RESPONSE:**

**REQUEST NO. 6:**

All Documents Concerning James T. Clemente or the February 2013 *Analysis of the Special Investigative Counsel Report and the Crimes of Gerald A. Sandusky & Education Guide to the Identification and Prevention of Child Sexual Victimization* by James T. Clemente, including all Communications with James T. Clemente.

**RESPONSE:**

**REQUEST NO. 7:**

All Documents Concerning Fred S. Berlin or the February 6, 2013 letter from of the National Institute for the Study, Prevention and Treatment of Sexual Trauma to J. Sedwick Sollers, III, including all Communications with Fred S. Berlin.

**RESPONSE:**

**REQUEST NO. 8:**

From January 1, 2000 to present, All Documents Concerning Sandusky or The Second Mile.

**RESPONSE:**

**REQUEST NO. 9:**

All Documents from January 1, 1996 to present Concerning Sandusky's retirement, interaction or involvement with children, sexual abuse, and/or Penn State privileges and benefits.

**RESPONSE:**

**REQUEST NO. 10:**

All Communications between or among any of the Plaintiffs (including Coach Paterno and George Scott Paterno) and one or more of the following: Sandusky, Graham Spanier, Tim Curley, Gary Schultz, former Penn State assistant coach Michael McQueary, or any other current or former Penn State Trustee.

**RESPONSE:**

**REQUEST NO. 11:**

All Communications with the Pennsylvania Attorney General's Office.

**RESPONSE:**

**REQUEST NO. 12:**

All Documents Concerning (i) institutional control over Penn State's football team, (ii) the level of deference or reverence provided to the Penn State football program, players, or coaches by Penn State students, faculty, staff, alumni, and fans, or (iii) the allegations in Paragraphs 99-101 of the Amended Complaint.

**RESPONSE:**

**REQUEST NO. 13:**

All Documents from January 1, 2000 to the present Concerning Your past and present efforts to secure employment or income as a football coach (whether as a head coach or in a subordinate role) or any other position, including, without limitation, all draft and final job application materials such as cover letters and resumes, and any Communications with the University of Illinois, the University of Wisconsin, Purdue University, Virginia Polytechnic Institute and State University, Florida State University, the University of Massachusetts, North

Carolina State University, Boston College, the University of Arizona, the University of Delaware, Syracuse University, or Western Michigan University, or any NFL franchise, including the New York Giants, Indianapolis Colts, Cleveland Browns, or any other prospective employer.

**RESPONSE:**

**REQUEST NO. 14:**

All Communications Concerning open football coaching positions or Communications with other universities or schools Concerning football coaching employment.

**RESPONSE:**

**REQUEST NO. 15:**

All Communications, contracts, and agreements with a head hunter or other individual who would receive a commission or other money if You obtained employment.

**RESPONSE:**

**REQUEST NO. 16:**

All Communications with a sports agent, sports agency, or other individual or company who is authorized to act on Your behalf in securing contracts or agreements or in obtaining employment, licensing opportunities, or other forms of income or revenue.

**RESPONSE:**

**REQUEST NO. 17:**

All Documents Concerning any efforts by a sports agent, sports agency, or other individual or company who is authorized to act on Your behalf to secure employment, licensing opportunities, or contracts, agreements, or any other arrangements that have the possibility of generating revenue or income for You.

**RESPONSE:**

**REQUEST NO. 18:**

Your Personnel file from any employment you have held from January 1, 2000 to present, including, without limitation, all reviews or evaluations of your performance as a football coach at Penn State.

**RESPONSE:**

**REQUEST NO. 19:**

All Documents Concerning your termination or departure from any employment, including from Penn State, from January 1, 2005 to present.

**RESPONSE:**

**REQUEST NO. 20:**

All Documents Concerning Your contract, salary, or benefits with or provided by Penn State from January 1, 2005 to present.

**RESPONSE:**

**REQUEST NO. 21:**

All Documents discussing the reputation or popularity of, or public support for, You, the Paterno family, Coach Paterno, George Scott Paterno, or Plaintiffs Al Clemens or Joseph V. Paterno.

**RESPONSE:**



**REQUEST NO. 22:**

All Communications, commentary, or other content from Facebook, Twitter, an Internet “blog,” MySpace, Instagram, or any other social media source created, sent, received, forwarded, or otherwise transmitted by You Concerning this litigation, the allegations contained in the Amended Complaint, the Freeh Report, the Consent Decree, the Athletics Integrity Agreement, Coach Paterno, Sandusky, the NCAA, Edward Ray, Mark Emmert, or Rodney Erickson.

**RESPONSE:**

**REQUEST NO. 23:**

All text messages You sent or received Concerning this litigation, the allegations contained in the Amended Complaint, the Freeh Report, the Consent Decree, the Athletics Integrity Agreement, Sandusky, the NCAA, Edward Ray, Mark Emmert, or Rodney Erickson.

**RESPONSE:**

**REQUEST NO. 24:**

All Communications with a public relations or media consultant or specialist.

**RESPONSE:**

**REQUEST NO. 25:**

Your pay-stubs, federal and state income tax returns, and any statement or record of other income You received from January 1, 2006 to the present.

**RESPONSE:**

**REQUEST NO. 26:**

Any other Documents Concerning Your claim of pecuniary or financial loss from January 1, 2006 to the present.

**RESPONSE:**

**REQUEST NO. 27:**

All Documents Concerning the damages You are seeking in this action from the Defendants, including all Documents Concerning Your claims for emotional distress, mental anguish, and humiliation.

**RESPONSE:**

**REQUEST NO. 28:**

All non-privileged Communications between or among any of the Plaintiffs (including Coach Paterno and George Scott Paterno) Concerning this lawsuit, or any and all facts or circumstances related to the allegations in the Amended Complaint, including the Consent Decree, the Freeh Report, the reputation of any Plaintiff (including Coach Paterno and George Scott Paterno), Coach Paterno's termination or departure from Penn State, Sandusky, or Rodney Erickson.

**RESPONSE:**

**REQUEST NO. 29:**

All Communications with any current or former Penn State football coaches or players, or Penn State staff or faculty not party to this lawsuit Concerning this litigation, the allegations contained in the Amended Complaint, the Freeh Report, the Consent Decree, the Athletics Integrity Agreement, Coach Paterno, Sandusky, or Rodney Erickson.

**RESPONSE:**

**REQUEST NO. 30:**

All Documents that you believe support, confirm, rebut, or contradict any fact or conclusion in the Amended Complaint, including all Documents referred to or relied upon in the Amended Complaint.

**RESPONSE:**

Respectfully submitted,

*/s/Thomas W. Scott*

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Thomas W. Scott (No. 15681)  
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Everett C. Johnson, Jr. (admitted *Pro Hac Vice*,  
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*Counsel for Defendants*

## **CERTIFICATE OF SERVICE**

I, Thomas W. Scott, hereby certify that I am serving the foregoing Defendant National Collegiate Athletics Association First Requests for Documents to Plaintiff William Kenney on the following by First Class Mail and email:

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Harrisburg, PA 17112  
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Wick Sollers  
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Dated: May 21, 2014

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*/s/Thomas W. Scott*

---

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*Attorney for Defendants*

# **EXHIBIT 3**

IN THE COURT OF COMMON PLEAS OF CENTRE COUNTY, PENNSYLVANIA

GEORGE SCOTT PATERNO,  
as duly appointed representative of the  
ESTATE and FAMILY of JOSEPH PATERNO;

RYAN McCOMBIE, ANTHONY LUBRANO,  
AL CLEMENS, and ADAM TALIAFERRO, members of the  
Board of Trustees of Pennsylvania State University;

PETER BORDI, TERRY ENGELDER, SPENCER NILES,  
and JOHN O'DONNELL, members of  
the faculty of Pennsylvania State University;

WILLIAM KENNEY and JOSEPH V. ("JAY") PATERNO,  
former football coaches at Pennsylvania State University; and

ANTHONY ADAMS, GERALD CADOGAN, SHAMAR  
FINNEY, JUSTIN KURPEIKIS, RICHARD GARDNER,  
JOSH GAINES, PATRICK MAUTI, ANWAR PHILLIPS,  
and MICHAEL ROBINSON, former football players of  
Pennsylvania State University,

Plaintiffs,

v.

NATIONAL COLLEGIATE ATHLETIC ASSOCIATION  
("NCAA"),

MARK EMMERT, individually and  
as President of the NCAA, and

EDWARD RAY, individually and as former Chairman  
of the Executive Committee of the NCAA,

Defendants.

and

THE PENNSYLVANIA STATE UNIVERSITY,

Nominal Defendant.

Civil Division

Docket No. 2013-2082

**OBJECTIONS AND RESPONSES BY JOSEPH V. PATERNO TO THE FIRST  
REQUESTS FOR PRODUCTION OF DOCUMENTS BY NATIONAL COLLEGIATE  
ATHLETIC ASSOCIATION**

Joseph V. Paterno ("Paterno"), by and through his counsel, submits the following as his objections and responses to the first requests for production of documents by defendant the National Collegiate Athletic Association (the "NCAA") in this matter.

### **GENERAL OBJECTIONS**

1. Paterno objects to these Requests to the extent the Definitions and Instructions purport to impose obligations greater than the requirements of the Pennsylvania Rules of Civil Procedure.
2. Paterno objects to these Requests to the extent these Requests seek information that is protected from disclosure by the attorney-client privilege, the work product doctrine, or any other applicable legal privilege. Paterno will produce non-privileged documents responsive to these Requests and will provide a log of privileged documents withheld, subject to agreement with counsel for the NCAA as to mutual provision of privilege logs for any documents withheld on grounds of privilege.
3. Paterno objects to these Requests to the extent that they seek information from someone other than Paterno.
4. Paterno objects to the Instructions in these Requests to the extent that they call for production of documents and information in the constructive possession, custody, or control of Paterno, but to which Paterno lacks actual access. Paterno lacks access to files containing documents and information potentially responsive to the requests, to which Paterno previously had access during his time as an assistant football coach at The Pennsylvania State University.



5. Paterno objects to the direction in the Instructions that the time period covered by the Requests is not limited, but continues from January 1, 2011 through the present. Paterno will produce responses up to the date of the filing of this action on May 30, 2013.

**REQUEST NO. 1:**

All Documents Concerning the Consent Decree, including but not limited to any of the sanctions set forth in the Consent Decree, any purported attempt to seek an appeal regarding the Consent Decree, or the Athletics Integrity Agreement.

**RESPONSE:**

Paterno will produce non-privileged documents, if any, responsive to this Request.

**REQUEST NO. 2:**

All Documents Concerning the Freeh Report.

**RESPONSE:**

Paterno will produce non-privileged documents, if any, responsive to this Request.

**REQUEST NO. 3:**

All Documents Concerning, and Communications with, Louis Freeh, FSS, Pepper Hamilton LLP, or FSS' current or former principals, representatives and/or employees, including, without limitation, Documents Concerning the retention of FSS by the Special Investigations Task Force of the Penn State Board of Trustees, the investigation conducted by FSS, the Freeh Report, and Penn State.

**RESPONSE:**

Paterno will produce non-privileged documents, if any, responsive to this Request.

**REQUEST NO. 4:**

All Documents Concerning Mr. Richard Thornburgh or research and preparation for, the drafting of, or the final version of Mr. Thornburgh's February 2013 *Review of the Freeh Report Concerning Joseph Paterno*, including, without limitation, all Communications with Mr. Thornburgh, all Communications regarding the basis for drafting it, compensation, research, drafts, and the final document.

**RESPONSE:**

Paterno objects to this Request to the extent it calls for production of documents protected by attorney work product or the attorney-client privilege. Subject to the foregoing objections, Paterno will produce non-privileged documents, if any, responsive to this Request.

**REQUEST NO. 5:**

All Documents Concerning King & Spalding's February 2013 *Critique of the Freeh Report: The Rush to Injustice Regarding Joe Paterno*, including, without limitation, all Documents regarding the basis for drafting it, compensation, research, drafts, and the final document.

**RESPONSE:**

Paterno objects to this Request to the extent it calls for production of documents protected by attorney work product or the attorney-client privilege. Subject to the foregoing objections, Paterno will produce non-privileged documents, if any, responsive to this Request.

**REQUEST NO. 6:**

All Documents Concerning James T. Clemente or the February 2013 *Analysis of the Special Investigative Counsel Report and the Crimes of Gerald A. Sandusky & Education Guide to the Identification and Prevention of Child Sexual Victimization* by James T. Clemente, including all Communications with James T. Clemente.

**RESPONSE:**

Paterno objects to this Request to the extent it calls for production of documents protected by attorney work product or the attorney-client privilege. Subject to the foregoing objections, Paterno will produce non-privileged documents, if any, responsive to this Request.

**REQUEST NO. 7:**

All Documents Concerning Fred S. Berlin or the February 6, 2013 letter from of the National Institute for the Study, Prevention and Treatment of Sexual Trauma to J. Sedwick Sollers, III, including all Communications with Fred S. Berlin.

**RESPONSE:**

Paterno objects to this Request to the extent it calls for production of documents protected by attorney work product or the attorney-client privilege. Subject to the foregoing objections, Paterno will produce non-privileged documents, if any, responsive to this Request.

**REQUEST NO. 8:**

From January 1, 2000 to present, All Documents Concerning Sandusky or The Second Mile.

**RESPONSE:**

Paterno will produce non-privileged documents, if any, responsive to this Request.

**REQUEST NO. 9:**

All Documents from January 1, 1996 to present Concerning Sandusky's retirement, interaction or involvement with children, sexual abuse, and/or Penn State privileges and benefits.

**RESPONSE:**

Paterno will produce non-privileged documents, if any, responsive to this Request.

**REQUEST NO. 10:**

All Communications between or among any of the Plaintiffs (including Coach Paterno and George Paterno) and one or more of the following: Sandusky, Graham Spanier, Tim Curley, Gary Schultz, former Penn State assistant coach Michael McQueary, or any other current or former Penn State Trustee.

**RESPONSE:**

Paterno objects to this Request because it is overly broad, unduly burdensome, and calls for production of documents and information not relevant to the pending action. Paterno further objects to the definition of "Plaintiff" to the extent it purports to include "George Paterno." Subject to the foregoing objections, Paterno will produce non-privileged documents, if any, responsive to this Request that relate to the investigation of Jerry Sandusky, actions by the

NCAA and Penn State following the indictment in November 2011, and the effects of those actions.

**REQUEST NO. 11:**

All Communications with the Pennsylvania Attorney General's Office.

**RESPONSE:**

Paterno objects to this Request because it is overly broad, unduly burdensome, and calls for production of documents and information not relevant to the pending action. Subject to the foregoing objections, Paterno will produce non-privileged documents, if any, responsive to this Request that relate to the investigation of Jerry Sandusky, actions by the NCAA and Penn State following the indictment in November 2011, and the effects of those actions.

**REQUEST NO. 12:**

All Documents Concerning (i) institutional control over Penn State's football team, (ii) the level of deference or reverence provided to the Penn State football program, players, or coaches by Penn State students, faculty, staff, alumni, and fans, or (iii) the allegations in Paragraphs 99-101 of the Amended Complaint.

**RESPONSE:**

Paterno objects to this Request because it is vague, ambiguous, and overly broad. The terms used in this Request and in the referenced paragraphs from the Amended Complaint come from statements by Defendants, including the Consent Decree, which adopted and incorporated them from the Freeh Report. Subject to the foregoing objections, and based upon further refinement of these terms, Paterno will produce non-privileged responsive documents, if any.

**REQUEST NO. 13:**

All Documents from January 1, 2000 to the present Concerning Your past and present efforts to secure employment or income as a football coach (whether as a head coach or in a subordinate role), media commentator, sports columnist, or any other position, including, without limitation, all draft and final job application materials such as cover letters and resumes, and any Communications with ESPN, CBS Sports, Fox Sports, the University of Colorado, Boston

College, the University of Connecticut, James Madison University, or any other prospective employer.

**RESPONSE:**

Paterno objects to this Request because it is vague, overly broad, and unduly burdensome. Subject to the foregoing objection, Paterno will produce non-privileged responsive documents, if any, from January 1, 2011 to the present.

**REQUEST NO. 14:**

All Communications Concerning open football coaching positions or Communications with other universities or schools Concerning football coaching employment.

**RESPONSE:**

Paterno will produce non-privileged documents, if any, responsive to this Request.

**REQUEST NO. 15:**

All Communications, contracts, and agreements with a head hunter or other individual who would receive a commission or other money if You obtained employment.

**RESPONSE:**

Paterno will produce non-privileged documents, if any, responsive to this Request.

**REQUEST NO. 16:**

All Communications with a sports agent, sports agency, or other individual or company who is authorized to act on Your behalf in securing contracts or agreements or in obtaining employment, licensing opportunities, or other forms of income or revenue.

**RESPONSE:**

Paterno objects to this Request to the extent it calls for production of documents protected by attorney work product or the attorney-client privilege. Subject to the foregoing objection, Paterno will produce non-privileged documents, if any, responsive to this Request.

**REQUEST NO. 17:**

All Documents Concerning any efforts by a sports agent, sports agency, or other individual or company who is authorized to act on Your behalf to secure employment, licensing opportunities, or contracts, agreements, or any other arrangements that have the possibility of generating revenue or income for You.

**RESPONSE:**

Paterno objects to this Request to the extent it calls for production of documents protected by attorney work product or the attorney-client privilege. Subject to the foregoing objection, Paterno will produce non-privileged documents, if any, responsive to this Request.

**REQUEST NO. 18:**

Your Personnel file from any employment you have held from January 1, 2000 to present, including without limitation, all reviews or evaluations of your performance as a football coach at Penn State.

**RESPONSE:**

Paterno will produce non-privileged documents, if any, responsive to this Request.

**REQUEST NO. 19:**

All Documents Concerning your termination or departure from any employment, including from Penn State, from January 1, 2005 to present.

**RESPONSE:**

Paterno will produce non-privileged documents, if any, responsive to this Request.

**REQUEST NO. 20:**

All Documents Concerning Your contract, salary, or benefits with or provided by Penn State from January 1, 2005 to present.

**RESPONSE:**

Paterno will produce non-privileged documents, if any, responsive to this Request.

**REQUEST NO. 21:**

All Documents Concerning Your evaluation or consideration of whether to run for public office or withdraw from a public office election race.

**RESPONSE:**

Paterno objects to this request on the grounds that it is vague and overly broad and calls for production of documents and information not relevant to the pending action. Subject to the foregoing objections, Paterno will produce non-privileged documents, if any, responsive to this Request.

**REQUEST NO. 22:**

All Documents Concerning any polls or surveys You conducted, were conducted on Your behalf, or pertained to You.

**RESPONSE:**

Paterno objects to this Request on the grounds that it is vague, overly broad, and calls for production of documents and information not relevant to the pending action. Paterno also objects to this Request to the extent it calls for production of documents protected by attorney work product or attorney-client privilege. Subject to the foregoing objections, Paterno will produce non-privileged documents, if any, responsive to this Request.

**REQUEST NO. 23:**

All Documents discussing the reputation or popularity of, or public support for, You, the Paterno family, Coach Paterno, George Scott Paterno, or Plaintiffs Al Clemens or William Kenney.

**RESPONSE:**

Paterno objects to this Request on the grounds that it is vague and overly broad. Paterno also objects to this Request to the extent it calls for production of documents protected by attorney work product or attorney-client privilege. Subject to the foregoing objections, Paterno will produce non-privileged documents, if any, responsive to this Request.

**REQUEST NO. 24:**

Invitations, contracts, agendas, speeches, awards, or information about payment received for any event in which You, Coach Paterno, Sue Paterno, or any other member of the Paterno family, was invited to speak or attend as a celebrity guest or honoree from January 1, 2008 to present.

**RESPONSE:**

Paterno objects to this Request because it is vague, overly broad, unduly burdensome, and calls for production of documents and information not relevant to the pending action. Subject to the foregoing objections, Paterno will produce non-privileged documents, if any, responsive to this Request.

**REQUEST NO. 25:**

All Documents Concerning Your upcoming book, Paterno Legacy, including without limitation, all drafts, public statements, and Communications.

**RESPONSE:**

Paterno objects to this Request because it is vague, overly broad, unduly burdensome, and calls for production of documents and information not relevant to the pending action. Paterno also objects to this Request to the extent it calls for production of documents subject to confidentiality agreements with third parties. Paterno further objects to this Request to the extent it calls for production of documents protected by attorney work product or the attorney-client privilege. Subject to the foregoing objections, Paterno will produce a copy of the upcoming book when it is released to the public by the publisher.

**REQUEST NO. 26:**

All Communications, commentary, or other content from Facebook, Twitter, an Internet "blog," MySpace, Instagram, or any other social media source created, sent, received, forwarded, or otherwise transmitted by You Concerning this litigation, the allegations contained in the Amended Complaint, the Freeh Report, the Consent Decree, the Athletics Integrity Agreement, Coach Paterno, Sandusky, the NCAA, Edward Ray, Mark Emmert, or Rodney Erickson.



**RESPONSE:**

Paterno will produce non-privileged documents, if any, responsive to this Request.

**REQUEST NO. 27:**

All Documents Concerning your termination or departure from any employment, including from Penn State, from January 1, 2005 to present.

**RESPONSE:**

Paterno will produce non-privileged documents, if any, responsive to this Request.

**REQUEST NO. 28:**

All Documents Concerning Your contract, salary, or benefits with or provided by Penn State from January 1, 2005 to present.

**RESPONSE:**

Paterno will produce non-privileged documents, if any, responsive to this Request.

**REQUEST NO. 24 [sic] [recte 29]:**

Your pay-stubs, federal and state income tax returns, and any statement or record of other income You received from January 1, 2006 to the present.

**RESPONSE:**

Paterno objects to this Request because it is vague, overly broad, and unduly burdensome. Paterno objects to the Request for tax returns on grounds they are not relevant to his claims in this pending action. Subject to the foregoing objections, Paterno will produce non-privileged documents, if any, sufficient to show income received from January 1, 2011 to the present.

**REQUEST NO. 25 [sic] [recte 30]:**

Any other Documents Concerning Your claim of pecuniary or financial loss from January 1, 2006 to the present.

**RESPONSE:**

Paterno objects to this Request on grounds that he currently lacks access to certain files that may contain responsive documents and information. Subject to the foregoing objection, Paterno will produce non-privileged documents, if any, sufficient to show income lost from January 1, 2011 to the present.

**REQUEST NO. 26 [sic] [recte 31]:**

All Documents Concerning the damages You are seeking in this action from the Defendants, including all Documents Concerning Your claims for emotional distress, mental anguish, and humiliation.

**RESPONSE:**

Paterno objects to this Request on grounds that he currently lacks access to certain files that may contain responsive documents and information. Subject to the foregoing objection, Paterno will produce non-privileged documents, if any, responsive to this Request.

**REQUEST NO. 27 [sic] [recte 32]:**

All non-privileged Communications between or among any of the Plaintiffs (including Coach Paterno and George Scott Paterno) Concerning this lawsuit, or any and all facts or circumstances related to the allegations in the Amended Complaint, including the Consent Decree, the Freeh Report, the reputation of any Plaintiff (including Coach Paterno and George Scott Paterno), Coach Paterno's termination or departure from Penn State, Sandusky, or Rodney Erickson.

**RESPONSE:**

Paterno objects to this Request because it is vague, overly broad, and unduly burdensome. Paterno further objects to the definition of "Plaintiff" to the extent it purports to include "George Scott Paterno." Subject to the foregoing objections, Paterno will produce non-privileged documents, if any, responsive to this Request.

**REQUEST NO. 28 [sic] [recte 33]:**

All Communications with any current or former Penn State football coaches or players, or Penn State staff or faculty not party to this lawsuit Concerning this litigation, the allegations contained in the Amended Complaint, the Freeh Report, the Consent Decree, the Athletics Integrity Agreement, Coach Paterno, Sandusky, or Rodney Erickson.

**RESPONSE:**

Paterno objects to this Request because it is overly broad and unduly burdensome. Subject to the foregoing objections, Paterno will produce non-privileged documents, if any, that relate to the investigation of Jerry Sandusky, actions by the NCAA and Penn State following his indictment in November 2011, and the effects of those actions.

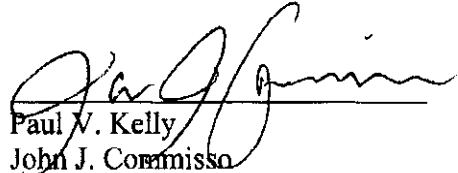
**REQUEST NO. 29 [sic] [recte 34]:**

All Documents that You believe support, confirm, rebut, or contradict any fact or conclusion in the Amended Complaint, including all Documents referred to or relied upon in the Amended Complaint.

**RESPONSE:**

Paterno objects to this Request on grounds that he currently lacks access to certain files that may contain responsive documents and information. Subject to the foregoing objection, Paterno will produce non-privileged documents, if any, responsive to this Request.

Dated July 11, 2014.

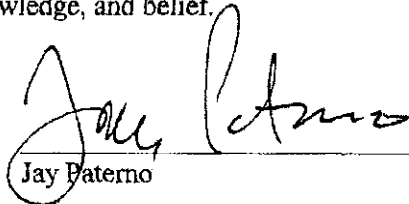


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*Counsel for Plaintiff Jay Paterno.*

**VERIFICATION**

I, Jay Paterno, have reviewed the foregoing Objections and Responses to the First Requests for Production of Documents by National Collegiate Athletic Association, and they are true and correct to the best of my information, knowledge, and belief.

  
Jay Paterno

Dated: July 11, 2014

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the **OBJECTIONS AND RESPONSES BY JAY PATERNO, TO THE FIRST REQUESTS FOR PRODUCTION OF DOCUMENTS BY NATIONAL COLLEGIATE ATHLETIC ASSOCIATION** was served this 11th day of July, 2014 by first class mail and email on the following:

Thomas W. Scott  
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Dated: July 11, 2014

  
\_\_\_\_\_  
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*Counsel for Plaintiff Jay Paterno.*

4824-8757-2764, v. 1

# **EXHIBIT 4**



IN THE COURT OF COMMON PLEAS OF CENTRE COUNTY, PENNSYLVANIA

GEORGE SCOTT PATERNO, )  
as duly appointed representative of the )  
ESTATE and FAMILY of JOSEPH PATERNO; )  
)  
RYAN McCOMBIE, ANTHONY LUBRANO, ) Civil Division  
AL CLEMENS, and ADAM TALIAFERRO, members of the )  
Board of Trustees of Pennsylvania State University; ) Docket No. 2013-2082  
)  
PETER BORDI, TERRY ENGELDER, SPENCER NILES, )  
and JOHN O'DONNELL, members of )  
the faculty of Pennsylvania State University; )  
)  
WILLIAM KENNEY and JOSEPH V. ("JAY") PATERNO, )  
former football coaches at Pennsylvania State University; and )  
)  
ANTHONY ADAMS, GERALD CADOGAN, SHAMAR )  
FINNEY, JUSTIN KURPEIKIS, RICHARD GARDNER, )  
JOSH GAINES, PATRICK MAUTI, ANWAR PHILLIPS, )  
and MICHAEL ROBINSON, former football players of )  
Pennsylvania State University, )  
)  
Plaintiffs, )  
)  
v. )  
)  
NATIONAL COLLEGIATE ATHLETIC ASSOCIATION )  
("NCAA"), )  
)  
MARK EMMERT, individually and )  
as President of the NCAA, and )  
)  
EDWARD RAY, individually and as former Chairman )  
of the Executive Committee of the NCAA, )  
)  
Defendants. )  
)  
and )  
)  
THE PENNSYLVANIA STATE UNIVERSITY, )  
)  
Nominal Defendant. )

**OBJECTIONS AND RESPONSES BY WILLIAM KENNEY TO THE FIRST REQUESTS  
FOR PRODUCTION OF DOCUMENTS BY NATIONAL COLLEGIATE ATHLETIC  
ASSOCIATION**

William Kenney ("Kenney"), by and through his counsel, submits the following as his objections and response to the first requests for production of documents by defendant the National Collegiate Athletic Association (the "NCAA") in the above-captioned matter.

### **GENERAL OBJECTIONS**

1. Kenney objects to these Requests to the extent the Definitions and Instructions purport to impose obligations greater than the requirements of the Pennsylvania Rules of Civil Procedure.
2. Kenney objects to these Requests to the extent these Requests seek information that is protected from disclosure by the attorney-client privilege, the work product doctrine, or any other applicable legal privilege. Kenney will produce non-privileged documents responsive to these Requests and will provide a log of privileged documents withheld, subject to agreement with counsel for the NCAA as to mutual provision of privilege logs for any documents withheld on grounds of privilege.
3. Kenney objects to these Requests to the extent that they seek information from someone other than Kenney.
4. Kenney objects to the Instructions in these Requests to the extent that they call for production of documents and information in the constructive possession, custody, or control of Kenney, but to which Kenney lacks actual access. Kenney lacks access to files containing documents and information potentially responsive to the requests, to which Kenney previously had access during his time as an assistant football coach at The Pennsylvania State University.

5. Kenney objects to the direction in the Instructions that the time period covered by the Requests is not limited, but continues from January 1, 2011 through the present. Kenney will produce responses up to the date of the filing this action on May 30, 2013.

**REQUEST NO. 1:**

All Documents Concerning the Consent Decree, including but not limited to any of the sanctions set forth in the Consent Decree, any purported attempt to seek an appeal regarding the Consent Decree, or the Athletics Integrity Agreement.

**RESPONSE:**

Kenney will produce non-privileged documents, if any, responsive to this Request.

**REQUEST NO. 2:**

All Documents Concerning the Freeh Report.

**RESPONSE:**

Kenney will produce non-privileged documents, if any, responsive to this Request.

**REQUEST NO. 3:**

All Documents Concerning, and Communications with, Louis Freeh, FSS, Pepper Hamilton LLP, or FSS' current or former principals, representatives and/or employees, including, without limitation, Documents Concerning the retention of FSS by the Special Investigations Task Force of the Penn State Board of Trustees, the investigation conducted by FSS, the Freeh Report, and Penn State.

**RESPONSE:**

Kenney will produce non-privileged documents, if any, responsive to this Request.

**REQUEST NO. 4:**

All Documents Concerning Mr. Richard Thornburgh or research and preparation for, the drafting of, or the final version of Mr. Thornburgh's February 2013 *Review of the Freeh Report Concerning Joseph Paterno*, including, without limitation, all Communications with Mr. Thornburgh, all Communications regarding the basis for drafting it, compensation, research, drafts, and the final document.

**RESPONSE:**

Kenney objects to this Request to the extent it calls for production of documents protected by attorney work product or the attorney-client privilege. Subject to the foregoing objections, Kenney will produce non-privileged documents, if any, responsive to this Request.

**REQUEST NO. 5:**

All Documents Concerning King & Spalding's February 2013 *Critique of the Freeh Report: The Rush to Injustice Regarding Joe Paterno*, including, without limitation, all Documents regarding the basis for drafting it, compensation, research, drafts, and the final document.

**RESPONSE:**

Kenney objects to this Request to the extent it calls for production of documents protected by attorney work product or the attorney-client privilege. Subject to the foregoing objections, Kenney will produce non-privileged documents, if any, responsive to this Request.

**REQUEST NO. 6:**

All Documents Concerning James T. Clemente or the February 2013 *Analysis of the Special Investigative Counsel Report and the Crimes of Gerald A. Sandusky & Education Guide to the Identification and Prevention of Child Sexual Victimization* by James T. Clemente, including all Communications with James T. Clemente.

**RESPONSE:**

Kenney objects to this Request to the extent it calls for production of documents protected by attorney work product or the attorney-client privilege. Subject to the foregoing objections, Kenney will produce non-privileged documents, if any, responsive to this Request.

**REQUEST NO. 7:**

All Documents Concerning Fred S. Berlin or the February 6, 2013 letter from of the National Institute for the Study, Prevention and Treatment of Sexual Trauma to J. Sedwick Sollers, III, including all Communications with Fred S. Berlin.

**RESPONSE:**

Kenney objects to this Request to the extent it calls for production of documents protected by attorney work product or the attorney-client privilege. Subject to the foregoing objections, Kenney will produce non-privileged documents, if any, responsive to this Request.

**REQUEST NO. 8:**

From January 1, 2000 to present, All Documents Concerning Sandusky or The Second Mile.

**RESPONSE:**

Kenney will produce non-privileged documents, if any, responsive to this Request.

**REQUEST NO. 9:**

All Documents from January 1, 1996 to present Concerning Sandusky's retirement, interaction or involvement with children, sexual abuse, and/or Penn State privileges and benefits.

**RESPONSE:**

Kenney will produce non-privileged documents, if any, responsive to this Request.

**REQUEST NO. 10:**

All Communications between or among any of the Plaintiffs (including Coach Paterno and George Paterno) and one or more of the following: Sandusky, Graham Spanier, Tim Curley, Gary Schultz, former Penn State assistant coach Michael McQueary, or any other current or former Penn State Trustee.

**RESPONSE:**

Kenney objects to this Request because it is overly broad, unduly burdensome, and calls for production of documents and information not relevant to the pending action. Kenney further objects to the definition of "Plaintiff" to the extent it purports to include "George Paterno." Subject to the foregoing objections, Kenney will produce non-privileged documents, in any, responsive to this Request that relate to the investigation of Jerry Sandusky, actions by the

NCAA and Penn State following this indictment in November 2011, and the effects of those actions.

**REQUEST NO. 11:**

All Communications with the Pennsylvania Attorney General's Office.

**RESPONSE:**

Kenney objects to this Request because it is overly broad, unduly burdensome, and calls for production of documents and information not relevant to the pending action. Subject to the foregoing objections, Kenney will produce non-privileged documents, in any, responsive to this Request that relate to the investigation of Jerry Sandusky, actions by the NCAA and Penn State following this indictment in November 2011, and the effects of those actions.

**REQUEST NO. 12:**

All Documents Concerning (i) institutional control over Penn State's football team, (ii) the level of deference or reverence provided to the Penn State football program, players, or coaches by Penn State students, faculty, staff, alumni, and fans, or (iii) the allegations in Paragraphs 99-101 of the Amended Complaint.

**RESPONSE:**

Kenney objects to this Request on the grounds that it is vague, ambiguous, and overly broad. The terms used in this Request and in the referenced paragraphs from the Amended Complaint come from statements by Defendants, including the Consent Decree, which adopted and incorporated them from the Freeh Report. Subject to the foregoing objections, and based upon further refinement of these terms, Kenney will produce non-privileged documents, if any, responsive to this Request.

**REQUEST NO. 13:**

All Documents from January 1, 2000 to the present Concerning Your past and present efforts to secure employment or income as a football coach (whether as a head coach or in a subordinate role), or any other position, including, without limitation, all draft and final job

application materials such as cover letters and resumes, and any Communications with the University of Illinois, the University of Wisconsin, Purdue University, Virginia Polytechnic Institute and State University, Florida State University, the University of Massachusetts, North Carolina State University, Boston College, the University of Arizona, the University of Delaware, Syracuse University, or Western Michigan University, or any NFL franchise, including the New York Giants, Indianapolis Colts, Cleveland Browns, or any other prospective employer.

**RESPONSE:**

Kenney objects to this Request because it is vague, overbroad, and unduly burdensome.

Subject to the foregoing objections, Kenney will produce non-privileged responsive documents, if any, from January 1, 2011 to the present.

**REQUEST NO. 14:**

All Communications Concerning open football coaching positions or Communications with other universities or schools Concerning football coaching employment.

**RESPONSE:**

Kenney will produce non-privileged documents, if any, responsive to this Request.

**REQUEST NO. 15:**

All Communications, contracts, and agreements with a head hunter or other individual who would receive a commission or other money if You obtained employment.

**RESPONSE:**

Kenney will produce non-privileged documents, if any, responsive to this Request.

**REQUEST NO. 16:**

All Communications with a sports agent, sports agency, or other individual or company who is authorized to act on Your behalf in securing contracts or agreements or in obtaining employment, licensing opportunities, or other forms of income or revenue.

**RESPONSE:**

Kenney objects to this Request to the extent it calls for production of documents protected by attorney work product or the attorney-client privilege. Subject to the foregoing objection, Kenney will produce non-privileged documents, if any, responsive to this Request.

**REQUEST NO. 17:**

All Documents Concerning any efforts by a sports agent, sports agency, or other individual or company who is authorized to act on Your behalf to secure employment, licensing opportunities, or contracts, agreements, or any other arrangements that have the possibility of generating revenue or income for You.

**RESPONSE:**

Kenney objects to this Request to the extent it calls for production of documents protected by attorney work product or the attorney-client privilege. Subject to the foregoing objection, Kenney will produce non-privileged documents, if any, responsive to this Request.

**REQUEST NO. 18:**

Your Personnel file from any employment you have held from January 1, 2000 to present, including without limitation, all reviews or evaluations of your performance as a football coach at Penn State.

**RESPONSE:**

Kenney will produce non-privileged documents, if any, responsive to this Request.

**REQUEST NO. 19:**

All Documents Concerning your termination or departure from any employment, including from Penn State, from January 1, 2005 to present.

**RESPONSE:**

Kenney will produce non-privileged documents, if any, responsive to this Request.

**REQUEST NO. 20:**

All Documents Concerning Your contract, salary, or benefits with or provided by Penn State from January 1, 2005 to present.



**RESPONSE:**

Kenney will produce non-privileged documents, if any, responsive to this Request.

**REQUEST NO. 21:**

All Documents discussing the reputation or popularity of, or public support for, You, the Paterno family, Coach Paterno, George Scott Paterno, or Plaintiffs Al Clemens or Joseph V. Paterno.

**RESPONSE:**

Kenney objects to this request on grounds that it is vague and overly broad. Kenney also objects to this Request to the extent it calls for production of documents protected by attorney work product or the attorney-client privilege. Subject to the foregoing objections, Kenney will produce non-privileged documents, if any, responsive to this Request.

**REQUEST NO. 22:**

All Communications, commentary, or other content from Facebook, Twitter, an Internet "blog," MySpace, Instagram, or any other social media source created, sent, received, forwarded, or otherwise transmitted by You Concerning this litigation, the allegations contained in the Amended Complaint, the Freeh Report, the Consent Decree, the Athletics Integrity Agreement, Coach Paterno, Sandusky, the NCAA, Edward Ray, Mark Emmert, or Rodney Erickson.

**RESPONSE:**

Kenney will produce non-privileged documents, if any, responsive to this Request.

**REQUEST NO. 23:**

All text messages You sent or received Concerning this litigation, the allegations contained in the Amended Complaint, the Freeh Report, the Consent Decree, the Athletics Integrity Agreement, Sandusky, the NCAA, Edward Ray, Mark Emmert, or Rodney Erickson.

**RESPONSE:**

Kenney objects to this Request to the extent it calls for production of documents protected by attorney work product or the attorney-client privilege. Subject to the foregoing objection, Kenney will produce non-privileged documents, if any, responsive to this Request.

**REQUEST NO. 24:**

All Communications with a public relations or media consultant or specialist.

**RESPONSE:**

Kenney objects to this Request because it is vague, overly broad, unduly burdensome, and calls for production of information not relevant to the subject matter of this litigation. Kenney also objects to this Request to the extent it calls for documents protected by attorney-client privilege and attorney work product. Subject to the foregoing objections, Kenney will produce non-privileged documents, if any, responsive to this Request.

**REQUEST NO. 25:**

Your pay-stubs, federal and state income tax returns, and any statement or record of other income You received from January 1, 2006 to the present.

**RESPONSE:**

Kenney objects to this Request because it is vague, overly broad, and unduly burdensome. Kenney objects to the Request for tax returns on grounds they are not relevant to his claims in this pending action. Subject to the foregoing objections, Kenney will produce non-privileged documents, if any, sufficient to show income received from January 1, 2011 to the present.

**REQUEST NO. 26:**

Any other Documents Concerning Your claim of pecuniary or financial loss from January 1, 2006 to the present.

**RESPONSE:**

Kenney objects to this Request on grounds that he currently lacks access to certain files that may contain responsive documents and information. Subject to the foregoing objection,

Kenney will produce non-privileged documents, if any, sufficient to show income lost from January 1, 2011 to the present.

**REQUEST NO. 27:**

All Documents Concerning the damages You are seeking in this action from the Defendants, including all Documents Concerning Your claims for emotional distress, mental anguish, and humiliation.

**RESPONSE:**

Kenney objects to this Request on grounds that he currently lacks access to files that may contain responsive documents and information. Subject to the foregoing objection, Kenney will produce non-privileged documents, if any, responsive to this Request.

**REQUEST NO. 28:**

All non-privileged Communications between or among any of the Plaintiffs (including Coach Paterno and George Scott Paterno) Concerning this lawsuit, or any and all facts or circumstances related to the allegations in the Amended Complaint, including the Consent Decree, the Freeh Report, the reputation of any Plaintiff (including Coach Paterno and George Scott Paterno), Coach Paterno's termination or departure from Penn State, Sandusky, or Rodney Erickson.

**RESPONSE:**

Kenney objects to this Request because it is vague, overly broad, and unduly burdensome. Kenney further objects to the definition of "Plaintiff" to the extent it purports to include "George Scott Paterno." Subject to the foregoing objections, Kenney will produce non-privileged documents, if any, responsive to this Request.

**REQUEST NO. 29:**

All Communications with any current or former Penn State football coaches or players, or Penn State staff or faculty not party to this lawsuit Concerning this litigation, the allegations contained in the Amended Complaint, the Freeh Report, the Consent Decree, the Athletics Integrity Agreement, Coach Paterno, Sandusky, or Rodney Erickson.

**RESPONSE:**

Kenney objects to this Request because it is overly broad and unduly burdensome. Subject to the foregoing objections, Kenney will produce responsive, non-privileged documents, if any, that relate to the investigation of Jerry Sandusky, actions by the NCAA and Penn State following his indictment in November 2011, and the effects of those actions.

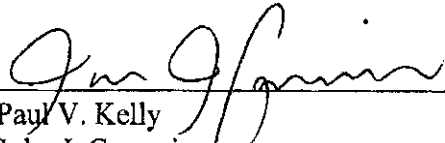
**REQUEST NO. 30:**

All Documents that You believe support, confirm, rebut, or contradict any fact or conclusion in the Amended Complaint, including all Documents referred to or relied upon in the Amended Complaint.

**RESPONSE:**

Kenney objects to this Request on grounds that he currently lacks access to files that may contain responsive documents and information. Kenney will produce non-privileged documents, if any, responsive to this Request.

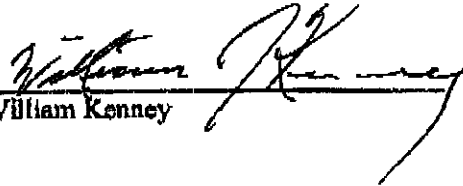
Dated July 11, 2014.

  
\_\_\_\_\_  
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John J. Commisso  
Jackson Lewis P.C.  
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Boston, MA 02116  
Telephone: (617) 367-0025  
Email: [Paul.Kelly@jacksonlewis.com](mailto:Paul.Kelly@jacksonlewis.com)  
[John.Commisso@jacksonlewis.com](mailto:John.Commisso@jacksonlewis.com)

*Counsel for Plaintiff William Kenney.*

**VERIFICATION**

I, William Kenney, have reviewed the foregoing Objections and Responses to the First Requests for Production of Documents by National Collegiate Athletic Association, and they are true and correct to the best of my information, knowledge, and belief.

  
William Kenney

Dated: July 1, 2014

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the **OBJECTIONS AND RESPONSES BY WILLIAM KENNEY TO THE FIRST REQUESTS FOR PRODUCTION OF DOCUMENTS BY NATIONAL COLLEGIATE ATHLETIC ASSOCIATION** was served on July 11, 2014 by first class mail and email on the following:

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Killian & Gephart  
218 Pine Street  
P.O. Box 886  
Harrisburg, PA 17108-0886  
Email: [tscott@killiangephart.com](mailto:tscott@killiangephart.com)

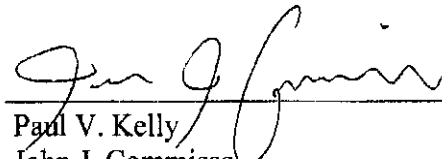
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Dated: July 11, 2014



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*Counsel for Plaintiff William Kenney*

# **EXHIBIT 5**



Brian E. Kowalski  
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brian.kowalski@lw.com

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www.lw.com

## LATHAM & WATKINS<sup>LLP</sup>

January 28, 2015

### VIA EMAIL

Patricia L. Maher  
King & Spalding LLP  
1700 Pennsylvania Avenue, NW  
Washington, DC 20006

#### FIRM / AFFILIATE OFFICES

Abu Dhabi	Milan
Barcelona	Moscow
Beijing	Munich
Boston	New Jersey
Brussels	New York
Chicago	Orange County
Doha	Paris
Dubai	Riyadh
Düsseldorf	Rome
Frankfurt	San Diego
Hamburg	San Francisco
Hong Kong	Shanghai
Houston	Silicon Valley
London	Singapore
Los Angeles	Tokyo
Madrid	Washington, D.C.

Re: Paterno, et al. v. NCAA, et al., Civil Div. No. 2013-2082

Dear Ms. Maher:

We write with regard to the requests for the production of documents the NCAA served on Plaintiffs Al Clemens, Jay Paterno, and William Kenney on May 21, 2014 in the above-referenced matter. Eight months have passed, and these individuals have produced no documents in response to our requests. As you now represent these Plaintiffs, please immediately produce documents for each or confirm they have nothing to produce. Please advise when we can expect your production.

In addition, we propose a telephonic conference to discuss the responses and objections to the NCAA's requests. Please advise if you are available on Monday, February 2, 2015 at 10:00 a.m.

Best Regards,



Brian E. Kowalski  
of LATHAM & WATKINS LLP

cc: All counsel

# **EXHIBIT 6**

Sarah M. Gragert  
Direct Dial: 202-637-3368  
sarah.gragert@lw.com

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## LATHAM & WATKINS LLP

April 21, 2015

### VIA EMAIL

Patricia L. Maher  
King & Spalding LLP  
1700 Pennsylvania Avenue, NW  
Washington, DC 20006

#### FIRM / AFFILIATE OFFICES

Abu Dhabi	Milan
Barcelona	Moscow
Beijing	Munich
Boston	New Jersey
Brussels	New York
Century City	Orange County
Chicago	Paris
Doha	Riyadh
Dubai	Rome
Düsseldorf	San Diego
Frankfurt	San Francisco
Hamburg	Shanghai
Hong Kong	Silicon Valley
Houston	Singapore
London	Tokyo
Los Angeles	Washington, D.C.
Madrid	

Re: Paterno, et al. v. NCAA, et al., Civ. No. 2013-2082

Dear Trish:

I am writing to memorialize the matters discussed during our March 27, 2015 teleconference regarding Plaintiffs' responses to the NCAA's requests for the production of documents. During the call, we primarily discussed the written responses and objections to the NCAA's requests for production from William Kenney, Jay Paterno, and Al Clemens (the "non-Estate Plaintiffs"), which are addressed below.

However, we first note three other topics discussed. *First*, you noted that all four Plaintiffs anticipated making an imminent production, which we have now received and are in the process of reviewing. We appreciate Plaintiffs' efforts to produce responsive materials. Nonetheless, we would hope that more sizable productions are forthcoming. Nearly a year has passed since the NCAA served its discovery requests, but Plaintiffs have produced few materials in response. For example, Mr. Kenney has not produced any materials, and Jay Paterno<sup>1</sup> has produced only 21 documents.

*Second*, you provided an update on the Estate's efforts to obtain Coach Paterno's materials located at Penn State. We understand that Coach Paterno's office has been sealed but that you will be permitted to conduct a supervised review. We ask that you please advise us if, in the course of that review, you identify materials that may be responsive to the NCAA's document requests.

*Third*, we reiterated the NCAA's concern regarding its lack of visibility into the custodians/sources of documents the Estate considers to be within its custody, control, or

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<sup>1</sup> In this letter, "Coach Paterno" refers to the late Joe Paterno, represented in this action by George Scott Paterno; "Mr. Paterno" refers to Jay Paterno.

**LATHAM & WATKINS<sup>LLP</sup>**

possession. We appreciate your efforts during our call to explain generally your approach to collecting responsive materials on behalf of the Paterno Estate. However, to ensure that all responsive materials are provided to the NCAA, we plan to seek documents directly from certain relevant individuals connected to the Estate and anticipate inquiring into this subject in the course of future depositions. We hope this approach will help reduce any ambiguity about the scope of the Estate's response. We trust that, notwithstanding these efforts, the Estate will continue to discharge its obligations to produce materials on behalf of the Estate.

As to the non-Estate Plaintiffs' written responses and objections, we discussed the following on our call:

**Time period.** We agreed that the same time period would apply to the non-Estate Plaintiffs' productions as the NCAA and the Estate have applied to their productions. Namely, the NCAA agreed that these Plaintiffs could limit their responsive materials to those generated between January 1, 2011 and May 30, 2013, unless otherwise noted. The NCAA reserved the right, however, to request additional documents outside of this date range in the future.

**Request Nos. 4-7.<sup>2</sup>** You clarified that, notwithstanding the non-Estate Plaintiffs' objections to these requests on the grounds of attorney work product and/or attorney-client privilege, the non-Estate Plaintiffs were not withholding materials on such grounds and that, in fact, they had no responsive materials.

**Request No. 10.** You clarified that the non-Estate Plaintiffs were not withholding documents on the basis of their objection to the definition of "Plaintiff" as encompassing George Scott Paterno. You also clarified that, notwithstanding the non-Estate Plaintiffs' limitation of the scope of this Request to materials "that relate to the investigation of Jerry Sandusky, actions by the NCAA and Penn State following [his] indictment in November 2011, and the effects of those actions," these Plaintiffs were not, in fact, withholding materials based on that statement. Said another way, the non-Estate Plaintiffs will not withhold materials, if any, that would be responsive to the Request as drafted by the NCAA but not responsive and/or outside of the time period as re-stated by the non-Estate Plaintiffs.

**Request No. 11.** You stated that you are not currently aware of any communications with the Pennsylvania Attorney General's Office and, as such, were not withholding documents on the basis of the non-Estate Plaintiffs' objections. We agreed that if you later found communications with the Attorney General's Office that Plaintiffs chose to withhold, you would so advise the NCAA.

**Request No. 12.** You indicated that the non-Estate Plaintiffs will not produce materials in response to this Request due to uncertainty of its meaning. We reiterated our confusion over this objection given that the Request, in part, seeks materials concerning Plaintiffs' own

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<sup>2</sup> All Request numbers refer to those contained in the requests for the production of documents propounded on Mr. Clemens; however, our discussion included the responses and objections Jay Paterno and William Kenney provided to their corollary Requests.

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allegations in Paragraphs 99-101 of the Amended Complaint. Nevertheless, we offered to attempt to clarify the Request.

**Request No. 13.** In response to the non-Estate Plaintiffs' objection that Request No. 13 is overly broad, we offered to narrow the Request by omitting publicly available media articles.

**Request No. 14.** We asked about the basis of the non-Estate Plaintiffs' objection that this Request calls for materials protected by the attorney work product doctrine and/or attorney-client privilege. In response, you stated that Messrs. Clemens and Kenney would not withhold materials on those grounds because they did not have responsive materials. As to Mr. Paterno, you noted that you did not yet know whether he intended to withhold responsive documents on those grounds, but that you would inform the NCAA should he choose to do so in order to permit a discussion of the grounds for the objection.

**Request Nos. 15-17.** Request Numbers 15-17 seek documents pertaining to the non-Estate Plaintiffs' financial position over time, including their sources of income, earnings, assets and financial wherewithal. We understand that Messrs. Kenney and Paterno will produce responsive documents, and are in the process of doing so. With regard to Mr. Clemens, however, you explained that information responsive to these requests would not reflect the type of damages he purportedly suffered and, as such, Mr. Clemens objects to producing the requested materials. We do not understand how that position is consistent with Mr. Clemens' claim for compensatory damages in this case. Indeed, Mr. Clemens voluntarily chose to assert claims for damages as a plaintiff here, and in doing so, put squarely at issue his financial condition and records. Thus, if we were to agree to exempt Mr. Clemens from producing materials responsive to Request Nos. 15-17, we would need in return a stipulation making sufficiently clear, *inter alia*, that Mr. Clemens is not asserting any claim for financial or pecuniary damages in this case, and that he will not claim to have suffered any such damages related to the statements made in the Freeh Report or repeated in the Consent Decree. Otherwise, we request that Mr. Clemens produce the requested materials within 21 days.

**Request Nos. 18-19.** Subject to the stipulation described above, the NCAA is amenable to limiting Request Nos. 18 and 19 as to Mr. Clemens to those documents pertaining to contracts and agreements pertinent to his reputation/personality, such as media deals, endorsements, etc., if any. You indicated that you doubted any exist, but we reiterated our request for such documents to the extent they do. We clarified that we could not so narrowly limit these Requests as to Messrs. Paterno and Kenney, but you likewise doubted responsive materials exist.

**Request No. 21.** Similar to Request No. 10, you clarified that Mr. Paterno would not withhold documents based on his objection to including George Scott Paterno in the definition of "Plaintiffs." You indicated that Messrs. Clemens and Kenney did not have responsive materials.

**Request No. 22.** Consistent with the non-Estate Plaintiffs' position regarding Request No. 10, you clarified that these Plaintiffs were not withholding materials on the grounds of the temporal and subject matter scope limitations contained in their responses.

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**Request No. 24.** We clarified that the word “and” in the date meant “between” so as to establish a date range.

**Request No. 29.** With regard to Mr. Clemens, we take the same position with respect to Request No. 29 as we do regarding Requests No. 15-17 above. We did, however, agree that as an initial matter, we would like to focus on documents created after January 1, 2011. Further, as noted above, the NCAA cannot accept Messrs. Kenney and Paterno’s temporal limitation to 2011. The NCAA is willing to narrow the time period to January 1, 2007, but documents prior to 2011 are relevant to their damages claims and should be produced.

Finally, at the conclusion of our call, we had insufficient time to address several of Jay Paterno’s and William Kenney’s unique responses and objections, which Mr. Clemens had not asserted. We attempt to address these issues here such that a separate call may not be necessary. However, if you believe any of these topics would benefit from further discussion, we are happy to schedule a call to do so.

**Request No. 13.** Messrs. Kenney and Paterno each seek to temporally limit this Request to 2011. The NCAA cannot accept that limitation. Documents pertaining to their employment, or attempted employment, prior to 2011 are highly relevant to understanding their qualifications for, and likelihood of securing, employment after their termination from Penn State, among other things. If either Plaintiff intends to withhold responsive material based on that limitation, please advise use promptly.

**Request Nos. 26-27 (Kenney); No. 31 (Paterno).**<sup>3</sup> Messrs. Kenney and Paterno objected to these Requests on the ground that they “lack[] access to certain files that may contain responsive documents and information.” The NCAA asks that Plaintiffs please identify who has custody, control, or possession of the files referenced in that objection so that it may determine if it needs to pursue discovery directly from such individuals or entities.

**Request No. 25 (Paterno).** Mr. Paterno objected to providing any responsive material pertaining to his book, *Paterno Legacy*, other than a copy of the final, published product on the grounds that the Request is overly broad and seeks irrelevant information. Mr. Paterno’s objections are not well-taken. The Request is far broader than Mr. Paterno’s narrow interpretation, and it is properly drafted to seek information that is reasonably likely to lead to admissible evidence, such as information, statements, and admissions regarding Coach Paterno’s career and reputation, the Sandusky scandal, the NCAA, and this litigation. He also objected on the grounds that the Request seeks information subject to confidentiality agreements, attorney-client privilege, and/or the attorney work product doctrine. At most, these objections would apply to only a small subset of the responsive materials and are not a basis for withholding all responsive documents. In any event, it is questionable that much, if any, responsive information is properly subject to a privilege or work product claim given that the final book was made public and has been highly publicized, and the Request calls for, *inter alia*, public statements. Additionally, the existence of a confidentiality agreement does not immunize documents from

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<sup>3</sup> Request No. 31 for Mr. Paterno was inadvertently mis-numbered as 26 in the original Requests.

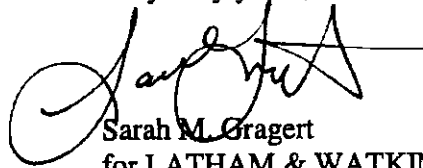
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production. Any documents properly designated as confidential will be protected by the operative protective order in this matter.

\* \* \*

We appreciate the time you have provided to work through these issues. If we have misunderstood or misstated any of the Plaintiffs' positions, please let us know. We are optimistic that we can jointly resolve the remaining few issues.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Sarah M. Gragert', with a long horizontal line extending from the end of the signature.

Sarah M. Gragert  
for LATHAM & WATKINS LLP

# **EXHIBIT 7**



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## LATHAM & WATKINS<sup>LLP</sup>

May 13, 2015

### VIA EMAIL

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Re: Paterno, et al. v. NCAA, et al., Civil Div. No. 2013-2082

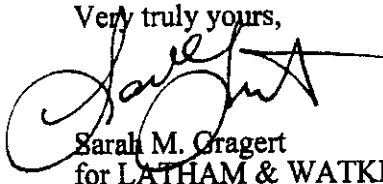
Dear Trish:

I write to follow up on my correspondence from April 21, 2015. As you know, the NCAA served document requests on the four remaining Plaintiffs on May 21, 2014—nearly *one year ago*. To date, Plaintiffs have produced virtually nothing in response. Mr. Clemens has produced only 71 documents, Jay Paterno has produced merely 21 documents, and Mr. Kenney has not produced a single document. For its part, the Estate of Joe Paterno has produced 490 documents. Based on our discussions over the past months and our review of the limited productions to date, it appears that each Plaintiff has produced only a small fraction of his responsive documents (or none at all).

We have engaged in at least three meet-and-confer conferences and exchanged multiple letters, but Plaintiffs' productions remain woefully incomplete. Plaintiffs' delay significantly prejudices the NCAA by hampering its ability to effectively proceed with depositions and potentially other forms of discovery. We therefore expect Plaintiffs to complete their document productions by June 3, 2015. If Plaintiffs are unable to complete their productions in this timeframe, we have no choice left but to seek judicial assistance.

In addition, we ask that you please let us know whether you disagree with any of the assertions in our April 21, 2015 correspondence, which attempted to faithfully memorialize our meet-and-confer discussions. We need some form of response from you so that we can determine whether any issues remain unresolved that require the Court's involvement.

Very truly yours,



Sarah M. Gragert  
for LATHAM & WATKINS LLP

cc: All counsel

# **EXHIBIT 8**

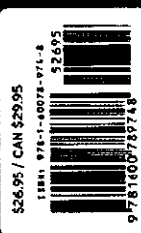
# Paterno Legacy

Enduring Lessons  
from the Life and Death  
of My Father

## PATERNO LEGACY

JAYP\_0000160

# Jay Paterno



# PATERNO LEGACY

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ENDURING LESSONS  
FROM THE LIFE AND  
DEATH OF MY FATHER

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Jay Paterno



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## PATERNO LEGACY

hatred. In a world that wanted him to spew venom, he never allowed it to touch his soul.

For over six decades, Joe Paterno conducted his professional life in a principled way. In seven days those decades would recede into the background as he became the object of an all-out assault in a scandal not in any way of his making. His only goal was to see that justice be carried out without regard to what it would mean to him or his football program.

But Joe Paterno's life stands far taller than the events of the last months of his life. He carried himself as though Rudyard Kipling's poem "If" was encoded in his DNA. He shared that poem with me when I was young, and it has always resonated with me.

No one ever walked with kings but never lost the common touch better than he. No one ever kept his head about him while all others were losing theirs better than he. Joe Paterno could have been anything he wanted yet he chose to settle in State College, coach football, raise a family, and teach the thousands he coached.

More than that, my father had a way of explaining things and talking to you that at times wasn't easy to understand, but he was always blunt in his assessments. Self-esteem wasn't something you were given. You earned it through achievement of worthy goals.

One morning in ninth grade, I complained to my siblings about a teacher in front of my parents. That afternoon he called me into his den. He sat at his desk while I stood. He had a blue pullover sweater and tie on. He wore a tie just about every time he left the house when I was a kid. As I stood in front of him, the late afternoon sunlight was coming in through the window behind him, finishing its daily journey over the horizon of Sunset Park behind our house. At times the rays gave my father's den an other-worldly glow.

As I stood in front of his desk, I knew a friendly conversation was not in the offing. This meeting had begun by the dreaded beckoning, "Jay, come in here and shut the door."

Nothing good was ever discussed behind the closed den door—at least for me. If I had to come in with Mom and shut the door, I feared I may be packing my bags. At least today my mother wasn't summoned. "Jay," my father began looking up from his desk. "Look, you're not in trouble."

Relief. However, I sensed there had to be a "But" coming. There was more to this story.

## PROLOGUE

reached. As tens of thousands of people filed past his casket to pay their respects, I listened to stories and hugged those who were crying.

The visitors hailed from down the road to places in faraway lands. All had a story or a connection to this man whom many had never met or had met briefly. But all shared how Joe Paterno's words or life example had reached them. His classroom was the world, and he may not have even known it.

As I got older, I listened more and more carefully to my father's stories and jokes and learned to appreciate them all. At a dinner table or in a meeting, he'd speak softly but deliberately. He challenged you to pay attention, maybe even lean in to hear him better, like he was letting you in on a secret. He usually was.

In early February 2011, he and I were talking about the speech President Obama had given in Tucson after congresswoman Gabby Giffords had been shot by a mad gunman. In my bi-weekly column for StateCollege.com, I'd written about it, and my father liked the theme of what I'd said.

"Jay, I admire how the President handled that speech. Do you know how tough that was? The event was in a basketball arena and was part memorial service and part rally for the people of that community. To give a speech that was upbeat but respectful was tough. He had to give a speech that mourned the death of a young girl but not bring everyone in the arena down. That is so difficult. I admire what he did."

Little did I know that less than one year later, I'd be standing in a basketball arena giving a speech about my father's life that had to be hopeful and respectful while also being mournful.

It was my father's lesson. The President's speech was something I thought about before writing my father's eulogy mainly because my father had recognized its power and strength.

That lesson stayed with me when I needed it most. And even now, many months after his voice is gone, his lessons continue to keep coming to me, and his work lives on.

As I wrote on Twitter the morning after he died, "Joe's Light Will Never leave my life," and neither will the words he gave that guide me.

This book is the story of those words and of a life example that not only survived but thrived in the onslaught against him. It forged his example in a way that made it stronger and more enduring.

## Chapter 1

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# The Elephant in the Room

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**M**any of you landed on this page because you are a Penn Stater, a college football fan, or a sports fan wanting to know more about Joe Paterno's life.

I also know some are here because you're interested in the Jerry Sandusky scandal and its accompanying fallout. You want to know what Joe Paterno knew and when he knew it. That is the elephant in the room. I get that.

My father's life was big, complex, and principled, and he himself would tell you he was not perfect. But what the Freeh Report asserted is far from the truth.

Child sexual abuse is the witch trial topic of our time. I fully grasp the powerful emotions wrought by this issue. Calm discussion is difficult. It is outside our comfort zone, creating a lack of awareness that provides cover for perpetrators to operate in plain sight.

However, we must remember what Johns Hopkins University professor Dr. Fred Berlin stated in his report: "In our legitimate effort to protect innocent children, the fair treatment of adults should not become a collateral casualty."

After the Freeh Report, I understand why people are angry at the university and my father. But as FBI director, Freeh took Richard Jewell from hero to suspect in the 1996 Atlanta Olympic bombing. After the facts were uncovered, Jewell was indeed the good guy, but the damage was done.



## PATERNO LEGACY

Our world demands immediate reaction and analysis. Initial reporting is often inaccurate and lacks perspective. For my father and Penn State, almost three years later the truth is getting clearer. An in-depth investigation by former U.S. attorney general Dick Thornburgh, former FBI profiler Jim Clemente, and Dr. Berlin presented a record supported by facts and evidence.

Both Thornburgh and Clemente worked with Louis Freeh. Yet both studied the report he issued and found it deeply flawed. Both addressed Joe Paterno's role related to crimes committed by another.

My father did not commit a crime or even witness a crime.

I grew up a son to Joe Paterno and worked alongside him for 17 years. I know all too well that he was human, an imperfect being. But he always tried to do what he believed was the right thing. When he erred, he erred with the right intentions.

This book is not an attempt to include my father as a victim in the horrible Sandusky story. When my father was fired, he reiterated to me that being fired paled in comparison to what had happened to others.

Beyond the victims, others lost their jobs and reputations. Recognizing that does not detract from our concern for the direct survivors of a predator. It simply realizes this truth; the bomb that went off threw shrapnel all over the place.

But the immediate media focus was not on the crimes committed or even the victims. On November 12, 2011 on *Saturday Night Live's* "Weekend Update," host Seth Meyers had a bit with actor Jason Sudeikis dressed up as the devil. The devil yells "JoePa, a cover-up? This is college football, not the Catholic church." In the entire skit, they referenced the Penn State scandal and Joe Paterno—but the man actually charged with the crimes not a single time. In an email to their subscribers in November of 2011, *The New York Times* recapped how they had covered the story. It concluded the email by saying this: "More than boys had been violated it seemed. A proud university's sense of superiority and privilege and arrogance had been blown up, too."

Using the specter of boys being violated was inappropriate. But in the headline and body of editor Joe Sexton's story, the name Penn State appeared six times, Paterno four times, and the man charged at the time, Jerry Sandusky, zero times.

Although Sandusky had not worked at Penn State in almost 12 years, the

## THE ELEPHANT IN THE ROOM

focus became the university. That the vast majority of the charges occurred at locations unconnected to Penn State did not matter.

The focus also fell on Joe Paterno, who did not witness a crime but when told of what *might* have been one, *a day after it happened*, reported it exactly as directed by university policy set by state law.

Joe Paterno has been pronounced by the media as "the most powerful man in the state," the foundation of an argument alleging he could and should have done more. His own words: "In hindsight I wish I had done more" have been used against him over and over again as a sign of guilt.

It never was an admission of guilt. It was a painful statement that if he had only known more, then he could have done more. Clemente's powerful report makes the point that Joe Paterno was but one of many, some infinitely more highly educated on this issue, who missed this.

One powerful element to come out of our family report was one that surprised me. If you had asked me three years ago what a pedophile looked like, I would have described a loner in a trench coat, cruising parks and elementary school parking lots in a white van.

We were totally unfamiliar with the nice guy offender. Most never suspect a predator could be a married, non-drinking churchgoer who'd spent his life building a charity to help young people. Yet as the experts in our report point out, these people set themselves up in ways that put them around children.

Why did we miss it? It is a societal problem, a lack of discussion and education on this issue. We have that image of the loner in the white van. We prefer not to talk about it or look in the shadows of ignorance where these criminals hide within plain sight.

Before you condemn Joe Paterno, I ask you to consider if you too would have seen into the darkness of another's heart when all signs pointed you to look the other way.

Before you condemn people at Penn State or in our community, consider this: in adopting Matt Sandusky, Jerry Sandusky went to court to fight for him. I recall him talking to us in the office about the setbacks and ultimate triumph in court.

In the end the presiding judge and the state of Pennsylvania ordered that Jerry be allowed to adopt Matt over the wishes of Matt's biological mother. They viewed Jerry and his home as the better place for Matt.

## PATERNO LEGACY

The State experts viewed him as a good person with a safe home, but we were to suspect something different? What would you have thought?

Given how little I knew about pedophilia at age 44 and given that my father in his 70s and 80s knew even less, I wonder how anyone could expect him to have known more than others who work every day in that field. By his own admission, he did not know how to handle such an accusation, so he took it to the required people. But for many that was not good enough because of some perceived power he held.

But how powerful was he? Did he have a police force? Did he have subpoena power? Could he bring charges? Was he capable of investigating what he'd been told a day after it happened?

The answers to all these is no.

On gameday facing a fourth down and 1 yard to go, he had all the power to make that decision. He decided who played and who did not play. Many people valued his opinion in politics, in business, and in society.

But when it came to criminal laws, he was like everyone else—a citizen equal under the eyes of the laws and governed by the rule of law. That's it.

These are the facts. Joe Paterno was made aware that Jerry Sandusky was in the shower with a young boy a day after a witness saw it. What that witness told him is subject to interpretation, but we do know that the witness *never* told him that he had seen a boy being raped. It was the first and only time Joe Paterno had ever been told by a witness that Jerry had been in the showers with a young boy.

I must reiterate that the witness never told Paterno he witnessed a rape and never told police that he had seen one. The grand jury presentment inaccurately stated that the witness stated he had seen an anal rape and had told Joe Paterno "what he saw." The perception that Joe Paterno had been told about an anal rape and did nothing took hold and cost him his job.

In early 2013 University of Arkansas law professor Brian Gallini made that point the centerpiece of a 64-page paper published in the *Tennessee Law Review*. On page seven of his paper, he wrote: "Paterno's downfall illustrates the importance of grand jury secrecy—both during and after its investigation. That secrecy, present in all federal grand jury proceedings, prevents collateral damage—like job loss—to unindicted criminally innocent third parties. The absence of that secrecy in Pennsylvania's investigative grand

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jury proceedings took Paterno's job, tarnished his legacy, and perhaps even shortened his life."

The presentment, combined with the state police commissioner's statement that Paterno had failed his moral obligation, doomed Paterno's career. The commissioner made that statement despite the attorney general's having stated that Joe had been wholly cooperative, followed the law, and was not a subject of the investigation.

I would counter that Joe Paterno fulfilled his legal obligation and his moral obligation. In this country we have due process and the rule of law to protect the accuser *and* the accused. Joe Paterno did not witness anything, and as such his *moral* obligation was to allow the proper authorities do *their* investigation. You cannot simply run out in public and declare a man is a child predator based on a story someone told you.

But the police commissioner's irresponsible characterization was allowed to stand unchallenged. The counter-narrative took hold. Even after the trial was over, Jerry Sandusky was never convicted of any rape on Penn State's campus.

The 2001 incident was one of two incidents at Penn State's campus that were brought to anyone's attention. A 1998 incident was investigated by the police, given to the county district attorney, and investigated by the state. The determination made was that no crime had been committed, and charges were never filed. The NCAA in handing down Penn State's sanctions stated that Penn State had failed to respond appropriately. The NCAA ignored the facts.

In his report Freeh alleged that Joe Paterno was not only made aware of the 1998 incident, but also "followed the investigation closely." He based this premise on an email from athletic director Tim Curley to university vice president Gary Schultz with the subject line "Joe Paterno" and the sentence "I have touched base with the coach." Not a word what he touched base about, nor the coach's identity.

What Freeh failed to consider are other 1998 factors. Jerry Sandusky was negotiating a retirement package. He was also talking with the university about starting a lower-division football program at Penn State's Altoona campus. There was also an investigation into a 1997 All-American running back's acceptance of improper benefits from a sports agent before the bowl game.

## PATERNO LEGACY

Later that morning, Colin Cowherd stated that Joe Paterno should have known that Sandusky had been to a grand jury in 1998. There was no grand jury at that time. Cowherd also asserted that Paterno should have fired Sandusky in 2001. That would have required Joe Paterno to have re-hired him, so that he could fire him. All those months later, the false narratives persisted.

But the university administration finds it convenient to let the false perceptions remain because they help justify actions they took against Joe Paterno and the Penn State football program.

The day the Freeh Report came out, I was the only person who went on television to defend Penn State, the truth, and Joe Paterno. The only one. The first satellite truck showed up at my house at 5:00 AM for the *TODAY Show* and the last one left at 8:15 PM after I was on CNN for *Erin Burnett OutFront*. During that long day, I did interviews with NBC, ESPN, ABC, CBS, CNN, and numerous state media outlets. At the same time while I was defending our school, the Penn State administration did nothing to defend our university. So how could people not come to believe a narrative the administration allowed to persist?

But the record is now clear, that narrative is *not* true.

It's human nature. We all have a tendency to assign the facts and perspective we have on a historical event and judge the actions of people at the time but forget that they did not have the information we have now. As I said on the air that day, we cannot judge the 2001 actions of people who weren't armed with the information we have over a decade later.

The morning after my father had been fired, I was seated at his desk, and he sat in his robe in another chair looking over at me. The pain, the sleepless nights of the previous days were visible in his face. But he had something he wanted me to know. "Jay, I never told you guys about Jerry because I didn't know if it was true," he said. "I certainly couldn't walk into the office and accuse a guy of something that I didn't witness or know to be true. I didn't know that he'd done all that stuff. I had no idea. I just didn't know."

As Dr. Berlin states in his report, any evaluation of someone's actions must take into account how he lived his life. For Berlin there is too much evidence in the way Joe Paterno lived his life to believe he would have acted to conceal this, especially without any evidence that he did.

I can tell you that I knew Jerry Sandusky from the time I was a kid. I coached with him and did charity events for The Second Mile. None of us

## THE ELEPHANT IN THE ROOM

knew. My own children were around him. My own daughter went to his house for a birthday party for his granddaughter in 2011.

Many believe coaches showered with Sandusky and young boys. During the Sandusky trial, Penn State assistant coach Dick Anderson was asked on the witness stand if "coaches often took showers with Jerry and young boys."

Anderson replied, "Yes".

That answer in court remains, but no other coaches were given a chance to answer. I know that in 17 years coaching at Penn State, I was never in the same shower with Sandusky and a young boy. The other Penn State assistant coaches I talked to said that same thing.

The subsequent use of Anderson's answer in the Freeh Report that "coaches often took showers with Jerry and young boys" was used by the NCAA to help sanction Penn State and damage the reputations of a lot of good men. It fed the perception that we all knew or should have known.

Perception too often becomes reality, but that doesn't make it truth. All Joe Paterno ever wanted was the truth. He had no fear of the truth.

Joe Paterno made the statement: "In hindsight I wish I had done more." But there is a more important statement he wrote on a pad just before he left the house to go to the hospital. It was the last thing he wrote in his own home: "Maybe the silver lining in this is that some good can come of this."

That is the story. Those are the words that we should focus on. Despite all that had happened to him, and more importantly all that had happened to Sandusky's victims, maybe new awareness and a new vigilance on these crimes can help prevent them in the future.

I am not writing to exonerate my father because he did not commit a crime that needs a pardon. If anything, he is guilty of failing to possess the God-like qualities ascribed to him by others, qualities that Joe was the first to insist he never had.

Sandusky was a man who'd adopted several children and had even more foster children placed in his home. The state evaluated him and his home many, many times. That is all we knew back then and we missed it. Can you blame us? Can you blame Joe Paterno? Can you blame our community?

Whether we like it or not, we live in a society where the presumption of innocence is one of, if not *the* most important foundation of our nation. Our system was designed to keep innocent people from being locked up for crimes they did not commit.

## PATERNO LEGACY

I know this truth: far more often than most, Joe Paterno got things right.

But Joe Paterno was disparaged by the baseless conclusions of the Freeh Report and resulting NCAA sanctions against the football program he'd led. That program's foundation was set on a bedrock of core beliefs and values, values that never wavered and were never compromised.

The Freeh commission asserted that Joe Paterno wanted to avoid bad publicity for the program.

Joe Paterno never feared weathering bad publicity. In my first year as quarterbacks coach, our starter, Rashard Casey, a black student-athlete from Hoboken, New Jersey, was wrongly accused of assaulting an off-duty white police officer. The race-heavy incident exploded in May, and Joe Paterno stood by his quarterback. The media rained down recriminations and condemnations.

Over the next several months, I received threatening emails and anonymous letters calling Rashard a "nigger" and me a "nigger-lover" and referring to my "nigger-loving daddy." Joe Paterno stood firm against blistering bad publicity. Ultimately, when Rashard was cleared, Joe was just happy that the truth emerged even if it cost him some bad publicity.

But that is not how Freeh's report wants you to remember the name Paterno. Even after their investigation, the report found no NCAA violations, no academic fraud, and no crimes committed by Joe Paterno. Yet they falsely described a flawed football culture at Penn State, an insult to the values of the NCAA's member institutions.

Truthfully, *their* lack of values are an insult to the values that Penn State athletics has stood for in *everything* we have done for over a century.

A century of positive living between my father and his father created a respect to the name Paterno. For now it will be tinged by the actions of another. For years to come, that asterisk will reside in the memory of people when they hear his name or see his image.

**SENT:** Sunday November 20, 2011 2:44 PM

**TO:** Jay Paterno

**SUBJECT:** Your Resignation

It is not important who I am, but I will tell you that my name is Lisa and my family and I are very big fans of

#### THE ASTERISK

meant sleepless nights, working to near exhaustion, and ignoring personal health issues. It meant sacrifice while competitors cut corners.

Yes, it took more effort, made for higher hurdles, but it was the only way he'd compete with high standards of integrity. There is comfort in knowing that history will eventually judge Joe Paterno and Penn State fairly, but for now the story of his life's last few months will be a part of that discussion.

I visit his grave and I see the letters "PATERNO" carved in black granite. I cannot help but think of how *my* grandchildren will see that name when they walk the grounds of that quiet hillside. In the distance Mount Nittany looms as a constant presence over this valley.

Ultimately that name will be rightfully thought of in the manner in which Joe Paterno lived his life. It will be the truth about his life, not the fiction that so many driven by panic or, worse yet, agendas of power and ambition chose to create.

It is coming. The day when the light of truth will once again shine favorably, the early dawn's rays across those letters carved in black granite on a quiet Pennsylvania hillside.



## Chapter 10

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### Molder of Men

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What I came to realize most vividly in the days after Joe Paterno was fired and ultimately died was how, as a coach, my father became a father to so many others. Men and women expressed that to me in the last few months of his life and after his death.

O.J. McDuffie, an NFL star for eight years, came to Penn State as a freshman in 1988 from Warrensville Heights, Ohio. He and my father had their moments, but both had tremendous respect for the other, a respect that grew to love. He pulled me aside at the viewing, pointed to the casket covered in white roses and said, "That man there was a father to me."

I realized that my father was so much more. Yes, he was a patriarch for his own children but also for the scores of student-athletes and others he inspired at Penn State and beyond through his living example.

The Italian name Paterno means "fatherly" and it is a most fitting name for Joe. His coaching style evolved over the years from a demanding taskmaster driving his troops Patton-like into the game to a more fatherly approach. But even in the early days when he was his toughest, there was a genuine love for the student-athletes in his program.

Some of the former players thought he got softer in his old age. It is the same argument kids make about their parents when they perceive looser rules for a younger sibling. Joe was simply adapting to new demographic realities of society around him that, whether he wanted them or not, were creeping into his program.

## PATERNO LEGACY

In a society always ready for mob mentality outrage, that isn't always how we see things. Joe Paterno understood the bigger picture that football could be used to change behaviors not for a week or a game but for life.

Punishment was always on the table, though. In Joe's earlier years, punishment was swift and generally very consistent—Old Testament fire and brimstone stuff. But Joe Paterno would be the first to tell you that he grew smarter as he grew older.

As the prosecution of our occasional players' legal issues grew more public, Joe's hands were increasingly tied. In cases involving a trial, Joe was hesitant to act unilaterally, not wanting to essentially proclaim the guilt in the public domain of his player without facts.

He knew administration of a public punishment could negatively impact a young man's ability to get a fair trial. There was no way he wanted the media's demands for him to act swiftly and force his hand.

As he got older, he developed a more measured, reasoned, and fairer response to allegations that came across his desk. Outsiders called it "getting soft."

In 2007 he hit back. In the offseason there was a fight involving members of our team. The media ran with a narrative that late in his career Joe Paterno had sacrificed his ideals and recruited "bad kids," so he could close out his career with more wins.

They cited statistics of charges—not actual convictions. When the actual rate of young men on our team who were actually found guilty was factored against the rate for society and for the campus, we were still well below the rates for both. No one realized the increase in charges was not a reflection of increased activity but rather increased and stricter enforcement in charging all Penn State students.

But that wasn't a good story. It wasn't just here at Penn State. *Sports Illustrated* ran a story in 2011 when they cited what they deemed to be a shocking statistic that 7 percent of all players on top 25 teams had been *charged* with a crime. Not guilty, not convicted, just charged.

The rate of college football players being *charged* was actually lower than the national average for young men of their same age group being *convicted* of crimes. That statistic didn't fit the narrative so it didn't make it into the story.

The 2007 fight started with someone pushing down the girlfriend of one of our players, and our player following the guy back to his apartment. Even

## HALLOWED BE THY NAME

What was most damaging was the assertion that this happened because there was some faulty deference to a flawed "culture of football" that allowed the offender to do this because we were protecting our football program.

Joe Paterno sat players out who missed classes. He deferred to doctors when they told him injured players could not play. He was never found to have committed any major NCAA violations and in fact never even had a hearing before the organization. He aggressively drug tested his players before it was something that was done by many other schools.

The assertion of a "football culture" flies in the face of decades of truth to the contrary.

It damaged the names of Penn State and Joe Paterno after decades when those names meant a gold standard. Now we're relegated to reviews by outsiders like *former* Senator George Mitchell, who reports that we are "moving toward compliance." Penn State athletics is relegated to officers overseeing the "moral conduct" of an athletic department that had few if any issues in compliance.

But that's the reality of where our university stands right now. The name built by the efforts of so many people has been damaged. When this story hit, those on the board of trustees entrusted with the hallowed name of our school stained it by taking the shortest way through, not the right way through. Their acts brought shame to so many hearts that love the name Penn State.

They allowed the truth to be sacrificed on the altar of expediency and in that they lost decades of work to build the respect of the world for Penn State.

## RUNAWAY TRAIN COMING

legal perspective. Not many people can rival his intense love of Penn State. By the time I pulled into my driveway at 12:30 AM, it became apparent that this story would be a problem for Penn State.

The collision was coming, the unstoppable force barreling down on people who were neither prepared nor ready to make decisions to divert the train or get out of the way. Behind that lead locomotive was a wave, an invasion of media the likes of which our world had never seen, that would steamroll all we'd known for decades.

I still couldn't quite see far enough to know what threat loomed just beyond the horizon.

## STORM CLOUDS

and I had more media calls. I now grasped this story would go beyond being a sports story.

My father and I talked again later that day. I wanted to be sure he was still okay and be sure he would have some dinner. When my mom was out of town, he had a couple of go-to dinners. One was calling for pizza, the other was a yellow jar of Mancini roasted peppers or fried peppers he'd heat up in a saucepan and eat with some sharp provolone. He assured me he was okay.

All day I hoped my oldest son, Joey, wasn't paying attention when the football announcers on TV talked about the emerging story. My son was born after Sandusky's career was over, but he had met him and knew he'd coached at Penn State.

Sandusky's adopted son, Matt, coached his daughter's soccer team, and my daughter was on that team. My daughter had been at Sandusky's house for her friend's birthday party just a few months earlier, and I feared how she'd react when she saw this.

After the Michigan-Iowa halftime, Joey wandered into my office, but I was on the phone. My son walked into my office and sat on a big chair in the corner. To the left of him, the blinds were open to the street.

He was confused. Sitting in an oversized chair, he looked even younger and smaller. He asked me what was going on. By then the reports were also talking about Tim Curley, a man Joey knew well.

It was a short conversation. I probably failed as a father, but I just wasn't ready to have that conversation. Although I was 43, I struggled to grasp this. Maybe that's why I ducked the question. He just looked too young to hear what had to be said. "Dad, what is going on? What is happening with Mr. Curley?" he asked.

There was genuine concern in his voice. "What's going to happen to Granddad?" he asked.

"Look, Joe," I snapped. "I don't know what is happening. I just don't know what to tell you. I don't think Mr. Curley did anything wrong."

"Why are they gonna arrest him?"

"Joe, sometimes they get it wrong."

"What did Mr. Sandusky do?"

"Joe, I can't talk about that now."

I regret how I handled it with terse answers—avoiding meaningful responses that may have fostered understanding. His confusion, unresolved

## PATERNO LEGACY

conference, announcing charges against Tim Curley and Gary Schultz. Many of the questions involved Joe Paterno. Linda credited Joe for his cooperation. It was clear he was not the target of any investigation. That should have ended it, but another comment stole the show.

The state police commissioner stated that he felt Joe Paterno had failed his "moral obligation" to protect children. It wasn't his call to make that judgment. Whether it was intentional or not, I don't know.

No matter the intent, the "moral obligation" concept became the headline.

Back in our offices, we were unaware of the speed with which the story was accelerating. We continued preparing for the game we had to play against Nebraska in five days.

Tuesday morning the focus turned to Joe and his usual Tuesday game week press conference. Joe had decided to issue a statement at the press conference and face this head on.

Since the story had broken, the university had issued one statement and then fallen completely silent. What we did not know was that the trustees had pulled President Spanier from leadership.

Guido D'Elia and I talked about the press conference and, while we were nervous, I felt that Joe would address the issue and get the truth out there in the media. Maybe that is what the board of trustees feared the most. Late Tuesday morning the trustees cancelled Joe's press conference. At the stadium the media was lined up, awaiting the press conference. Sports information director Jeff Nelson announced that it had been cancelled, fueling speculation that rocketed out of control.

I got a call, relaying a rumor that Graham Spanier had called off the press conference and was going to fire Joe to save himself. I drove to my father's house, where Scott, Guido, my sister Mary, and my mother had become besieged by dozens of reporters who'd left the stadium and gathered across the street from the house. You can see media mob scenes on television, but it can't prepare you for being in the middle of it. I waded through reporters entering the house amid the din of shouted questions.

Inside the house no one had any idea what was going on with the administration. We reached out.

Mary got Penn State trustee Ed Hintz on the phone, and he claimed not to really know anything. In a cryptic exchange, Ed indicated he'd talk with

## THE STORM HITS

Mary at the football game Saturday to which Mary responded, "Ed, I'm not going to be at the game if my father is not still coaching."

Ed said nothing, avoiding the topic.

I took an unlisted cell phone I had and placed a call to Dave Joyner, another trustee I knew well. Dave had played at Penn State. "Dave, it's Jay Paterno," he said.

"Hi, Jay," his voice betrayed a bit of surprise.

"Dave, what's going on?"

"I don't know."

"Dave, I know you can't talk, but let me share what we're hearing. We're hearing that Graham pulled the press conference and is going to fire Joe Paterno."

"Jay, I haven't heard that."

"Whether it is true or not, Joe wants to discuss this. But absent that I want to give you an opinion. Take it for what it is worth."

"Okay."

"Look, there is only one guy in all this that can stand on the national stage and defend Penn State and carry us through this. It's Joe. The best move would be for you guys to state that Joe reported the crime, hasn't been charged, and will remain the coach. That will shut this off. There's also a belief that Graham may be charged. What that means is that you'll be trying to hire a football coach with an interim AD and an interim president. Let Joe stay on and help that process. I know you guys think you can have your pick of any college head coach you want. Most of them will not step into this mess."

"I hear you."

"Dave, one last thing—just talk with Joe. He can help Penn State no matter what happens. Just talk to him."

Months later when trying to defend their actions, the trustees falsely stated that neither Joe nor anyone from our family ever reached out to the board.

As we headed to practice, everyone going into and out of the building was being hassled by media. Joe faced a gauntlet at the house and also at the football office. Media members were surrounding the practice fields to get photos and video.

After practice on Tuesday, Joe had given the okay to hire outside help. Guido knew that as the university remained silent, the storm was, unlike a hurricane, *gaining* strength after it had made landfall here.

## PATERNO LEGACY

After practice Ben Bouma, Guido, and I sat with names and numbers of crisis management experts. Joe had grown impatient with the way the administration was handling the situation and agreed to hire someone to help defend the university.

Mary had finally convinced Joe to hire someone. Joe agreed to use in excess of \$100,000 of *his own money* to pay for help for Penn State; there wasn't time to wait for the university to figure out what to do.

At 7:00 PM we started to discuss options. Mary had the name of Dan McGinn as someone who could help us handle crisis management. He was recommended by a number of people we knew.

After research we decided that Dan McGinn was the first pick. He was based in D.C., and had been part of the firm brought in to clean up the situation left at Duke after the lacrosse mess there a few years earlier.

Guido called him, and Dan answered.

"Dan McGinn, this is Guido D'Elia calling from Penn State. I suppose you know why we're calling."

"Yes," Dan said.

"We are interested in getting you to help us."

"First, I have one question. Who will I be representing?"

"Well, Coach Paterno and Penn State."

Dan wanted to know which one would take precedence because he was pretty sure the interests of both parties wouldn't remain aligned—a statement born of experience.

When we hung up with Dan, we were not sure he was taking the case until he called back giving his explanation doing so. "Look, I am only taking this case because of what I know about Joe Paterno and his reputation," Dan said.

It was a long night of calls and arrangements between Guido, Ben, Scott, and Mary. Through media contacts we tried to stamp out the inaccurate stories, but it was blowing out of control.

By midnight we'd done all we could do, and I drove Ben to his hotel in downtown State College. As we drove down Beaver Avenue, the students were on the streets blocking the road. Nothing had happened yet, but there was still time.

I went to bed, feeling we had taken positive steps. But Dan's prediction of divergent interests would come true in less than a day.



THE FIRING, TEMPEST, AND ET TU BRUTE

**SENT:** Wednesday November 09, 2011 10:52 PM

**TO:** Jay Paterno

Jay,

What a travesty. In response to horrible things, the board of trustees does a horrible thing. When I was younger, I envied the guys that got to play for your dad, but it is YOU who is to be envied. It would be nice to have played for the greatest coach who ever lived, but how special it must be to be the son of one of the finest MEN who walked the earth. He is in our prayers. You and your family are all in our prayers. Nothing has changed from a week ago—your dad's greatest reward is still to come. Penn State may not want JoePa now, but when the time comes, God will welcome him with open arms.

God bless you all Jay

—Calvin

Now as I reflect, I recall in Arthur Miller's *The Crucible* the critical moment when they tell the innocent John Proctor that they must post his phony signed confession on the door of the church for all to see. He refuses the entreaties of the town elders who know in their hearts he is innocent. He refuses his wife imploring him to allow the confession to be posted. "Because it is my name! Because I cannot have another in my life! Because I lie and sign myself to lies," Proctor said. "How may I live without my name?"

At that moment the trustees chose to condemn an innocent man. But in their actions, they also offered up the name of Penn State, an honorable name earned over decades. In a moment of fear and panic, they destroyed it. For the damage done to the Penn State name, all the money, all the investigations, and all the public relations firms they hire cannot repair what they've done.

As a son of undying loyalty on and off the field, I knew that I was probably at risk. Thanking my friends I got back into my car and drove Posnanski back to his car. When we arrived at the parking lot, I called a friend who

PATERNO LEGACY

chair and sat. The house was still dark except for a lamp on behind him. He looked tired, not crestfallen—just tired.

There was a cup of coffee on the small table next to his chair. For the first time in his life, he didn't need the coffee. If he wanted, he could have just gone back to bed and said, "The hell with all of you. I did all I could and I don't have to answer for anything."

But that was not his way.

"Coach," I said, "I think I am going to get fired."

"What makes you think that?" he asked.

"I got a text to come in right away," I said.

"Well, I don't think they will, but I've been wrong before."

"This is such a mess. I'm not sure what to do."

"Jay, you have an obligation to the guys you coach, to the university, and to try and help Tom Bradley."

I understood that but to help the university that had turned its back on him? That was a lot to ask. We both knew going into work was like walking into a pit of vipers, but he was insistent. "Jay," he said, "you know in your heart what you have to do."

He was right. Part of me wanted to walk out and make a statement ripping everyone and everything. I was in that kind of mood.

I got down to the brunt of it. "Dad," I asked, "what happened?"

"Mike [McQueary] came to me, and it was the first I'd ever heard anything like this. I knew I wasn't the one to handle this, so I did what I was supposed to do. I couldn't go running with things I didn't know were true. I went to Tim and Gary."

"Why them?"

"I didn't see it. I knew Tim and Gary are capable people. Mike had to tell them what he saw. I don't know what he told them, but there was nothing else I could do."

"Dad, I know you did the right thing. I know the truth. What happened isn't fair."

"Jay, you better get back to work," he said.

"I just don't want to go without you."

"This day was going to come sooner or later."

He waved me out. In silence I walked slowly toward uncertainty, leaving behind a past that was almost constant in its certainty.

## SURVIVOR'S GUILT

Obviously the board handled this with no class. Just as Joe brought class and prestige to the program, we all knew the school would operate with less class when he was no longer there. This is not cancer and this is not death. With the benefit of some time and perspective all of us will come to terms with what happened. The damage done to Joe will begin to soften and improve among his critics. It is now a process.

There will be positive lessons to be learned from the events of the past week. Frankly, the week has rocked me to my core. I spent much time last night discussing the fact that it is amazing what it takes to remind one of what a cruel and ugly world it can be. There are too many people who love to hate.

The worst of this is seeing your parents hurt...

You do not worry about what you cannot control and you do not worry about those who do not understand what you are all about. Like the greatest teachers, your dad has had a positive impact on countless lives. That impact continues to positively impact our society for generations. What on earth could be better than that!

Your Friend,  
Charles

## PATERNO LEGACY

maybe the last tailgates I'd see as a member of Penn State's staff, I noticed the sadness in the eyes of fans who approached me. This was the first day of Penn State football after Joe Paterno with so much uncertainty ahead.

There wasn't a lot any of us could say to each other. People still had on their blue jerseys. Young boys still threw the football around. For them this game was just a tough loss. For their parents and grandparents it was so much more. It was the closing of a big book, a long saga that they had been a part of for decades.

Sure it would continue, but it would never, ever be the same, and they knew it.

I knew it.

Each step toward the house marked a last walk in my life. By the time we reached the border of my parents' neighborhood on Park Avenue, I noticed neighborhood kids having a bake sale. We stopped to buy brownies and cookies, and the photographers who had been following us snapped pictures.

We walked down Holmes Street, past the house where Mike had grown up two blocks from my childhood home. Now he was here when this part of my life was ending.

As we emerged onto McKee Street, the media snapped to life, yelling questions and taking pictures. What had always been a quiet walk home from the games with my father had ended now with me not even knowing where he was or what was wrong with him.

As I got into the house, Diana informed me that he had not returned yet, but that everything was okay. Nothing could have been further from the truth.

The world had turned upside down.

**SENT:** Saturday November 12, 2011 5:32 PM

**TO:** Jay Paterno

**SUBJECT:** tears for your father

Bottom line, Jay Paterno: The most powerful, the most influential man at Penn State, your father, knew that a boy was raped and he looked the other way. Joe Paterno does not deserve a single tear. Shame on the whole rotten lot of you who place football higher than a life

WORLD TURNED UPSIDE DOWN

of a child. I hope the class actions suits that are coming your way bring you to your knees and force you to understand that ALL tears should be for those forsaken children, not your lousy, worthless, empty football program

Edwina

## Chapter 28

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### The Final Hours

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**F**riday, January 20, 2012--Sunday, January 22, 2012

Friday morning I got a call from Mary that I was needed at the hospital very soon. After hearing the previous evening that my father was "up against it," it was the last message I wanted. At the hospital I learned that my worst fears were real so I decided to stay there until he was out of danger or...

I didn't want to even think that.

My father didn't look like he was fading. He was aware, nodding when you talked to him. He slept a lot, but we talked to him.

Morning stretched into afternoon.

Two days before, a group of Penn State's trustees had met with a reporter from *The New York Times*, asserting Joe Paterno had to be fired because of his moral failings and a failure of leadership. The story had run on Thursday.

That story was out there as I sat next to my father, watching the last sands of his life's hourglass starting to run out. I harbored anger toward the trustees, but being next to my father I remembered his lifelong advice: "Don't get in a pissing contest with a skunk."

I forgot my anger to focus on being there for my father.

Perhaps all children watching an ill parent fighting the last fight of their life come to a place where you want what is easiest for them. Selfishly you hope that they survive, but a moment arrives when you know their survival to a life they never wanted is just selfish on your part.

## PATERNO LEGACY

Rinaldi, one of the best interviews I have ever seen.

A great man is no longer with us, but his legacy will live on forever through the university he helped build, and through his family. I have tremendous admiration for the way Joe, you and your entire family has handled the very difficult situation over the past several months. If I was in your situation, I don't think I could have been so restrained after the awful attacks by the media and others. Your family has continued to show everyone the honor and class that stands behind the Paterno name.

I recall the last time I saw Joe. I was with my wife and two of our kids in Sunset Park throwing a football around. And you and Joe walked by—the two of you just slowly strolled around the perimeter of the park. A touching sight. My youngest son wanted to go over and say “hi” but I told him it was your alone time.

Like so many others, I suppose I looked at Joe as a father figure. I am very grateful for his advice—although I never had but short, casual conversations with him. But I was able to use a lot of his words to guide my actions over the last 30 years. I look forward to learning more of his wisdom when I read the many books that will be written about him in the coming years. Maybe your family will write one someday?

My condolences to you and the entire family. I look forward to the many future celebrations of Joe Paterno's contributions and achievements, and the future strengthening of his legacy.

Thank you again for allowing us to grieve (and celebrate) with you.

Warm regards.

Ben

## GIVE THEM NO TEAR!

speech, and here he was. Of all the people, this would be the toughest for him because of the travel, and he hadn't yet had a chance to come to grips with this.

Before the service I went out on the floor to talk to Ohio State coaches Urban Meyer and Luke Fickell. I spoke to ESPN's Kirk Herbstreit. South Carolina coach Steve Spurrier was there. The number of former players was staggering.

Jackson led the event off with some loving words, words that a son would speak to a father, and words for my mother. I listened to all the speakers. It was never just about football with the players. The addition of two students and an academic dean drove home the point of this man's legacy away from football.

Cefalo talked about how Joe recruited his mother and father more than him. Blackledge told about a key moment in the national championship game where Joe trusted him. Michael made a forceful speech about Joe's honesty in recruiting. "Joe never lied to me," he repeated over and over again.

In a beautiful speech asking, "Who will be my hero now?" Phil Knight slew the elephant in the room. He told the story of how, having lost his college track coach and hero, Bill Bowerman, 12 years ago he adopted Joe as his new hero.

"In the 12 years since, through four losing seasons, big bowl wins, 12-win seasons, through All-Americans and players with criminal charges, through 4-point students and players dismissed from the team for discipline—never once did he let me down. Not one time.

"In the year in question, it turns out he gave full disclosure to his superiors, information then went up the chain to the head of the campus police and the president of the school. The matter was in the hands of a world class university and by a president with an outstanding national reputation. Whatever the details of that investigation are this much is clear to me: if there is a villain in this tragedy, it lies in that investigation and not in Joe Paterno's response to it."



## PATERNO LEGACY

got there. He and I had talked about it, but now it was real. "Look Daryll," I said, "it's hard being young and thinking about this. But you've got to ask yourself what you'd say to yourself if you were 40 and talking to your 18-year-old self."

Daryll and his father talked with us about what the prep school year would entail. He could have gone to Nebraska, Iowa, or West Virginia without going to prep school. "Look," Joe said, "it's hard at your age to be patient. When you get older, you'll see that one year is a relatively short period of time. But remember it doesn't matter where you are when you start college, it's where you're at when it is time to get out."

Then Joe told him a story about a young man he'd recruited decades earlier. Everyone in his family told him to major in engineering. He visited Penn State and met with an engineering professor. The professor sensed hesitation in the young man. "I'm not sure what I want to study," the young man said. "But I know when I am 60 I don't want my life to have been decided by an 18-year-old kid."

Joe shared that story with Daryll, and it hit home. He challenged Daryll to make the decision as a mature man who would look back to advise him. This decision was bigger than the next year. "Coach," Daryll said, "I'm gonna make the decision a man would make. I will go to prep school."

All in all, Michigan ended up with Henne, who had a great career, and we ended up with two-time All-Conference quarterback and Big Ten MVP Daryll Clark.

But when Daryll left, we had big shoes to fill.

In 2010 we'd settled on Rob Bolden, Kevin Newsome, and Matt McGloin in the last week and a half of preseason practice. The week of the first game, Joe was ready to decide who would be the starter. Joe had a staff meeting and asked the entire staff for their thoughts. I was the last to express my opinion, and by the time it got to me, the vote was unanimous in favor of Bolden. The genius of Joe's method was in making them all weigh in, so they couldn't gripe about the decision later. They'd gone on the record.

The 2010 start would not be easy. After a very good performance in the season opener against Youngstown State, we had to go play at top-ranked and defending national champion Alabama. It was going to be a rapid ascent up the learning curve.

The trip to Alabama was one we'd looked forward to for years, and the atmosphere did not disappoint. But the greatest moment came at the end of pregame warm-ups. As Joe walked off the field toward the Alabama

## VINDICATION

student section, they rose and gave him a standing ovation that was joined by everyone in the stadium. It stills gives me chills when I think about it.

For our seventh game, we headed to Minnesota. We came out on fire with Bolden hitting his first nine passes and going 11-of-13 before suffering an injury. McGloin came in. "Don't get conservative," Joe said, "keep throwing it. They'll expect a run play with a new quarterback."

We called a play-action pass. I told the coaches on the sideline to get the extra-point team ready because I knew Matt would throw for the end zone. He did, and Derrick Moyer pulled in the touchdown. It confirmed Matt's tremendous self-confidence, which carried him through the rest of his career.

The next week Matt started as we beat Michigan in a wild shootout. No matter how far ahead we got, it seemed the Wolverines were three plays (or less) from scoring. Ultimately, they couldn't stop us, and we won 41-31. After the game I was at my parents' house. I saw my mom and stopped her for a moment. "Mom," I asked, "are Diana and her family coming up for the game next week?"

"Why would they?" My mom asked.

"Mom, tonight was Dad's 399<sup>th</sup> win. Next week should be number 400."

"So?"

"Mom, it's huge. No one at this level has ever done it. If we win, they may not want to miss it."

It never dawned on her to think about those things, but I saw Diana in the house and gave her more information than I gave my mom. Diana asked if we were going to win the next week, and I guaranteed it. "Don't say that. It's bad luck," she said.

### **Coaches' Quotes on ESPN Pregame before the 400<sup>th</sup> Win**

"It's amazing to me that when he went to Penn State, I was 10, and he's still there. And he's been able to adjust and adapt." —then-Texas coach Mack Brown

"He's set a great example of how a coach should conduct himself in doing things the right way." —Oklahoma coach Bob Stoops

"I had the opportunity to work for Coach Paterno for six years and probably not a day that goes by that I don't

## Chapter 37

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# Where Is Rock Bottom?

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### **From Bleacher Report**

*Penn State Football: It Doesn't Feel Right to*

*See Jay Paterno on the Sidelines*

By Dr. SEC(Analyst) on November 12, 2011

One of the lessons that I learned at a young age is that family might mess with each other, but nobody messes with family. As I watched Jay Paterno take the field today for the Nittany Lions, that lesson came to mind.

I understand that Joe Paterno was in the wrong by not pushing the issue harder when the AD did not respond to allegations outlined in this grand jury summation. Public opinions differ on the issue of his firing. Perhaps he should have been allowed to finish the season. On the other hand, his immediate firing might have been the right choice.

Either way, he is now gone and the Paterno era at Penn State is over. When Joe Pa was fired, Jay should have resigned with him.

## PATERNO LEGACY

Jay should consider the emotional aspect of the players. Sometimes it is better to just rip the Band-Aid off in one pull.

Jay did nothing wrong as far as I know. However, he is a constant reminder of his father. Joe Paterno might have been the face of the Nittany Lions for the last 46 seasons, but this game should have been about the seniors.

Although Paterno had delegated much of the work of the head coach to his assistants, these players still loved Joe Pa. The events that have transpired over the last week have devastated them.

As hard as it was to go on the field, once the first hit transpired, it could have become a safe haven—instead, Jay was there as a reminder.

Secondly, Jay should have considered the emotional aspect of his father. Yes, Joe Paterno allegedly messed up. Yes, he should have gone to the police. However, at the end of the day, he is still Jay's father. His dad needed him by his side more than the Nittany Lions did.

Joe Paterno is known as a coach who was not overly emotional. He just believed that every player and coach went to work and did his job. He might have even told Jay that he should coach in the game. However, this was probably the hardest moment of his father's life.

He needed his son to be there and hug his neck. Much of the world has turned on Joe Pa, and it is understandable. As a result, he needs those closest to him. The reality is, this is likely the death of his career and public image.

Perhaps Jay did nothing wrong by coaching in today's game—however, he did nothing right, either.

**SENT:** Monday, November 14, 2011 8:12 PM

**TO:** Jay Paterno

Jay, "The ultimate test of a man is not where he stands in moments of comfort and moments of convenience, but

PATERNO LEGACY

**SENT:** Wednesday, November 16, 2011

**TO:** Jay Paterno

**SUBJECT:** Sorrow

Jay..I neither know what to say or how to say it. My devastation pales in comparison to what you and your mother and father and siblings must be enduring. My admiration for you under unbelievably trying circumstances is more profound than ever.

The impersonal aspect of an Email is embarrassing... but...it would be an emotional experience I couldn't handle to confront any of you.

My life, as well as Charlotte and my sons lives have been enriched, thanks to years of association with the Paternos.

Please give your mother and father a hug for me and tell them I love them.

Fran Fisher

**SENT:** Wednesday, November 16, 2011 9:47 AM

**TO:** Jay Paterno

**SUBJECT:** Ohio State Gameplan

You are a useless douchebag. And your brother is a stupid fuck. The only reason you have a job is your last name. I think it was former President Clinton who said that it isn't the screw up that brings you down, it's the cover up. How does it feel to work for Pedophile State University? I hope you die in prison of pancreatic cancer if you were in on the cover up. ....

He is not a man. He is just a senile guinea. You are just a greasy cocksucker. You should do everyone a favor

WHERE IS ROCK BOTTOM?

and kill yourself. You are a gutless maggot. I hope your entire family dies of pancreatic cancer. Fuck you and fuck everyone at Pedophile State University.

Jef

Media stories circulated, insinuating we knew about Jerry and either looked the other way or covered for him. Media people, who should've picked up the phone to get the truth, went on national television with false narratives destroying our reputations.

The university was no help. In a meeting days after the Nebraska game, the firm the school hired stated it wasn't in the school's best interest for us to respond. I responded that soon most of us would no longer work for the school. We needed to defend *our* best interests. We coached with integrity. The firm Penn State had hired had no answers and would have to consult with the board.

On Wednesday the administration decided we'd do an interview with ESPN's Tom Rinaldi on Friday, a full two weeks after the story broke. In this media age, two weeks is like a thousand years.

As for my father's cancer, my family wanted to keep it private, but he'd been seen coming and going from the hospital. We had no choice but to issue a statement that would come on Friday.

Shortly after the team plane took off on Friday, I told the assistant coaches and interim head coach Tom Bradley about Joe's cancer. I waited until takeoff, so that all media members would hear it from my family first. I wish it could've been handled differently. By the time we got to the hotel, most of our student-athletes had already seen it on their phones.

**SENT:** Friday, November 18, 2011 11:08 PM

**TO:** Jay Paterno

**SUBJECT:** New

Your father is a worthless piece of worm shit. Who gives a fuck if he dies? The shit hole you and your perverted, maggot eating family live in is irrelevant to the rest

#### WHERE IS ROCK BOTTOM?

Playing in Ohio Stadium is special. Their 100,000 fans bring an intensity that is tough to beat. As I boarded the bus to the stadium that Saturday, I was nervous about how they would treat our team.

My fears were unfounded; the Ohio State fans were so supportive. They stopped me getting off the bus, yelled to me from the stands, shook my hand, and patted me on the back. Before the game and even after we had won the game, they were the same. "Your dad is a great man, what they did to him was wrong," they said

"Tell Joe to get well soon."

"We love Joe."

"We miss your dad."

After the win outside the locker room, the white-haired man who'd guarded the door every year we'd come to Ohio State took my hand in both of his hands. Under the stadium lights cutting through the dark night, tears glistened in his eyes. He spoke in a pained voice. "Jay, tell your dad I miss him. It will never be the same without him, never. I hope he gets well...I just miss him."

From the Ohio State fans came recognition of my humanity and my father's humanity. They showed so much class. I'll never ever forget that day in Columbus—not because we won but because of their fans. I'll always have a special place for them in my heart; they put aside team allegiance for a moment to help me.

When I saw my father on Sunday, I relayed all the well wishes from Ohio State fans. It meant a lot to him. I could tell in his half-smile, a smile brought on by memories of games past.

"I missed them too," he whispered.

**SENT:** Saturday, November 19, 2011 6:41 PM

**TO:** Jay Paterno

**SUBJECT:** I'm Your Fan

Dear Mr. Paterno,

I'm not sure if you read e-mail. I know it is a difficult time and that a lot of people are probably saying a lot of foolish things via e-mail. I just wanted to tell you that my husband and I are now pretty big JayPa fans. We

## PATERNO LEGACY

A few days later, my father came home again. More people came to visit him. My friend Mike, the guy who'd probably spent more time with my dad than any of my friends, came by with me to see him.

We talked about the current events. Joe looked Mike dead in the eyes and reiterated how he hadn't known, but if he had known that he certainly would've been more aggressive. But the truth was that he didn't know.

Four days before Christmas, Joe celebrated his 85<sup>th</sup> birthday with his wife, his five children, their spouses, and all 17 grandchildren. The medical news was positive, and my father was in great spirits. Instead of complaints he reminded us how lucky he was and to treasure the good in his life. That's how he looked at things. Be thankful for what you *do* have; don't complain about what you don't have.

Underlying it was the bowl trip, and as I left the house Christmas night, my family wished us luck. My heart sank, knowing that I would go without him on the bowl trip. My mother and father and my siblings would not be along. I also sensed this would be the last game I would coach for at least a year—maybe ever.

We were headed to a bowl game with a team that was at best lukewarm to the idea of playing in the Ticket City Bowl.

The night the bowl bids were announced in early December, I was at the Penn State basketball game. Our team expected a trip to the Gator Bowl in Jacksonville, Florida, or to the Insight.com bowl in sunny Tempe, Arizona. Despite being division co-champions, we slid all the way to the eighth pick of Big Ten bowl teams.

At Penn State we'd recruited a smart group of student-athletes—bright enough to know the Big Ten didn't go to bat for us. A year earlier Big Ten commissioner Jim Delany lobbied the NCAA to allow key Ohio State players to play in a bowl game after they had violated NCAA rules. Where was he to defend the Penn State players?

That Sunday night I received a text informing me that the players were meeting to decline the bowl trip and announce their decision on social media. Interim head coach Tom Bradley was out of town. There wasn't time to talk to anyone, so I reacted.

I left the basketball game, arriving at the football building, where the team was gathering. I asked senior Quinn Barham if it would be okay if I talked to the team.



## WHERE IS ROCK BOTTOM?

That dinner would be the very last one, but no one even suspected that.

The next morning my father was too weak from the treatments, so we moved him from the wheelchair to his bed. He insisted that he would finish the interview from his bed. When I asked if he should do it at all, he scolded me. "Sally came all this way, and I want to make sure she can get everything she needs. I owe that to her," he said in a voice that was a whisper of what it once was.

From his bed he struggled to finish the interview. Shortly afterward he left the house to go back to the hospital. He would never return.

Annie Marshall @KarlMarx36 1/22/12

@JayPaterno @THON Be careful not to rape any  
children like Joe Pa did. Thank god he's dead

*From Twitter*

LeBron James @KingJames 1/22/12

R.I.P Joe Pa! Met him before while I was out at Nike  
campus with @BrandonWeems10 @mavcarter @  
RichPaul4 @ErnieRamos32. He was great man!!

*From Twitter*

After Joe died the Freeh Commission continued their investigation. Our attorneys offered to help and were told the report would be completed in late August or maybe earlier that month. We were also told we'd have a chance to reply to any allegations about Joe.

In late May I saw an athletic department member's email, stating Joe's role in this whole thing would be seen in a darker light based on what he was being told. In June a trustee mentioned there was evidence of a cover-up. I sensed trouble.

In June Sandusky's trial took place. On late Friday evening June 22<sup>nd</sup>, the jury had reached a verdict.

As the verdict was announced, the people outside the courthouse cheered. The cheering seemed out of place; there are no winners in stories like these.

PATERNO LEGACY

tom foster (@tmatfost) 6/23/12 9:03 AM

@JayPaterno wish you're dad could of spent his life in jail with jerry too bad he took the easy cancer and death way out

*From Twitter*

A week later the final Freeh warning came. CNN went on air with leaked emails, reportedly showing a cover-up and insinuating that Joe Paterno knew about a 1998 incident. I was seated in a restaurant with friends. I excused myself to talk with my brother Scott and Dan McGinn. "Dan," I said, "I bet this report is coming out over the All-Star break. ESPN has *nothing* to talk about then. It is the deadest day in sports. They'll release it to do the most damage. This is an opening salvo."

We were all in complete agreement.

A little over a week later, I successfully pulled off a surprise 20<sup>th</sup> anniversary party for my wife. I stood on my patio to say a few words to gathered friends and family. Despite the happy commemoration, I knew there was trouble on the horizon. "I want to thank all of you for being here and for sticking by us through the events of the last several months," I said. "I appreciate all of your loyalty. Understand it may get worse before it gets better, but we'll see it through together."

Four days later, the night before the report was to be released, I was on a conference call with my family. We talked about what to expect the next day. There was great uncertainty about what was in the report.

I remember clearly what I said on that call. "Look, I know what will not be proven in that report. There is no academic fraud. There are no NCAA rules violations. I know Dad didn't commit a crime, witness a crime, or cover up a crime. They have the ball, they will make their case. But then we get the ball, we're on offense from here on out. This is a long game."

The next morning as planned, the NBC News satellite truck for the *TODAY Show* arrived at my house at 5 A.M. The plan was to do one interview with them and then see what happened. I did the interview with Matt Lauer before the report came out. It was tough to talk about a report that had yet to be issued. Given that we were both in the dark on the report's contents, both Lauer and I did the best we could.

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But I reiterated that we did not fear the truth.

As soon as the report came out, we started to print it. As it came off the printer, we were highlighting sections and passages. My phone rang, and it was Dan. "Jay," he said, "you're going to have to go back on and do more interviews."

I took a deep breath: "Okay."

"Jay, I wouldn't ask you to do it if I didn't have to. It's up to you. But I'll tell you this, there was a time when Eisenhower had to send Patton into the fight. Our best course of action is to have you go in and fight. You've got to be Patton."

"If I'm Patton, we're screwed," I said, laughing.

We read frantically until Freeh's press conference at 10. My initial reaction reading the report was positive because he had *zero* evidence. But in his press conference, he stated things that I knew to be lies unsupported by evidence. He took some questions from the media; none had actually read or analyzed the report to see the flaws.

It was well planned, a setup all the way. The 24/7 media spent the rest of the day drumming the accusations into everyone's brain. Massive repetition gives even outrageous lies the aura of truth.

We decided to go back on air in the afternoon. We thought out possible questions. Dan called in, Scott called in. These would not be easy interviews. I had to counter a false narrative that my father had helped cover up for a convicted pedophile.

There are three distinct interviewing situations; it's like a game. The first—things are good, and you can easily answer to score points. The second—events are open to interpretation, so you must play some defense but can still score some points. The third—events are bad, and all you can do is limit the damage, hold ground, and retain the ability to credibly respond more forcefully later.

That day was the third situation. Play defense, limit damage, and give the people in our corner some ground they could stand on when it came time to rally back. It was the first part of a long, long road back.

The toughest moment of the day came when Nike announced that they would be taking Joe Paterno's name off their daycare facility—The Joe Paterno Child Development Center.

I would get that question right away in the next round of interviews,

## PATERNO LEGACY

particularly since Phil Knight had spoken so forcefully in defense of my father at his memorial service in January. I knew the answer I had to give.

I looked at Guido D'Elia and Mike Clements and said, "Here is what my dad would say. Phil is the CEO of a publicly traded company with a responsibility to his board and his shareholders. I don't fault him for making that decision. We still consider him a friend, and my family and I still love him."

When I got the question, I answered it along those lines. Months later Phil said he watched my interview. He thanked me for how I'd answered it. I assured him it was exactly what my father would have said.

The rest of that day included over a dozen interviews with national and state outlets. The toughest setup was a taped interview with CBS News. They asked me 10 questions to use and would only use two. I knew I could get eight of 10 just right, and they'll use the two you missed. Eight of 10 is really zero for two; nine of 10 is one for two.

The longest interview was via satellite live on *SportsCenter* with Tom Rinaldi. He is a great interviewer—tough but fair.

All afternoon long the satellite trucks came and parked on the street, and the television crews filed in and out. The furniture in the living room was moved all over the place. Friends took our kids to play with their kids, and so many people helped out on a horrible day. It was humbling to feel their loyalty and their love.

I took a break and walked with Guido through Spring Creek Park, out to Millbrook Marsh, and back home. On the way back, I saw a neighbor and apologized for the trucks and the mayhem I'd created in the neighborhood. "Don't sweat it," he said. "You're doing the right thing; for *all* of us."

Just before 8 PM we had a last interview with CNN's Erin Burnett. I am a fan of her show so I knew her pace of questioning. It varies, so you can never get too comfortable in the batter's box. I relished the challenge. I felt my strongest answer came when I said that, "Joe Paterno, Penn State, and above all the victims deserve more than reasonable conclusions. They deserve the truth."

It was in response to Freeh's repeated use of the words "reasonable conclusions."

It was a tough day, but we'd stood up and held ground to defend and may have even scored points. But the report damaged the reputations of Penn State, Joe Paterno, and the other accused men. What saddened me

#### WHERE IS ROCK BOTTOM?

most was Penn State's board of trustees willingly accepting the report's false narratives about our university.

The story Freeh sold was not true. Despite all we'd done to defend Penn State, their narrative would stain the school for the foreseeable future.

Joe Paterno was a liar, there's no doubt about that now. He was also a cover-up artist. If the Freeh report is correct in its summary of the Penn State child molestation scandal, the public Paterno of the last few years was a work of fiction. In his place is a hubristic, indictable hypocrite.

—Sally Jenkins in *The Washington Post*, July 13, 2012

"When the fall is all there is, it matters."—Richard III in *The Lion In Winter*

It was a quote my brother Scott had shared with me. As we kept falling, I just hoped we'd reached rock bottom, so we could push off and try to swim back to the surface.

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in my mind. There are people who live with or know people hurt by sexual abuse. There is a lot of pain and with that maybe a desire to lash out at someone. For those who don't have all the facts, we're the easiest target.

Later that day the police called back and had found one of the people who'd made a threat. My prediction was correct. There were some issues there. "We've talked to him and to the police in his area. What action do you want us to take?" the police officer asked.

"I don't want an emotional tweet to ruin someone's life. If they promise to get help, I won't do anything."

We offered to provide references to people who could help and even pay for the help if needed. "Okay," the officer said, "I will pass that along."

Later the officer called back and reported that the person had agreed to get help and apologized. I hung up the phone, knowing I had done what my father would've wanted me to do. I hope that person got help and found peace.

I thought back to July just after the Freeh Report put my father in the crosshairs. The 11 days after the Freeh Report were among the toughest of my life. As the Central Pennsylvania Festival of The Arts began in State College, thousands of alumni flooded back into town. As I walked around the festival, people stopped me to thank our family for standing up for Penn State.

Going on behind the scenes was a coordinated effort to tear down Joe Paterno once and for all. After the initial two-day surge of the Freeh Report, the university leaked details of Joe's last contract to a reporter from *The New York Times*. The attempt was to imply Joe added a retirement bonus to his contract because he knew this was coming.

It was clearly written by someone working hand in hand with board members to make Joe Paterno look greedy and, after his death, to make our family look bad for simply asking that the terms of his contract be honored. But it also gave insight into the paranoia that some board members felt about what one board member had termed in an email to a friend as "a narrow band of Paterno worshippers."

The article reported: "During a conference call, one board member worried aloud that failure to make good on what was owed to the Paterno estate could lead to another 'reign of terror' by Mr. Paterno's supporters, according to a person who was on the call."

Monday the mess continued. I got a call from someone close to the Paternoville group, a student organization that camps out before each

## PATERNO LEGACY

Sunday morning I got a call. Six months to the day that Joe died and less than 48 hours after he'd said a decision wouldn't be made, Rod Erickson had the university take down the statue of my father. I refused to watch it. My mother found out from the children of my sister Mary as they were watching it live on television.

The administration had gotten what they wanted, the visual of a public lynching of Joe Paterno—even it was only a bronze statue of him.

The statement issued by Penn State was even more insulting: "With the release of Judge Freeh's Report of the Special Investigative Counsel, we as a community have had to confront a failure of leadership at many levels. The statue of Joe Paterno outside Beaver Stadium has become a lightning rod of controversy and national debate, including the role of big time sports in university life. The Freeh Report has given us a great deal to reflect upon and to consider, including Coach Paterno's legacy. I now believe that, contrary to its original intention, Coach Paterno's statue has become a source of division and an obstacle to healing in our university and beyond. For that reason, I have decided that it is in the best interest of our university and public safety to remove the statue and store it in a secure location. I believe that, were it to remain, the statue will be a recurring wound to the multitude of individuals across the nation and beyond who have been the victims of child abuse."

I couldn't believe what they had written about my father. Shortly thereafter, the leaks about the NCAA sanctions started. The NCAA would hold a Monday press conference, announcing "unprecedented sanctions" against Penn State.

The press conference was grandstanding for NCAA president Mark Emmert. He used the false accusations of the Freeh Report as the basis for the sanctions. It was an appalling moment for all Penn Staters and anyone who believes in due process.

The team received a reduction in scholarships, a four-year bowl ban, and a \$60 million fine. Penn State's wins were taken away all the way back to 1998 when, according to Emmert, Penn State had failed to act appropriately in response to an accusation against Jerry Sandusky. That showed how little grasp he had of the situation. Penn State had issued a 1998 report and given it to the commonwealth of Pennsylvania to investigate.

By Monday night the damage was nearly total. In 11 days the Freeh Report, a story about Joe Paterno's greed, the removal of the Paternoville

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interests to sell an alternate story. They neglected to defend the university they'd been entrusted to protect.

The rest of the week I did interviews with nearly two dozen more people in cities like Atlanta, Philadelphia, Miami, and Los Angeles. I went and talked with all the local media outlets as well. It was important that the people in our home community hear what Clemente's report had to say about how we miss the nice guy offenders in communities all over the country.

Many people in State College who'd worked for or volunteered with Sandusky's charity, The Second Mile, were carrying collective guilt. I wanted them to know nice guy offenders operate without enablers; they neither need nor want them. I also wanted people to realize there were many young people whose lives had been saved by the work of The Second Mile volunteers.

As we went on the offensive, Louis Freeh hid behind his written statement. He'd been asked to appear and declined. The damage his false narrative had wrought was but a blip in his rearview mirror as he counted his Penn State money.

Subsequently, Louis Freeh and Mark Emmert have declined every chance to appear on camera with anyone from our side.

One of our objectives as we issued the reports was to create awareness of the issues of child sexual abuse in this country. Clemente was given a segment on *Katie*. My mother and I were asked to speak to the Pennsylvania Family Support Alliance at their awareness breakfast in Harrisburg on April 10, 2013.

While I made it quite plain in my speech that I was not there to talk about my father, we were criticized by members of the media, who were not even in the room, for trying to use Abuse Awareness Month to try and "defend Joe Paterno." The media that was actually in the room had a very different take on our message.

Shortly after my speech, I heard from Jolie Logan, who is the CEO of Darkness to Light, a group based in Charleston, South Carolina, that trains people to recognize the signs of child sexual abuse. They asked if I could help Penn State student Lance Chappelle with his prevention walk. I was more than happy to do so in September of 2013 but also noticed the university administration's absence at the event.

As the spring of 2013 moved toward summer, there were more and more positive developments. NBC's Bob Costas took another look at the Sandusky scandal and hosted a show on the NBC Sports Network as we announced



## THE FIGHT BACK

a sweeping lawsuit against the NCAA. In the run-up to the show, Costas showed why he is among the most respected journalists on the planet. He openly admitted that he had not read the entire Freeh Report before commenting in July of 2012. With more study and time, he asserted that Joe Paterno wasn't involved in a cover-up.

I was grateful for Bob's willingness to stand as a bigger person than others in the media who refused to further study what had happened here. Journalism should be a constant re-evaluation and analysis of facts as we learn more and more. Bob Costas gets it, and that's why he is among the elite.

Others weren't as ethical.

Christine Brennan from *USA TODAY* stated that she knew everything she needed to know before even reading our report. I laughed as I heard her say that. Good thing Galileo and the explorers of the 1400s and 1500s didn't just accept that the world was flat.

In the fall of 2013, the prosecutors of the Sandusky case told CBS that there was no evidence of Joe Paterno being involved in a cover-up. I am still awaiting Sally Jenkins' retraction from what she wrote in July of 2012 about Joe Paterno being a cover-up artist. I'm disappointed because I respect Sally so much.

The sweeping lawsuit against the NCAA united a broad-based group of people. Faculty members signed on, unafraid of the potential retaliation from the university administration. Five trustees—Anthony Lubrano, Ryan McCombie, Adam Taliaferro, Al Clemens, and Peter Khoury—signed onto the suit. Peter was later forced to choose between being on the lawsuit or be removed from the committee choosing Penn State's next president. He stepped off the lawsuit but made sure the media knew why he'd done so.

Nine former players stood up: Michael Robinson, Anwar Phillips, Justin Kurpeikis, Pat Mauti, Richard Gardner, Gerald Cadogan, Shamar Finney, Anthony Adams, and Josh Gaines. All of them had played between 1998 and 2011 and had wins stripped. Bill Kenney and I put our names in to represent the former coaches. The group stood shoulder to shoulder armed with a slingshot to take on the NCAA Goliath. It might have only been a slingshot, but it was loaded with the truth.

In the summer there was more ammunition for our cause.

On the Thursday of the Arts Festival, former Penn State football player Brian Masella and his wife had joined forces with former basketball player

## PATERNO LEGACY

To Phil Knight, special thanks for writing the foreword. It is rare to see accomplished men speak so honestly about a difficult decision they've made. My father was proud to call you a friend, and you have remained a friend to him even now that he has gone. Thanks also to Al Clemens, who had the fortitude to publicly acknowledge the errors made in November of 2011. It takes a lot to stand up and own something—for that I have great respect for you.

I want to thank the men I coached with and the people I worked with every day—particularly the student-athletes I coached. I miss the camaraderie of meetings, the practice field, and the team bonds—from quiet pregame moments to a rowdy victorious postgame locker room. There were lots of laughs and tears, and I've taken something with me from so many players.

I now know why my father never gave it up.

Thanks to my friends. Some friends have emerged stronger than before, and some drifted away, and I thank them all. I know the true feelings of those around me. When hard times emerged, I saw the best and worst of people I know and for that I am thankful.

Last I want to thank all those who have been here to support the cause of finding truth: Dan McGinn, Wick Sollers, Mara Vandlik, Paul Kelly, and others who have battled for Penn State's name and my father's name. Thanks to the trustees, faculty, former players, and coach Bill Kenney who joined the lawsuit to right the wrongs wrought by the NCAA and the Freeh Report. I'm grateful to so many alumni, Penn Staters, and students who have supported our fight. Thanks to Penn State coaches like Russ Rose and former players like Franco Harris and Brian Masella, who led countless others. They refused to allow others to tear down what we know to be true.

Over time the truth has emerged, but in the earliest days, it wasn't easy, nor was it politically correct to defend Joe Paterno. The ones who stood to support Joe are the ones I will always remember in my heart until the day I die.

Thanks.

# **EXHIBIT 9**

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**From:** George Middlemas <Middlemas@apexvc.com>  
**Sent:** Sunday, August 12, 2012 10:40 AM  
**To:** Jay Paterno (paterno\_jay@yahoo.com); kpaterno@comcast.net  
**Subject:** FW: Schultz defense granted subpoena power for Freeh materials

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**From:** Warren Hartenstine [mailto:whartenstine@gmail.com]  
**Sent:** Sunday, August 12, 2012 9:20 AM  
**To:** Undisclosed Recipients  
**Subject:** Schultz defense granted subpoena power for Freeh materials

Per Tom McLaughlin:

OK, folks, this is more important information, and another reason why certain members of the BoT may be in such a big hurry to get that consent decree ratified. On Thursday, the judge in the Schultz case granted the defense subpoena power for materials used in the Freeh report. On the same day, the BoT called their meeting this weekend. This is a dangerous path, and we are watching. Don't believe me? Look here! <http://www.dauphincounty.org/files/3537.pdf> This is one of those important pieces of the puzzle.

# **EXHIBIT 10**

---

**From:** Dana <danadonut@gmail.com>  
**Sent:** Wednesday, August 29, 2012 9:19 PM  
**To:** Dana D  
**Subject:** Fwd: the trophies were part of the consent decree

While asking about the trophies, a friend was told that they were included under the consent decree. She was kind enough to send a copy of it.

This should keep you up tonight.

"Found the consent decree. Glancing through it saw nothing about the trophies specifically, but guessing it fell under the agreement to erase wins from record books. Here's a link. Nothing here that didn't come out before. This is pretty much what they detailed at the announcement, but it does have Emmert and Erickson's signatures."

<http://s3.amazonaws.com/ncaa/files/20120723/21207236PDF.pdf>

# **EXHIBIT 11**

---

**From:** Charles Kranich <ckranich@kranichs.com>  
**Sent:** Thursday, June 13, 2013 12:49 PM  
**To:** Jay Paterno  
**Subject:** FW: Check out Rodney Erickson is a Gutless Idiot Who Admitted Being Forced to Sig  
**Attachments:** image001.gif; image002.gif

Did you see this??

Charles Kranich  
President, Kranich's Jewelers

*Shop Online:* [www.kranichs.com](http://www.kranichs.com)

.... follow Kranich's Jewelers on  

---

**From:** [MMKSR@aol.com](mailto:MMKSR@aol.com) [<mailto:MMKSR@aol.com>]  
**Sent:** Thursday, June 13, 2013 11:25 AM  
**To:** Mike Kranich Jr.; Charles Kranich  
**Subject:** Check out Rodney Erickson is a Gutless Idiot Who Admitted Being Forced to Sig

[Click here: Rodney Erickson is a Gutless Idiot Who Admitted Being Forced to Sign the NCAA Consent Decree | The Framing of Joe](#)



# **EXHIBIT 12**

**The ESTATE of JOSEPH PATERNO;**

**and**

**WILLIAM KENNEY and JOSEPH V.**  
**(“JAY”) PATERNO,**

**Plaintiffs,**

**v.**

**NATIONAL COLLEGIATE ATHLETIC**  
**ASSOCIATION (“NCAA”); et al.**

**Defendants,**

**and**

**PENNSYLVANIA STATE UNIVERSITY,**

**Defendant.**

Joseph V. ("Jay") Paterno submits the following objections and responses to the First Set of Interrogatories from the NCAA. In doing so, he reserves the right to supplement any of these objections or responses.

**INTERROGATORY NO. 1:**

Identify every job title You have held since graduating from college and include the name of the institution, the position title, Your supervisor's name and position, and the salary you received each year in each position.

**RESPONSE TO INTERROGATORY NO. 1:**

From 1991-1993 Jay Paterno was a Graduate Assistant Football Coach at the University of Virginia. His supervisors were Ed Henry, Administrative Assistant, Gerry Capone, Director of Football Operations, and George Welsh, Head Football Coach. As is typical in Graduate Assistantships he received a grant for graduate studies in education.

From 1993-94, Jay Paterno worked at the University of Connecticut as the Assistant Coach for Wide Receivers and Tight Ends. His supervisor was Tom Jackson, Head Football Coach. He cannot recall the amount of his initial salary. At the time he was let go his salary had been raised to \$30,000.

From 1994-1995, Jay Paterno worked at James Madison University as Assistant Coach for Quarterbacks. His supervisor was Rip Scherer, Head Football Coach. His salary was between \$10,000 and \$18,000 and was raised to \$36,000.

In 1995, Jay Paterno was hired by the Pennsylvania State University ("Penn State") as Assistant Coach for Tight Ends and Recruiting Coordinator and in 2000 was named Assistant Coach for Quarterbacks. His supervisors were Fran Ganter, Offensive Coordinator, and Joseph Paterno, Head Coach. His salary was \$36,000 which increased over the years.

**INTERROGATORY NO. 2:**

State all facts regarding every employment opportunity You believe You lost due to NCAA's conduct, including, without limitation: (1) the name of the institution; (2) the job position; (3) the date You applied; (4) whether You interviewed; (5) when and with whom You interviewed; (6) the names of any other individuals at that institution with whom You spoke about the position; (7) whether You were offered the position, rejected, or no decision was

rendered; (8) the date You were offered the position or informed You had been rejected; (9) any reasons provided for any rejections; and (10) any other facts that You believe demonstrate the NCAA caused You to not receive the employment opportunity.

**RESPONSE TO INTERROGATORY NO. 2:**

Jay Paterno lost the following opportunities due in whole or part to the NCAA's conduct:

In December 2011, Jay Paterno applied for the position of Head Coach at Penn State. He interviewed on December 3, 2011 with David Joyner, Ira Lubert, Charmelle Green, Linda Caldwell, Russ Rose, and John Nichols. Jay Paterno was later told that he was an outstanding candidate, who had performed well at his interview, but that he would not be hired as the next head coach.

In March 2012, Jay Paterno discussed with Ed Placey, a producer at ESPN, a position as a commentator for one or more spring college football games, and was slated to tape on-air analyst segments at the ESPN studio in Charlotte, North Carolina. These games were a trial for a more long term arrangement with ESPN for Jay Paterno to provide college football commentary and analysis. In April 2012, ESPN informed Jay Paterno that they wanted to postpone his work. Following the publication of the Freeh Report and imposition of the Consent Decree, ESPN informed Jay Paterno that it was no longer interested in employing him as a commentator and analyst for that season.

In late February 2012, Jay Paterno began discussions with Bonnie Bernstein and Ken Hirschman, President of HBO Sports, to produce a documentary about Joe Paterno's life. In late spring these discussions were facilitated by agent Colin Smeeton. During the same time period, Jay Paterno made proposals for a documentary about the life of Joseph Paterno to other media outlets, including discussions with Steven Esposito, President of Showtime Sports, Michael Bloom of Fox Sports and Jonathan Hock, a producer with an independent filmmaker who had

previously done work with ESPN. In June 2012, Jay Paterno, the Paterno Family, Colin Smeeton and ESPN agreed to produce the documentary together with the goal of airing the film during a prime time slot. The documentary would also have provided an effective vehicle to set the record straight as it related to Penn State, Joe Paterno and certainly the assistant coaches as well. After the publication of the Freeh Report, ESPN began discussing the possibility of changing the scope of the film, but were still interested in producing and airing it. By the end of July, following the imposition of the Consent Decree and the vacation of Joe Paterno's wins, ESPN was no longer interested in the Joe Paterno documentary.

In April 2013, Jay Paterno began discussions regarding work as a commentator and analyst for CBS Sports. On April 23, Jay Paterno met with Harold Bryant, in New York. Subsequent to this meeting, Jay Paterno and representatives from CBS Sports spoke on the phone regarding possible employment, but Jay Paterno was told they were not comfortable hiring him.

From the spring of 2013 through the spring of 2015, Jay Paterno has had ongoing discussions in person, electronically, and telephonically, with representatives of Fox Sports, including Jacob Ullman, regarding employment as a commentator and analyst. Jay Paterno has been told that Fox Sports is not comfortable hiring him.

In December 2012, Jay Paterno applied for the head football coach position at Boston College. He was not interviewed and not hired.

In December 2012, Jay Paterno applied for the head football coach position at the University of Colorado. He was not interviewed and not hired.

In December 2013, Jay Paterno applied for the head football coach position at the University of Connecticut where he had previously been an assistant coach. He received positive feedback from the search firm, which was conducting the search to fill the vacancy, but was later told that the Athletics Director was not comfortable with him as a candidate and he was neither interviewed nor hired.

In December 2013, Jay Paterno applied for the head football coach position at James Madison University where he had previously been an assistant coach. He was not hired.

In December 2014, Jay Paterno applied for the assistant coach for quarterbacks position at West Virginia University. He was not hired.

In December 2014, Jay Paterno applied for the assistant coach for quarterbacks position at the University of Georgia. He was not hired.

In December 2012 Jay Paterno was advised that Temple University would not consider any former Penn State coaches for the Head Coach position.

**INTERROGATORY NO. 3:**

Describe every communication with or statement by a representative of any institution discussed in Interrogatory No. 2 regarding the NCAA, the Consent Decree, or sanctions imposed on Penn State that You believe support Your contention that the NCAA caused You to not receive an offer for employment at that institution.

**RESPONSE TO INTERROGATORY NO. 3:**

After the imposition of the Consent Decree, Jay Paterno spoke to numerous individuals regarding employment or other opportunities, all of which he was well qualified for. These positions were all ultimately filled by individuals with equivalent or in some cases lesser experience. Additionally, it was made clear through the statements made at the time of the imposition of the Consent Decree that individual sanctions for Penn State coaches were still

under consideration by the NCAA. Because that left open the possibility of further sanctions against Penn State coaches like Jay Paterno, other schools were unwilling to consider him for open positions for which he was well qualified based on 20 years of successful coaching. In addition, because the sanctions imposed on Penn State carried the possibility under NCAA rules of “following” him until their expiration, the NCAA foreclosed coaching and media opportunities for Jay Paterno.

**INTERROGATORY NO. 4:**

Describe the basis for Your contention that the NCAA knew or should have known that You had “prospective and existing employment, business, and economic opportunities with many prestigious college and professional football programs.”

**RESPONSE TO INTERROGATORY NO. 4:**

The NCAA governs college athletics on a national level and is deeply involved in the business of competitive sports. As such, the NCAA understands that employment prospects for a Division I football coach depend on the success of the players and teams he coaches as indicators of what that coach can offer another team that wants to fill a coaching position. The NCAA also knows that there is movement within ranks of Division I football coaches at the end of every season. The NCAA knew or should have known that Jay Paterno, who had received many accolades in his role as an assistant coach for Head Coach Joe Paterno, would be a viable candidate for positions with other college football programs. Similarly, it is common practice in collegiate athletics for a coach or assistant coach who has left a program to work as a commentator and analyst for media outlets, either permanently or for a number of years in order to raise their profile and wait for a suitable position to become available.

The NCAA also knew Jay Paterno to be a well-respected coach and leader in college athletics. In 2011 an assistant to Mark Emmert called Jay Paterno to request permission to re-run

a column Jay Paterno had published on StateCollege.com about the issue of paying student-athletes. Jay Paterno was told that Mr. Emmert liked what he had written and the column was posted on the front page of the NCAA's website.

**INTERROGATORY NO. 5:**

State all facts regarding Your hiring at Penn State, including, without limitation, what You did to apply for a position, and with whom You interviewed (if anyone).

**RESPONSE TO INTERROGATORY NO. 5:**

Jay Paterno was contacted by several Penn State assistant football coaches in late 1994 when Coach Craig Cirbus accepted a position as head football coach at his alma mater, the State University of New York at Buffalo, and urged him to apply for the position. Jay Paterno submitted his resume and references to the coaching staff, and was interviewed over the phone for the open position. He was offered the job by Joe Paterno and Tim Curley.

**INTERROGATORY NO. 6:**

Identify and Describe when You first learned of any allegations that Sandusky had engaged in sexual contact or any other inappropriate conduct with minor children.

**RESPONSE TO INTERROGATORY NO. 6:**

Jay Paterno first learned of allegations that Sandusky had engaged in sexual contact or inappropriate conduct with children in the Fall of 2010 when he heard that Sandusky was the subject of a grand jury investigation for inappropriate contact with minor children.

**INTERROGATORY NO. 7:**

State all facts supporting Your allegation in Paragraph 169 of the Second Amended Complaint that statements made by the NCAA "irreparably harmed Your reputation and "lowered" You "in the estimation of the nation," including all facts You believe demonstrate that Your reputation has been irreparably harmed and "lowered [] in the estimation of the nation."



**RESPONSE TO INTERROGATORY NO. 7:**

When the NCAA incorporated in to the Consent Decree a “key finding” of the Freeh Report that “some coaches, administrators and football program staff members ignored the red flags of Sandusky’s behaviors and no one warned the public about him,” it marked Jay Paterno and others who had coached at Penn State when Jerry Sandusky was there, as persons who failed to protect the public from a serial pedophile. The NCAA emphasized that allegation in a national press conference when it announced the Consent Decree, and stated that the NCAA reserved the right to pursue additional sanctions against individuals at Penn State. In addition to widespread commentary in the national press that the other coaches at Penn State “must have known” about Jerry Sandusky’s conduct, Jay Paterno personally received hate mail and death threats following the release of the Consent Decree because of the accusations it contained about coaches and the football program at Penn State.

**INTERROGATORY NO. 8:**

Identify and Describe all injuries and damages, including economic loss, opportunity loss, emotional distress, mental anguish, humiliation, and financial or pecuniary loss that You believe You have suffered as a result of the NCAA’s actions as alleged in Counts II, IV, and V of the Second Amended Complaint.

**RESPONSE TO INTERROGATORY NO. 8:**

Jay Paterno has suffered loss including, inter alia, the opportunity to continue as an assistant football coach and the opportunity for promotion to head football coach at a major collegiate program. Recent salaries for assistant football coaches at such program are, on average, just below \$350,000 annually. Recent salaries for head football coaches at such program are, on average, just below \$835,000 annually. The NCAA’s actions have prevented Jay from obtaining and holding such a position since 2013, and are frustrating his chances of obtaining such a position in the future.

**INTERROGATORY NO. 9:**

State all facts that support or contradict Your claim that a reasonable person would believe that the statement about “some coaches, administrators, and football program staff members” in the Consent Decree was directed at You personally.

**RESPONSE TO INTERROGATORY NO. 9:**

When Jay Paterno was an assistant football coach at Penn State, there were nine members of the coaching staff in addition to the Head Coach. When the NCAA included in the a statement in the Consent Decree that “some coaches, administrators and football program staff members ignored the red flags of Sandusky’s behaviors and no one warned the public about him,” that statement pertained to a small group, which included Jay Paterno. At the time when the story broke in 2011 there were just six assistant coaches at Penn State staff who were members of the Penn State Coaching staff in the 1998 and 2001 time frames that the NCAA repeatedly cited in the Consent Decree and the national press conference. Two of those coaches were retained by Penn State after Head Coach Joe Paterno was terminated, and therefore could not have been of concern for “ignor[ing] the red flags of Sandusky’s behavior.” That left just four other coaches on the football staff who could be referenced in the NCAA’s statements. Of that group, the NCAA had accused Jay Paterno’s father of covering up Sandusky’s conduct for more than a decade. Thus, a reasonable person would believe that the coaches the NCAA referred to as “ignor[ing] the red flags of Sandusky’s behavior” included Jay Paterno.

**INTERROGATORY NO. 10:**

State all facts regarding Your termination at Penn State, including, without limitation, when You were notified, and any information communicated to You by Coach Bill O’Brien or any other Penn State representative or employee regarding Your termination.

**RESPONSE TO INTERROGATORY NO. 10:**

Jay Paterno never received formal notice of his termination from Penn State.

**INTERROGATORY NO. 11:**

State all facts regarding why You withdrew from the Pennsylvania Lieutenant Governor's race in 2014.

**RESPONSE TO INTERROGATORY NO. 11:**

Jay Paterno objects to this Interrogatory on grounds that is not relevant to the subject matter of the pending action. Subject to the foregoing objection, Jay Paterno withdrew from the race for Pennsylvania Lieutenant Governor in 2014 because of a challenge to the petition he had submitted to appear on the ballot, which would have required substantial campaign resources to fight and win, and he decided not to do that.


**INTERROGATORY NO. 12:**

Describe the subject matter for which You intend to present an expert witness, and Identify such expert if he or she has been selected.

**RESPONSE TO INTERROGATORY NO. 12:**

No decision has yet been made about potential expert witnesses to testify at trial.

Dated: June 26, 2015

By: 

Thomas J. Weber  
GOLDBERG KATZMAN, P.C.  
4250 Crums Mill Road, Suite 201  
P.O. Box 6991  
Harrisburg, PA 17112

Wick Sollers  
L. Joseph Loveland  
Ashley C. Parrish  
Patricia L. Maher  
KING & SPALDING LLP  
1700 Pennsylvania Avenue, NW  
Washington, DC 20006

Counsel for Plaintiffs

**VERIFICATION**

I hereby state that the information provided in the foregoing Amended Response of Joseph V. ("Jay") Paterno to First Set of Interrogatories from Defendant NCAA is true and correct to the best of my knowledge, information and belief.

  
\_\_\_\_\_  
Joseph V. Paterno

**CERTIFICATE OF SERVICE**

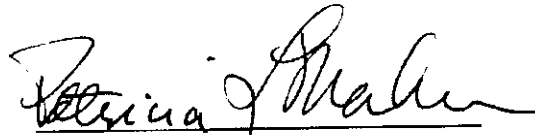
I HEREBY CERTIFY that a true and correct copy of the foregoing **Amended Response**  
**of Plaintiff Joseph V. ("Jay") Paterno to First Set of Interrogatories from Defendant**  
**NCAA** was served this 26th day of June, 2015 by first class mail and email to the following:

Thomas W. Scott  
Killian & Gephart  
218 Pine Street  
P.O. Box 886  
Harrisburg, PA 17108-0886  
Email: [tscott@killiangephart.com](mailto:tscott@killiangephart.com)

Everett C. Johnson, Jr.  
Brian E. Kowalski  
Sarah Gragert  
Latham & Watkins LLP  
555-11<sup>th</sup> Street, N.W.  
Suite 1000  
Washington, D.C. 20004-1304  
Email: [everett.johnson@lw.com](mailto:everett.johnson@lw.com)  
[brian.kowalski@lw.com](mailto:brian.kowalski@lw.com)  
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Joseph P. Green  
Lee Green & Reiter Inc.  
115 East high Street  
Lock Drawer 179  
Bellefonte, PA 10823-0179  
Email: [jgreen@lmgrlaw.com](mailto:jgreen@lmgrlaw.com)

A handwritten signature in cursive script, appearing to read "Patricia L. Maher", written in dark ink.

Thomas J. Weber  
GOLDBERG KATZMAN, P.C.  
4250 Crums Mill Road, Suite 301  
P.O. Box 6991  
Harrisburg, PA 17112

Wick Sollers  
L. Joseph Loveland  
Ashley C. Parrish  
Patricia L. Maher  
KING & SPALDING LLP  
1700 Pennsylvania Avenue, NW  
Washington, DC 20006  
Telephone: (202) 737-0500

*Counsel for Plaintiffs*

# **EXHIBIT 13**

Eric Shenks  
Intro E-mail

Eric,

I am writing you at the suggestion of a mutual friend Chris Bevilacqua.

After twenty-two years coaching major-college football I have reached a point where I'd like to transition into the broadcast side of the business. There is no doubt that my experiences as a coach and in all the off-field things I have done give me a unique skill set to bring to Fox Sports and the new ventures you are beginning.

My twenty-six years of coaching and playing college football provided me with perspective, stories and experiences that are my own. I've called the plays for some of the best offenses in Penn State and Big Ten conference history. Growing up in the home where I was raised, and then coaching for two Hall of Fame coaches I was exposed to college football history almost every day. It was common for me to hear about Jim Brown's recruitment, while we recruited Lavar Arrington or sat in Walter Payton's home recruiting his son. There were times I answered the home phone only to realize that Coach Bryant from Alabama was on the other end.

When you look over my attached bio, you'll see a range of experiences giving me a uniquely versatile skill set to work across platforms on air, in print, on the web and in social media. I have a collection of on-air links as well as links to columns I have written if you'd like me to send those along as well.

I would be happy to talk with you about the possibilities of becoming a part of your group. I have no doubt that I can help be a cornerstone in your newly expanded package of college football coverage.

My cell is 814-777-7781 and e-mail is at [paterno\\_jay@yahoo.com](mailto:paterno_jay@yahoo.com).

Thanks for your time and I look forward to talking soon.

Sincerely,



Jay Paterno

Eric,

I am writing you at the suggestion of a mutual friend Chris Bevilacqua.

After twenty-two years coaching major-college football I have reached a point where I'd like to transition into the broadcast side of the business. There is no doubt that my experiences as a coach and in all the off-field things I have done give me a unique skill set to bring to Fox Sports and the new ventures you are beginning.

My twenty-six years of coaching and playing college football provided me with perspective, stories and experiences that are my own. I've called the plays for some of the best offenses in Penn State and Big Ten conference history.

Growing up in the home where I was raised I was exposed to college football history almost every day. It was common for me to hear about Jim Brown's recruitment, while we recruited Lavar Arrington. There were times I answered the home phone only to realize that Coach Bryant from Alabama was on the other end.

When you look over my bio, you'll see a range of experiences giving me a uniquely versatile skill set to work across platforms on air, in print, on the web and in social media.

I would be happy to talk with you about the possibilities of becoming a part of your group. I have no doubt that I can help be a cornerstone in your newly expanded package of college football coverage.

# **EXHIBIT 14**

Maryland Development Job:

AD Kevin Anderson—San Fran native, was at Army, 4 kids 5<sup>th</sup> year at Maryland

Others I Know:

Peter Weiler [pweiler@umd.edu](mailto:pweiler@umd.edu) 301-405-4683

Kerry McCoy

Randy Edsall

Sue Sherburne

# **EXHIBIT 15**

JAY V. PATERNO  
305 HOLLY RIDGE DRIVE  
STATE COLLEGE, PENNSYLVANIA 16801

12/23/14

Dana —

I wanted to drop you a note to wish you  
a Merry Christmas, good luck in the Bowl game and  
good luck with recruiting.

This letter is also to express my sincere interest  
in the staff opening you have on your staff. Having  
been down to see your team practice and play I  
feel I could be a valuable asset to your program.

My career includes a diverse set of experiences on  
and off the field that will be a valuable addition  
to your staff.

I'd welcome the opportunity to come down and talk  
with you and your staff after you return from Memphis.  
Thanks for your time.

Jay Paterno

JAY V. PATERNO  
305 HOLLY RIDGE DRIVE  
STATE COLLEGE, PENNSYLVANIA 16801

12/23/14

Coach Richt -

I wanted to drop you a note to express my interest in the Coaching Staff vacancy you have. Over the years I often heard my father Joe Paterno talk about how much respect he had for you and for the way you run your program.

Your goals of a student athlete program that develops young men to be men of character fits what I have been a part of all of my career.

I also bring a set of diverse skills on and off the field that will be tremendous assets to your program.

Any opportunity to talk with you would be welcome when you return from your Bowl game.

Thanks for your time

Jay Paterno

JAY V. PATERNO  
305 HOLLY RIDGE DRIVE  
STATE COLLEGE, PENNSYLVANIA 16801

12/23/14

Urban -

Just a quick note to Congratulate you on a tremendous finish to your season and wish you luck in the playoffs.

This note is also to express interest in any coaching positions that have opened and may open as you still in the future.

My father had tremendous respect for you - and I share that respect as well. It would be an honor to be a part of your staff.

For you and Ohio State - I would bring a diverse set of experiences on and off the field that would be an asset to your program. My career has included success in recruiting, coaching as well as leadership in Social Media and public relations.

I hope to talk with you after you've won the playoffs.

Jay Paterno

# **EXHIBIT 16**



COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF STATE  
BUREAU OF COMMISSIONS, ELECTIONS AND LEGISLATION

**2014 PENNSYLVANIA ELECTIONS  
IMPORTANT DATES TO REMEMBER**

First day to circulate and file nomination petitions .....	February 18
Last day to circulate and file nomination petitions .....	March 11
First day to circulate and file nomination papers .....	March 12
Last day for withdrawal by candidates who filed nomination petitions .....	March 26
Last day to REGISTER before the primary .....	April 21
Last day to apply for a civilian absentee ballot .....	May 13
Last day for County Board of Elections to receive voted civilian..... absentee ballots	May 16
<b>PRIMARY</b> .....	May 20
First day to REGISTER after primary .....	May 21
Last day for County Board of Elections to receive voted military and..... overseas absentee ballots (must be postmarked no later than May 19)	May 27
Last day to circulate and file nomination papers .....	August 1
Last day for withdrawal by candidates nominated by nomination papers	August 8
Last day for withdrawal by candidates nominated at the primary .....	August 11
Last day to REGISTER before the NOVEMBER election .....	October 6
Last day to apply for a civilian absentee ballot .....	October 28
Last day for County Boards of Elections to receive voted civilian..... absentee ballots	October 31
<b>GENERAL ELECTION</b> .....	November 4
First day to REGISTER after November election .....	November 5
Last day for County Board of Elections to receive voted military and..... overseas absentee ballots (must be postmarked no later than November 3)	November 12

Note: All dates in this calendar are subject to change without notice.

# **EXHIBIT 17**

---

**From:** Jay Paterno <paterno\_jay@yahoo.com>  
**Sent:** Thursday, March 28, 2013 3:41 PM  
**To:** Rachel Magnuson  
**Subject:** Re: Gov poll

Rachel,

I would love to meet with Allyson. Just let me know her schedule and we can work it in with what works for her.

As for the 21st if that Monday works for you that would be good.

The 2 things that have come up in serious discussions for me have been the 5th Congressional District or Lt. Governor.

Either way I'd love to talk with you about any possibilities and would love to talk the Congresswoman as well.

Jay Paterno

Sent from my iPad

On Mar 28, 2013, at 3:14 PM, Rachel Magnuson <[rleed@hotmail.com](mailto:rleed@hotmail.com)> wrote:

Jay - wanted to be sure you had this polling memo. In addition to me being in PA the weekend of April 21st, Allyson will be speaking to both Centre County Dems and Clearfield Dems (separate events) April 27th, and I wanted to see if you might be available that day to meet with her.

best,  
Rachel

<Schwartz-Viability Memo.pdf>

# **EXHIBIT 18**

2011/2012 Notes from Dec/January:

**Saturday December 3, 2011**

Interviewed with the PSU Search Committee for the Head Coaching Job—in the meeting Russ Rose, Ira Lubert, Dave Joyner, Charmelle Green and John Nichols

Went to NCAA Women's Volleyball game—they won of course. After the game Russ Rose told me that I hit it "out of the park"

**Friday January 6, 2012**

Dave Joyner came to my office to let me know they'd hired a coach—did not say who—but that I would not be the Head Coach at Penn State

On my way to the car I was swarmed by media members and told them I was still employed by Penn State

**Saturday January 7, 2012**

Sit down interview with ESPN's Tom Rinaldi in my house

**Sunday January 8, 2012**

Meeting with newly hired coach Bill O'Brien. He made notes on a tablet he was handed by Dave Joyner

**Monday January 9, 2012**

Bill O'Brien calls my cell phone after I dropped my twins off at school at Mt Nittany Middle School. He told me that I would not be part of the staff and that he had hired a quarterbacks coach. Fact: he did not hire a QB coach for several more weeks. At no time did he indicate that he was terminating my employment at Penn State or that my severance would begin then.

**Tuesday January 10, 2012**

I cleaned out my football office at the Lasch Building on Monday and Tuesday 1/9 and 1/10

In response to several media inquiries I issued the following statement on my blog:

***TUESDAY, JANUARY 10, 2012***

***Closing Statement...for now***

*Statement for Today:*

*After talking with Coach Bill O'Brien we have reached the conclusion that I will not be a part of the Penn State football staff moving forward.*

*I will spend the next few weeks consulting with my wife and family to weigh various future options both inside and outside of football.*

*I thank the student-athletes that I've been privileged to coach over the past two decades at four schools. Hopefully my career has had an impact and helped you learn about life, and about the commitment and passion it takes to pursue personal excellence.*

*As for Penn Staters, I cannot even begin to express what your support has meant to me and my family over the past seventeen seasons and in particular the past two months. Through the tumult of the past several weeks, it has been your stalwart support combined with life lessons learned from Joe Paterno that has and continue to sustain us.*

*As a Penn Stater I am reminded of the words "Sing Our Love and Loyalty" from the Alma Mater. I wish the program the best of luck in carrying on the academic and athletic excellence that have been a hallmark of this university for decades.*

Note: at no time did I indicate that I was quitting or was terminated as an employee of Penn State

#### **Wednesday January 11, 2012**

Met with several leaders of the Centre County Democratic Party to discuss running for office

#### **Thursday January 12, 2012**

1:00 Wick Sollers and I met with a Penn State Attorney who asked questions regarding what I may or may not have known about Jerry. Also some seemed to be follow-up type questions to my Freeh Committee interview

After that meeting we drove out to the State Police office in Patton Township and met with State Police officer Tony Sassano

# **EXHIBIT 19**

New to Twitter?

Sign up



Search Twitter



Have an account? Log in ▾



**Jay Paterno**  
@JayPaterno

+ Follow

Also the movie relies heavily on The Freeh Report---we all know that report is just flat out wrong

**Brendan Saller** @bluesal89

@JayPaterno @ScottPaterno @Darkness2Light @StopItNow\_NED @RAINN01  
@PeacefulHearts1 @ChiTownLionPSU #happyvalley doc available on Netflix FYI

RETWEETS  
21

FAVORITES  
23



5:07 AM - 10 Jun 2015





# **EXHIBIT 20**

New to Twitter?

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**Jay Paterno**  
@JayPaterno

+ Follow

Truth is marching on...State College, PA -  
Judge Orders Freeh's Law Firm to Turn  
Over Documents  
[statecollege.com/news/local-new...](http://statecollege.com/news/local-new...)

 [StateCollege.com](http://StateCollege.com)

**Judge Orders Freeh's Law Firm to Turn Over Documents to Paterno Estate**

The Paterno estate has been fighting tooth-and-nail for months to subpoena the Pepper Hamilton law firm for an undisclosed number of documents gathered during Freeh's investigation into the Jerry Sand



[View on web](#)

RETWEETS  
23

FAVORITES  
47



12:51 PM - 8 May 2015



# **EXHIBIT 21**

New to Twitter?

Sign up



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**Jay Paterno**  
@JayPaterno

+ Follow

"Jay puts holes in the Freeh Report big enough for Franco Harris to run through"-favorite quote from Stan Hochman review of Paterno Legacy

RETWEETS  
21

FAVORITES  
40



6:59 AM - 10 Apr 2015



# **EXHIBIT 22**



**BILL R. MCMILLEN, SR., Plaintiff, vs HUMMINGBIRD SPEEDWAY, INC., a  
Pennsylvania Corporation; LOUIE CALTAGARONE; DAVE RESINGER; and  
JOSIE LEE WOLFE, Defendants.**

**No. 113-2010 CD**

**COMMON PLEAS COURT OF JEFFERSON COUNTY, PENNSYLVANIA,  
CIVIL DIVISION**

**2010 Pa. Dist. & Cnty. Dec. LEXIS 270**

**September 9, 2010, Decided**

**JUDGES:** [\*1] Hon. John Henry Foradora, P. J.

**OPINION BY:** John Henry Foradora

**OPINION**

**OPINION ON DEFENDANTS' MOTION TO  
COMPEL DISCOVERY**

**Factual and Procedural History**

The plaintiff, Bill R. McMillen, Sr., has filed suit in an attempt to recover damages for injuries he allegedly sustained when Defendant Wolfe rear-ended him during a cool down lap following a July 7, 2007 stock car race. McMillen alleged substantial injuries, including possible permanent impairment, loss and impairment of general health, strength, and vitality, and inability to enjoy certain pleasures of life.

As discovery progressed, Defendant Hummingbird asked in its second set of interrogatories whether McMillen belonged to any social network computer sites and, if so, that he provide the name of the site(s), his user name(s), his login name(s), and his password(s). McMillen answered that he belonged to Facebook and MySpace but maintained that his user names and login

information were confidential and thus would not be provided. Counsel for Hummingbird responded by letter, denying that McMillen was entitled to claim confidentiality or privilege as recognized under the Pennsylvania Rules of Evidence.

After reviewing the public portion of McMillen's Facebook [\*2] account and discovering comments about his fishing trip and attendance at the Daytona 500 race in Florida, Defendants Hummingbird, Caltagarone, and Resinger filed a Motion to Compel Discovery. They asked the Court to compel the production of McMillen's user names, log-in names, and passwords, contending that those areas to which they did not have access could contain further evidence pertinent to his damages claim. Specifically, they wanted to be able "to determine whether or not plaintiff has made any other comments which impeach and contradict his disability and damages claims."

Defendants filed a brief in support of their Motion, and on July 13, 2010, the parties appeared for oral arguments. The Court offered McMillen additional time to file a written reply, but none was forthcoming.

**Discussion**

Under Pennsylvania's broad discovery rules, as long as it is relevant to the litigation, whether directly or

peripherally, a party may obtain discovery regarding any unprivileged matter. Pa.R.C.P. 4003.1. As a practical matter, that means that nearly any relevant materials are discoverable, because this Commonwealth recognizes only a limited number of privileges. See Bernstein, *Pa. Rules of* [\*3] *Evidence*, Art. 5 (enumerating and discussing Pennsylvania's recognized privileges).

In this case, McMillen asks the Court to recognize communications shared among one's private friends on social network computer sites as confidential and thus protected against disclosure. Because Rule 4003.1 only makes privileged materials non-discoverable, he is essentially asking the Court to recognize a privilege for those communications. He does not cite any binding or persuasive authority to support his position, however, and indeed, no "social network site privilege" has been adopted by our legislature or appellate courts. As a general matter, in fact, the law disapproves privileges. See *Joe v. Prison Health Servs.*, 782 A.2d 24, 31 (Pa. Commw. Ct. 2001) ("Pennsylvania law does not favor evidentiary privileges").

"Evidentiary privileges are not favored; . . . exceptions to the demand for every man's evidence are not lightly created nor expansively construed, for they are in derogation of the search for the truth." *Hutchison v. Luddy*, 414 Pa. Super. 138, 606 A.2d 905, 908-09 (Pa. Super. 1992) (quoting *Herbert v. Lando*, 441 U.S. 153, 175, 99 S. Ct. 1635, 60 L. Ed. 2d 115 (1979)). Even in the arena of testimony, where the evidence will be publicly divulged, [\*4] the courts sanction the application of privilege "only to the very limited extent that [it] has a public good transcending the normally predominant principle of utilizing all rational means for ascertaining the truth." *Koken v. One Beacon Ins. Co.*, 911 A.2d 1021, 1027 (Pa. Commw. Ct. 2006) (quoting *Joe*, 782 A.2d at 31)). The less public arena of discovery, according to *Commonwealth v. TAP Pharmaceutical Products, Inc.*, 904 A.2d 986 (Pa. Commw. Ct. 2006), necessitates even greater latitude, for "the purpose of allowing a broader standard is to ensure that a party has in its possession all relevant and admissible evidence before the start of trial." *Id.* at 994.

Because "evidentiary privileges are to be narrowly construed, *Joyner v. S.E. Pa. Transp. Auth.*, 736 A.2d 35, 38 (Pa. Commw. Ct. 1999), our courts have routinely declined to extend the scope of existing privileges beyond their historical purpose and application or the strictures of

the statutory language creating them. See e.g. *id.* (attorney-client privilege); *Hutchison*, *supra*, *Commonwealth v. Stewart*, 547 Pa. 277, 690 A.2d 195 (Pa. 1997) (clergy-penitent privilege); *Joe*, *supra* (attorney-client, deliberative process, and Peer Review Protection [\*5] Act privileges); *In re Subpoena No. 22*, 709 A.2d 385 (Pa. Super. 1998), *M. v. State Bd. of Med.*, 725 A.2d 1266 (Pa. Super. 1999) (psychologist-patient privilege); *Grimminger v. Maitra*, 2005 PA Super 374, 887 A.2d 276 (Pa. Super. 2005) (physician-patient privilege). Additionally, a new privilege ought not be recognized unless the claimant can establish four things: 1.) that his communications originated in the confidence that they would not be disclosed; 2.) that the element of confidentiality is essential to fully and satisfactorily maintain the relationship between the affected parties; 3.) community agreement that the relationship must be sedulously fostered; and 4.) that the injury potentially sustained to the relationship because of the disclosure of the communication outweighs the benefit of correctly disposing of litigation. *Matter of Adoption of Embick*, 351 Pa. Super. 491, 506 A.2d 455, 461 (Pa. Super. 1986) (citing 8 J. Wigmore, *Evidence*, § 2285 (McNaughton's rev. Ed. 1961)). McMillen cannot satisfy those requirements.

Facebook, MySpace, and their ilk are social network computer sites people utilize to connect with friends and meet new people. That is, in fact, their purpose, and they do not bill themselves as anything [\*6] else. Thus, while it is conceivable that a person could use them as forums to divulge and seek advice on personal and private matters, it would be unrealistic to expect that such disclosures would be considered confidential.

Both sites at issue here do guarantee a modicum of privacy insofar as users may, with the exception of certain basic information, choose what information and posts to make public and which ones to share with only those persons they have identified as friends. Yet reading their terms and privacy policies should dispel any notion that information one chooses to share, even if only with one friend, will not be disclosed to anybody else.

Facebook, in section 3, **Sharing information on Facebook, Other**, of its Privacy Policy, cautions users as follows:

Some of the content you share and the actions you take will show up on your

friends' home pages and other pages they visit.

Even after you remove information from your profile or delete your account, copies of that information may remain viewable elsewhere to the extent it has been shared with others, it was otherwise distributed pursuant to your privacy settings, or it was copied or stored by other users. You understand that [\*7] information might be reshared or copied by other users.

When you post information on another user's profile or comment on another user's post, that information will be subject to the other user's privacy settings.

Facebook, <http://www.facebook.com/policy.php> (revised 04/22 /2010). Then under section 6, **How We Share Information, To respond to legal requests and prevent harm**, users are informed that Facebook's operators may disclose information pursuant to subpoenas, court orders, or other civil or criminal requests if they have a good faith belief that the law requires them to respond. *Id.* They likewise reserve the right to share information with companies, lawyers, courts, or other government entities "when we have a good faith belief it is necessary to prevent fraud or other illegal activity, to prevent imminent bodily harm, or to protect ourselves or you from people violating our Statement of Rights and Responsibilities." *Id.*

Facebook users are thus put on notice that regardless of their subjective intentions when sharing information, their communications could nonetheless be disseminated by the friends with whom they share it, or even by Facebook at its discretion. Implicit in those [\*8] disclaimers, moreover, is that whomever else a user may or may not share certain information with, Facebook's operators have access to every post.

Similarly, if one goes to MySpace's Terms and reads section 2, **Term**, he will find that the operators of that site may, at their election, reject, refuse to post, or remove any posting, whether it be a private message, an email, or an instant message. MySpace, <http://www.myspace.com/index.cfm?fuseaction=misc>

(June 25, 2009). Section 7.1, **Content Posted**, further states that "MySpace may reject, refuse to post or delete any Content for any or no reason, including, but not limited to, Content that in the sole judgment of MySpace violates this agreement or which may be offensive, illegal or violate the rights of any person or entity, or harm or threaten the safety of any person or entity." *Id.* It then provides that MySpace may choose to monitor users' content or conduct, thereby explicating the fact of the operators' unfettered access to a member's communications, and may, with his or her implied consent, scrutinize those communications at any time and for any reason.

Without more, the complete access afforded to the Facebook and MySpace operators [\*9] defeats McMillen's proposition that his communications are confidential. The law does not even protect otherwise privileged communications made in the presence of third parties. *See e.g. In re Condemnation by City of Philadelphia*, 981 A.2d 391, 397 (Pa. Commw. Ct. 2009) ("Confidentiality is key to the [attorney-client] privilege, and the presence of a third-party during attorney-client communications will generally negate the privilege"). When a user communicates through Facebook or MySpace, however, he or she understands and tacitly submits to the possibility that a third-party recipient, i.e., one or more site operators, will also be receiving his or her messages and may further disclose them if the operator deems disclosure to be appropriate. That fact is wholly incommensurate with a claim of confidentiality. Accordingly, McMillen cannot successfully maintain that the element of confidentiality protects his Facebook and MySpace accounts from discovery.

The Court reaches the same result upon considering Wigmore's test for privilege.

Returning to the four factors identified in *Matter of Adoption of Embick*, it is clear that no person choosing MySpace or Facebook as a communications forum [\*10] could reasonably expect that his communications would remain confidential, as both sites clearly express the possibility of disclosure. Confidentiality is not essential to maintain the relationships between and among social network users, either. The relationships to be fostered through those media are basic friendships, not attorney-client, physician-patient, or psychologist-patient types of relationships, and while one may expect that his or her friend will hold certain information in confidence,



the maintenance of one's friendships typically does not depend on confidentiality.

The Court cannot say, therefore, that the community seeks to sedulously foster friendships by recognizing friend-to-friend communications as confidential or privileged. No such privilege currently exists. Friendships nonetheless abound and flourish, because whereas it is necessary to guarantee people that their attorneys, physicians, and psychologists will not disseminate the substance of their discussions in order to encourage the type and level of disclosure essential to those professional relationships, history shows that the same guarantee is not necessary to encourage the development of friendships.

Furthermore, [\*11] whatever relational harm may be realized by social network computer site users is undoubtedly outweighed by the benefit of correctly disposing of litigation. As a general matter, a user knows that even if he attempts to communicate privately, his posts may be shared with strangers as a result of his friends' selected privacy settings. The Court thus sees little or no detriment to allowing that other strangers, i.e., litigants, may become privy to those communications through discovery.

The countervailing benefits, moreover, cannot be overstated. Take this case, for instance. McMillen has alleged significant and substantial injuries, some of which he claims may be permanent. Accessing only the public portion of his Facebook page, however, the defendants have discovered posts they contend show that McMillen has exaggerated his injuries. Certainly a lack of injury and inability is relevant to their defense, and it is reasonable to assume that McMillen may have made additional observations about his travels and activities in private posts not currently available to the defendants. If they do exist, gaining access to them could help to prove either the truth or falsity of McMillen's alleged [\*12] claims.

The same may be true in any number of cases. Millions of people join Facebook, MySpace, and other social network sites, and as various news accounts have attested, more than a few use those sites indiscreetly. *See*

*e.g., The Independent, Facebook can ruin your life. And so can MySpace, Bebo ...*, <http://www.independent.co.uk/life-style/gadgets-and-tech/news/facebook-can-ruin-your-life-and-so-can-myspace-bebo-780521.html> (02/10/2008) (Discussing some of the potential social, career, and legal ramifications of inappropriate social computer networking). When they do and their indiscretions are pertinent to issues raised in a lawsuit in which they have been named, the search for truth should prevail to bright to light relevant information that may not otherwise have been known.

Where there is an indication that a person's social network sites contain information relevant to the prosecution or defense of a lawsuit, therefore, and given *Koken's* admonition that the courts should allow litigants to utilize "all rational means for ascertaining the truth," 911 A.2d at 1027, and the law's general dispreference for the allowance of privileges, access to those sites should be freely granted.

#### ORDER

AND [\*13] NOW, this 9th day of September 2010, for the reasons articulated in the foregoing Opinion, it is hereby **Ordered** and **Decreed** that the Motion to Compel Discovery is **GRANTED**. Accordingly, the plaintiff shall provide his Facebook and MySpace user names and passwords to counsel for Defendants Hummingbird Speedway, Louie Caltagaroni, and Dave Resinger within the next **FIFTEEN (15) DAYS**.

**IT IS FURTHER ORDERED** that the plaintiff shall not take steps to delete or alter existing information and posts on his MySpace or Facebook account.

This Order shall afford the defendants' attorneys read-only access to the plaintiff's accounts. The plaintiff's user names and passwords shall not be divulged to the defendants themselves unless and until further order of Court.

**BY THE COURT,**

**Hon. John Henry Foradora, P. J.**

## **CERTIFICATE OF SERVICE**

I, Thomas W. Scott, hereby certify that I am serving *The National Collegiate Athletic Association's Appendix of Exhibits to NCAA's Brief in Support of its Motion to Compel the Production of Documents from Plaintiffs Jay Paterno and William Kenney* on the following by First Class Mail and email:

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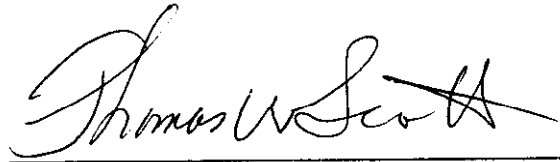
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Dated: July 10, 2015



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