



IN THE COURT OF COMMON PLEAS OF CENTRE COUNTY, PENNSYLVANIA

The ESTATE of JOSEPH PATERNO;

AL CLEMENS, member of
the Board of Trustees of Pennsylvania State
University; 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

PENNSYLVANIA STATE UNIVERSITY,

Defendant.

)
) Civil Division
)
) Docket No. 2013-2082
)
) **Plaintiffs' Response to Motion for Stay**
) **Pending Appeal and Motion for**
) **Protective Order by Non-Party Pepper**
) **Hamilton LLP**
) Filed on Behalf of the Plaintiffs
)
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CLERK OF COURT
CENTRE COUNTY, PA

Plaintiffs submit this response to non-party Pepper Hamilton LLP's ("Pepper Hamilton") motions (1) for a stay pending the appeal filed by the Pennsylvania State University ("Penn State") from this Court's September 11, 2014 Opinion and Order overruling Penn State's attorney-client privilege and work product objections, and (2) for entry of a protective order. Both of Pepper Hamilton's motions should be denied because they are improper and because Pepper Hamilton has not made the requisite showing to be entitled to the relief it seeks.

Pepper Hamilton seeks a stay pending appeal but it has no standing to seek that extraordinary relief. Penn State, not Pepper Hamilton, is the holder of the attorney-client privilege, and Penn State itself did not file a motion for a stay of the Court's Order. Instead, Penn State has belatedly filed a brief joinder in Pepper Hamilton's motions. But Pepper Hamilton has not made the strong showing required under Pennsylvania law to justify a stay. It has not demonstrated any substantial likelihood that Penn State will prevail on appeal. Nor has Pepper Hamilton made any concrete showing of irreparable harm. Moreover, granting a stay would harm Plaintiffs by unnecessarily delaying the litigation and would not be in the public interest.

Pepper Hamilton's motion for a protective order should also be denied. The Court properly held the work product objection must be raised by Pepper Hamilton, but the way to raise that objection is in response to the subpoena. The motion for a protective order is thus premature because Pepper Hamilton has not yet responded to the subpoena. In addition, although Pepper Hamilton seeks a protective order to prevent production of documents that contain work product, it has not satisfied (or even attempted to satisfy) the good cause standard of Pa. R.C.P. No. 4012. Accordingly, Plaintiffs respectfully requests that the Court deny both Pepper Hamilton's motion for a stay pending appeal and motion for entry of a protective order.

BACKGROUND

In February 2014, Plaintiff Estate of Joseph Paterno (“the Estate”) provided notice of its intent to issue a subpoena *duces tecum* to Pepper Hamilton. In response, Penn State, which had been the client of a predecessor law firm, Freeh Sporkin & Sullivan, LLP (the “Freeh firm”), objected that the requests purportedly called for the production of documents protected under the attorney-client privilege and work product doctrine. Penn State’s objections were meritless and, on September 11, 2014, the Court largely overruled them. The Estate then served the subpoena on Pepper Hamilton.

On October 8, 2014, Penn State noticed an appeal challenging the Court’s ruling on its attorney-client privilege and work product objections. Penn State did not seek a stay of the Court’s ruling in conjunction with its notice of appeal. Nonetheless, Pepper Hamilton requests a stay insofar as the Court’s ruling requires production of documents that Pepper Hamilton deems protected by either the attorney-client privilege or attorney work product doctrine, despite the Court having previously rejected the same assertions of privilege. Penn State has now sought to join Pepper Hamilton’s motion.

The documents at issue relate to an investigation conducted by the Freeh firm for Penn State. (As Pepper Hamilton notes, lawyers from the Freeh firm subsequently joined Pepper Hamilton, and the Freeh Group International is now a subsidiary of Pepper Hamilton. Mot. at 3, ¶ 6. Before that, it appears that Pepper Hamilton lawyers participated in the Freeh investigation.) Penn State retained the Freeh firm to perform an investigation of sexual abuse of children by Jerry Sandusky (“Sandusky”) and the alleged failure of Penn State personnel to report Sandusky’s conduct to the proper authorities. Penn State gave the Freeh firm carte blanche access to records at Penn State; the Freeh firm “essentially seized, gathered collected . . . millions of pages of documents from University servers, as well as documents from University

custodians,” including the laptop computer and personal handheld device of Penn State’s president. Tr. 125, Ex. A. Those documents were pulled into a database of “source documents.” The Freeh firm also conducted numerous interviews of University personnel and other knowledgeable individuals. Freeh Report at 9, Ex B.

The Freeh firm’s investigation began in November 2011 and concluded in July 2012, when the Freeh firm published its report pursuant to Penn State’s waiver of the attorney-client privilege. *See* Report at 10 (“This report sets forth the essential findings of the investigation, pursuant to the appropriate waiver of the attorney-client privilege by the Board.”); *see also* Consent Decree at 4, Ex. C (acknowledging Penn State’s agreement to waive attorney-client privilege). As the Court has noted, the Freeh firm voluntarily communicated with third parties regarding the investigation, including the Big Ten and the NCAA. When the Freeh Report was released, the Freeh firm acknowledged that it had “continuously interfaced and cooperated with” various governmental agencies and authorities. Press Release, Ex. D at 3, Pennsylvania State University, Remarks of Louis Freeh in Conjunction with Announcement of Publication of Report Regarding the Pennsylvania State University (July 12, 2012).

When Plaintiffs gave notice of their intent to serve a subpoena on Pepper Hamilton for documents related to the investigation, Penn State objected that disclosure of documents called for by the subpoena would violate its attorney-client privilege with the Freeh firm. The Court overruled Penn State’s attorney-client privilege objections on grounds that the documents at issue either were not privileged to begin with, or that any privilege had been waived through voluntary disclosure, with the exception of certain non-source documents on subject matters other than what was disclosed to third parties.¹ The Court also ruled that Penn State lacked

¹ Pepper Hamilton contends that the Court’s ruling is based on a misapprehension of facts regarding the roles of the Freeh firm and the Freeh Group. Mot. at 9. Plaintiffs do not challenge Pepper Hamilton’s description of the two

standing to assert the work product protection because that objection belonged to the attorneys rather than the client. The Court further held that Penn State's engagement of the Freeh firm did not contemplate legal services in conjunction with the current litigation, so the work product doctrine does not apply in any event. *See Graziani v. One Beacon Ins. Inc.*, 2007 WL 5077409 (Pa. Com. Pl.), 2 Pa. D. & C.5th 242, 249 (2007).

STANDARD FOR STAY PENDING APPEAL

A court may grant a stay pending appeal only if the applicant makes a "strong showing" that (1) it is likely to prevail on the merits; (2) without the requested relief, it will suffer irreparable injury; (3) the issuance of the stay will not substantially harm other interested parties; and (4) a stay will not adversely affect the public interest. *Temple Ass'n of Univ. Prof'l v. Temple Univ.*, 135 Pa. Commw. 426, 429–30, 582 A.2d 63, 64 (1990); *see also Witmer v. Commonwealth, Dep't of Transp.*, 889 A.2d 638, 640 (Pa. Commw. 2005) ("Generally, the applicant must make a 'strong showing' on each of the [four] criteria . . ."). The decision to grant a stay is vested in the trial court's discretion and will be overturned only when there is an "egregious error." *Reading Anthracite Co. v. Rich*, 525 Pa. 118, 125, 577 A.2d 881, 884 (1990); *Insilco Corp. v. Rayburn*, 374 Pa. Super. 362, 374, 543 A.2d 120, 126 (1988). The Pennsylvania standards for a stay are informed by federal cases, *see Dep't of Evtl. Res. v. Jubelirer*, 531 Pa. 463, 469, 614 A.2d 199, 202–03 (1989), and, as the U.S. Supreme Court has emphasized, a stay is an "intrusion into the ordinary processes of administration and judicial review" that "is not a matter of right, even if irreparable injury might otherwise result," *see Nken v. Holder*, 556 U.S. 418, 427 (2009) (quoting *Va. Petroleum Jobbers Ass'n v. Fed. Power Comm'n*, 259 F.2d 921, 925 (D.C. Cir. 1958) (per curiam) and respectively *Virginian Ry. Co. v. United States*, 272 U.S.

entities' respective functions, but submits that a reversal of the names is immaterial to the Court's ruling on the effect of the voluntary disclosure of the Freeh Report and underlying material, although it may affect which, if any, documents can properly be characterized as work product.

658, 672 (1926)).

ARGUMENT

Pepper Hamilton's motion should be denied because it has no standing to seek a stay of a ruling in a case to which it is not a party when that ruling affects a privilege held not by it, but by a party that has not itself timely moved for a stay. *See Graddick v. Newman*, 453 U.S. 928, 933 (1981) (standing to seek a stay depends on status of movant to assert the interests to which injury allegedly occurred). The attorney-client privilege is for the benefit of the client, and accordingly, the client is the holder of the privilege. *Maleski v. Corporate Life Ins. Co.*, 165 Pa. Commw. 72, 79, 646 A.2d 1, 4 (1994). Here, the holder of the privilege is Penn State, not Pepper Hamilton. Moreover, and in any event, Pepper Hamilton has not satisfied the requirements for seeking a stay pending appeal, and Penn State has not separately addressed the factors to be considered on a motion for a stay.

I. Pepper Hamilton Has Not Made A Strong Showing That Penn State Will Likely Prevail On Appeal.

Pepper Hamilton has made no showing — much less the strong showing required — that *Penn State* is likely to prevail on its appeal of this Court's ruling concerning the attorney-client privileges.

There are four categories of documents to which the privileges have been asserted but do not apply. *First*, the Freeh firm "seized" pre-existing records and documents from Penn State's servers, files, and personnel in connection with its investigation. *See Op. & Order* at 21. Those documents are not privileged because they were pre-existing records and were not communications made to the Freeh firm for purpose of obtaining legal advice. 42 Pa. C.S.A. § 5928; *see also Nationwide Mut. Ins. Co. v. Fleming*, 924 A.2d 1259, 1264 (Pa. Super. 2007), *aff'd*, 605 Pa. 484 (Pa. 2010). Moreover, most if not all of the documents have been returned to

Penn State, and Pepper Hamilton no longer controls the database. Op. & Order at 19.

Second, the Freeh firm voluntarily disclosed certain non-source documents and information to third parties (such as the NCAA or the Big Ten) and, as a result, waived any potentially applicable privilege with respect to those documents. *Id.* at 21–22. *Third*, the Freeh firm conducted interviews of non-Penn State personnel. These materials were never privileged because they did not involve attorney-client communications. *Commonwealth v. Mrozek*, 441 Pa. Super. 425, 428, 657 A.2d 997, 998 (1995). *Fourth*, the documents that are referenced in or underlie the conclusions of the published Freeh Report or the subject matter of the Report are not privileged because the report was voluntarily published. *See Minatronics Corp. v. Buchanan Ingersoll, P.C.*, 1995 W.L. 520686 (Pa. Com. Pl.), 23 Pa. D. & C.4th 1 (1995).

Pepper Hamilton refers to excerpts from the Freeh firm’s engagement letter to show that Penn State retained the firm to provide confidential legal services subject to the protections of the attorney-client privilege. Mot. at 10. As noted above, however, the Freeh Report was publicly released at the same time it was delivered to its client, the Penn State Board of Trustees, pursuant to a waiver of privilege by the Board. Accordingly, the Report did not constitute confidential advice from a lawyer to a client. In challenging the merits of this Court’s conclusions, Penn State’s objections are based on the premise that it could selectively waive attorney-client privilege and limit the waiver to only the contents of the Freeh Report. *See* Tr. 129–30, Ex. A. But Penn State has no meaningful legal support for the novel proposition that publication of an otherwise privileged internal investigation report waives the privilege with respect to the report but not the report’s subject matter generally. *See* Tr. 130–32.

Penn State opposed the Estate’s motion to overrule its objections in reliance on *Nationwide Mutual Insurance Co. v. Fleming*, which involved disclosure of documents that were

determined not to be privileged attorney-client communications, so their disclosure did not result in any subject matter waiver. Even if Pepper Hamilton could properly assert the privilege on behalf of its former client, Penn State, it has failed to make the requisite strong showing that Penn State will likely prevail on appeal. Pepper Hamilton describes certain steps taken during the investigation to preserve confidentiality. Mot. at Ex. B. But Pepper Hamilton does not address either the waiver of privilege by the Penn State Board of Trustees or the disclosures of information to third parties that were inconsistent with preserving the confidentiality necessary to maintain the attorney-client privilege. It cites *no* legal support for the notion that a party may selectively waive the attorney-client privilege. Penn State's joinder does not even address the likelihood of success on appeal.

Neither of the cases involving internal investigations cited by Pepper Hamilton involved a published report of the internal investigation. In *Upjohn Co. v. United States*, 449 U.S. 383 (1981), the Supreme Court considered the extent to which employees within the company could engage in privileged communications with corporate counsel in connection with an internal investigation. Similarly, *In re Kellogg Brown & Root, Inc.*, 756 F.3d 754 (D.C. Cir. 2014), involved a request for documents related to an internal investigation undertaken to gather facts and ensure compliance with the law. In subsequent litigation, Kellogg Brown & Root asserted the attorney-client privilege in response to requests for materials related to the investigation, and the court concluded that so long as obtaining legal advice was one of the significant purposes of the internal investigation, the attorney-client privilege applies, even if there were other business reasons for the investigation. Because neither case resulted in a published report or involved a claim of limited waiver, neither case supports Penn State's selective waiver theory or suggests that it is likely to prevail on appeal.

Pepper Hamilton contends that there should not be a broad waiver as to subjects the Freeh firm “may have merely discussed” with third parties. Mot. at 11. But Pepper Hamilton’s position is at odds with both the record and the law. Shortly after being retained by Penn State, the Freeh firm began participating in weekly calls with counsel for the NCAA and the Big Ten. Indeed, in December 2011, the Big Ten’s Commissioner asked Penn State’s President to allow the Big Ten’s outside counsel to participate in the investigation, noting that counsel had already “been communicating with both the Freeh Group and the NCAA regarding an agreeable process of *collaboration on gathering and sharing information.*” Ex. E (emphasis added). Soon thereafter, a schedule of conference calls for a “PSU Weekly Update” was established among counsel for the NCAA, counsel to the Big Ten, and the Freeh firm. See Ex F (collecting emails). Also, in July 2012, Louis Freeh confirmed that his law firm had been in regular contact with the NCAA and the Big Ten. Press Conference, Ex. G at 14, Remarks of Louis Freeh at Freeh Report Press Conference (July 12, 2012). When the Big Ten announced the imposition of its sanctions on Penn State in reliance on the conclusions of the Freeh Report, it stated that it “had legal counsel *embedded with* the Freeh Committee that investigated Penn State.” Ex. H (emphasis added).

Pepper Hamilton has not addressed in its motion the well-settled law establishing that sharing of otherwise confidential information developed in the context of an investigation will result in a subject matter waiver. See, e.g., *Westinghouse Elec. Corp. v. Republic of the Philippines*, 951 F.2d 1414, 1425–27 (3d Cir. 1991) (rejecting claim of selective waiver and ordering production of summary of internal investigation and underlying documents that had been disclosed to the government because that disclosure waived attorney-client privilege); *Adhesive Specialists Inc. v. Concept Scis. Inc.*, 2002 WL 32068897 (Pa. Com. Pl.), 59 Pa. D. &

C.4th 244, 263 (2002) (delivery of an internal memorandum prepared by an attorney to the Pennsylvania State Police constituted voluntary disclosure to a third party, thereby waiving the attorney-client privilege, even if the police agreed not to disclose the communication to a third party).

Pepper Hamilton instead argues that there should be no subject matter waiver because Penn State purportedly did not use the privilege as a sword and shield. Mot. at 11. But Penn State has done *precisely that* —by authorizing disclosure of the contents of the Report at a national press conference in an effort to demonstrate that Penn State addressed the problems that supposedly resulted in the Sandusky crimes, but denying access to the information underlying the Report’s conclusions. *See Nationwide Mut. Ins. Co.*, 924 A.2d at 1265 (litigant attempting to use the attorney-client privilege as an offensive weapon by selective disclosure of favorable privileged communications has misused the privilege; waiver of the privilege for all communications on the same subject is the appropriate response to such misuse). Penn State’s Board of Trustees made a choice to waive attorney-client privilege so that the report of the Frech firm’s investigation could be published rather than confidentially delivered to the Board. Having done so, it cannot refuse inquiry into the bases of the Report. Pepper Hamilton has made no showing that the Court’s ruling in this regard is likely to be overturned on appeal.

II. Neither Pepper Hamilton Nor Penn State Has Made A Showing Of Irreparable Harm.

Pepper Hamilton argues that it will suffer irreparable harm if it is required to produce “arguably privileged documents” before the resolution of Penn State’s appeal. *See* Mot. at 6–7. Yet it provides no specifics to support that claim. *See Grenmoor, Inc. v. Burchick Constr. Co.*, 908 A.2d 310, 314 (Pa. Super. 2006) (a plaintiff “must present ‘concrete evidence’ demonstrating ‘actual proof of irreparable harm’”). Penn State contends that it “will lose the

ability to argue that documents and information” are privileged. Joinder at 2. Neither Pepper Hamilton nor Penn State identifies any confidential information included in the documents that, if disclosed in litigation, would harm either of them. Nor do they provide any explanation as to how Pepper Hamilton or Penn State would plausibly be harmed by the release of these documents in general. That omission is especially significant given that the Court has already entered a protective order that limits the parties’ use of any materials produced in discovery “solely for the purpose of preparing and prosecuting the Parties’ respective cases, and shall not be disclosed for any other purpose.”²

Instead, and somewhat ironically, Pepper Hamilton and Penn State rely on the general proposition that once privileged materials are disclosed, they are no longer subject to protection — the very reason the Court held that many of the documents are not privileged in the first instance. Pepper Hamilton asserts that because of the potential for irreparable harm, the Court’s ruling on privilege is an immediately appealable collateral order. But just because courts’ privilege rulings are subject to immediate appellate review because of the *potential* for harm does not mean that Pepper Hamilton is relieved of its obligation to make a “strong showing” of irreparable harm to be entitled to a stay in this particular case. *Cf. Nken*, 556 U.S. at 427 (stay is “not a matter of right”). The case it cites — *Nationwide Mutual Insurance Co. v. Fleming* — merely noted without discussion that a stay was entered in that case, not that a stay *must* automatically be entered whenever an interlocutory appeal is taken on an issue involving a claim of attorney-client privilege. Pepper Hamilton confuses what the law allows with what it

² Plaintiffs provided Pepper Hamilton with the protective order entered by the Court before it decided to file its motion. October 2, 2014 Letter from P. Maher to T. Zemaitis, Ex. I. Pepper Hamilton provides no meaningful reason why it should not be required to comply with that order or why that order will not provide whatever protection is entitled to. Penn State has not done so either.

requires.³

III. A Stay Would Harm Plaintiffs And Is Not In The Public Interest.

Pepper Hamilton's contention that the public interest favors granting a stay suffers from the same failure in attempting to show the likelihood of success on appeal. Its argument consists of merely a recitation of the general public policy reasons for the attorney-client privilege, and the harm to the administration of justice of the "improvident disclosure of attorney-client privileged documents." Mot. at 7. But Pepper Hamilton offers no basis to conclude that compliance with the Court's order here would result in such "improvident disclosure." The Court properly concluded that the documents are not privileged and Pepper Hamilton has made no substantial showing that the Court's ruling is in error. Also, as noted above, the Court has entered a protective order that prevents the documents from being used outside of litigation. Penn State has included nothing in its Joinder regarding the public interest.

More fundamentally, both the Plaintiffs and the public interest would be significantly harmed by granting a stay. This case has already been pending for more than 17 months and yet discovery has barely begun. Given the extraordinary harms caused by the NCAA-imposed Consent Decree, there is a strong interest in ensuring that this litigation moves forward and that the NCAA Defendants are held to account for their unlawful and irresponsible conduct. Further delay would only exacerbate the harms that have already been inflicted on the Plaintiffs.

IV. Pepper Hamilton's Motion For A Protective Order Should Be Denied.

The Court rejected Penn State's objection based on work product protection because that objection belongs to attorneys, not their clients. Pepper Hamilton asserts that it has standing to

³ Similarly, Penn State provides legal authority only for the proposition that an order on production of potentially privileged materials is immediately appealable. This contention is not disputed, and merely reciting the fact that the law permits an appeal does nothing to satisfy the burden of showing that a stay is appropriate during the pendency of that appeal.

invoke the work product doctrine, making Penn State's lack of standing as a basis for the Court's ruling "moot." Mot. at 12. But the work product objection should be asserted by Pepper Hamilton in response to the subpoena, which Pepper Hamilton has not yet done. See Pa. R.C.P. No. 4009.23. ("The person not a party upon whom the subpoena has been served *shall, in complying with the subpoena, execute a certificate of compliance* and deliver it with the documents or things produced[.]") (emphasis added).

Pepper Hamilton is not entitled at this stage to seek blanket protection for anything it unilaterally deems work product. To the extent Pepper Hamilton asserts an objection based on work product, it must show that the documents responsive to particular requests meet the criteria of Pa. R.C.P. No. 4003.3, which it has not even purported to do. To meet that burden, it would have to show that the materials covered by Rule 4003.3 were prepared in connection with the current litigation. *Graziani*, 2 Pa. D. & C.5th at 249 (the work product protection under Pennsylvania law applies only to the litigation of the claims for which the impressions, conclusions and opinions were made). Nothing in Pepper Hamilton's motion or supporting Verification does that. Finally, Pepper Hamilton would have to show why there has not been a waiver of any work product protection after the selective, voluntary disclosure made in the Freeh Report. See *Westinghouse Electric Corp.*, 951 F.2d at 1425–27 (work product waived by selective disclosure); *Adhesive Specialists*, 59 Pa. D. & C.4th at 263 (work product protection waived).

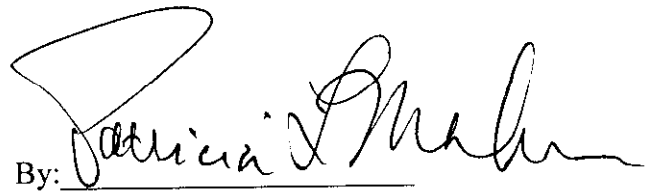
In addition to failing to properly assert work product protection with respect to particular responsive documents, Pepper Hamilton has not even attempted to meet the "good cause" standard for entry of a protective order under Pa. R. C. P. No. 4012. Accordingly, there is no basis to enter such an order. Penn State asks the court in its Joinder to enter a protective order

and a limited stay of discovery, but has not addressed the good cause standard of Rule No. 4012, nor explained why any stay of discovery, however limited, is warranted.

CONCLUSION

Pepper Hamilton's motions for a stay pending Penn State's appeal and for entry of a protective order should be denied. The relief requested in Penn State's Joinder should also be denied.

Date: October 22, 2014

By: 

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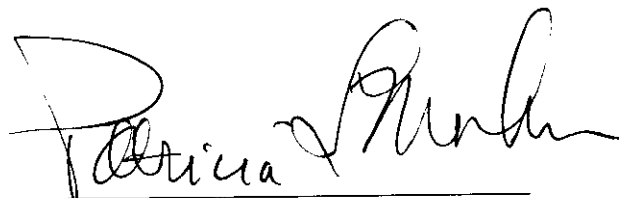
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing **PLAINTIFFS' RESPONSE TO MOTION FOR STAY PENDING APPEAL AND MOTION FOR PROTECTIVE ORDER BY NON-PARTY PEPPER HAMILTON LLP** was served this 22nd day of October, 2014 by first class mail and email to the following:

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EXHIBIT A

IN THE COURT OF COMMON PLEAS
OF CENTRE COUNTY, PENNSYLVANIA
CIVIL DIVISION - LAW
GEORGE SCOTT PATERNO, as duly : 13-2082
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 : :

VS

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, and THE :
PENNSYLVANIA STATE UNIVERSITY : :

INDEX TO THE WITNESSES DIRECT CROSS REDIRECT RECROSS

PLAINTIFFS:

(None)

DEFENDANTS:

(None)

INDEX TO THE EXHIBITS ADMITTED:

PLAINTIFFS:

(None)

DEFENDANTS:

(None)

TRANSCRIPT OF PROCEEDINGS (Preliminary Objections)

BEFORE: John B. Leete, Senior Judge

Specially Presiding

DATE: May 19, 2014

PLACE: Centre County Courthouse
Courtroom No. 1

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Bellefonte, PA 16823

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P R O C E E D I N G S

THE COURT: Please be seated. Good morning, ladies and gentlemen. We are going to call case 2082 of '13 in the matter of the Paterno Estate, et al. versus the NCAA, et al., with Pennsylvania State University as a nominal defendant. There are basically two categories of issues before us today. We have preliminary objections to plaintiff's first amended complaint, some by the Pennsylvania State University, others by the NCAA. Preliminarily, the Court notes that some of the preliminary objections are repetitive, and the Court is encouraging counsel to avoid re-arguing those matters which have been firmly decided in the January 7, 2014, opinion of this Court.

We have preliminary objections that relate to the amendments that were made to, of course, the addition of Penn State University as a nominal defendant. We have a second category of matters to decide relating to discovery issues, subpoenas that are outstanding. We're going to separate those, ladies and gentlemen. We're going to cover the preliminary objections first, then move on to

1 presentation today badly conflates and confuses
2 the nature of our objections, what we object to
3 and, frankly, what we don't object to. I heard
4 Mr. Loveland say they were trying to pull a
5 curtain down on discovery and are refusing to
6 participate. That is abjectly not the case.

7 Let me just give a brief set of
8 background. I'm going to try to put these
9 documents into two different categories. One
10 is what I'm going to call the source documents.
11 The Freeh law firm went and essentially seized,
12 gathered, collected, if you will, millions of
13 pages of documents from university servers, as
14 well as documents from university custodians.
15 So, by way of example, I understand that they
16 seized Mr. Spanier's computer, his laptop, and
17 his personal handheld device. Those documents
18 were then culled down to a set of roughly 3.5
19 million electronic documents, and there's about
20 15 to 20 hard copy documents that have
21 subsequently been scanned and made electronic
22 for that purpose. That's what I'm calling the
23 source documents.

24 As the plaintiffs are well aware,
25 because we specified in our objections and we

1 told them during the meet and confer, we are
2 not claiming that all of those documents are
3 privileged. We recognize that historical, as
4 Your Honor referred to, ordinary course
5 documents aren't necessarily privileged, and
6 I'm saying that with a bit of a caveat, because
7 some of them may be. Think of, for example,
8 Cynthia Baldwin, the university's general
9 counsel. In pulling files from various
10 custodians, they may well have pulled an
11 opinion letter that Ms. Baldwin wrote on an
12 unrelated real estate matter.

13 THE COURT: And that certainly would
14 not be discoverable.

15 MS. DOBLICK: That would not be
16 discoverable. There may be communications
17 between Ms. Baldwin and a university executive
18 about a student disciplinary matter. There may
19 be personal e-mail and documents on various
20 custodians' records or in the servers that were
21 pulled. In short, this monolithic collection
22 of \$3.5 million -- 3.5 million documents that
23 the Freeh firm gathered --

24 THE COURT: It's probably going to
25 cost \$3.5 million somewhere along the way.

1 MS. DOBLICK: So the notion that the
2 plaintiffs are entitled to just simply
3 wholesale receive those and review those is
4 untenable. What we have told the plaintiffs
5 we're willing to do is to treat this like
6 discovery in any case. And, Your Honor, I need
7 to point out as well -- I know we dropped it in
8 footnotes in the brief, but the Pepper Hamilton
9 law firm no longer has possession of this
10 database, and so what we have been suggesting
11 to plaintiffs is that we treat this as an
12 ordinary document request to the university
13 whereby, in the world of electronic discovery,
14 the plaintiffs give us search terms. We will
15 search the database. If it produces a
16 reasonable number of hits, we would then be
17 given the opportunity to review those materials
18 for privileges, for confidentiality concerns,
19 and for relevancy.

20 THE COURT: Because the university has
21 not indicated thus far a privilege log; is that
22 correct?

23 MS. DOBLICK: Your Honor, there's
24 three and a half million documents, most of
25 which are not relevant to anything related to

1 any claim in this litigation. You know, we
2 really need to search --

3 THE COURT: Well, don't plaintiffs get
4 some choice in determining what's out there?
5 In other words, it's simply not enough for Penn
6 State to say, well, these aren't relevant.

7 MS. DOBLICK: It's not enough to say
8 it's not relevant, but the plaintiff, by virtue
9 of what they're asking for -- for example, they
10 asked for the Freeh firm's entire, quote,
11 "client file," all 3.5 million documents, and
12 as I think I just explained to Your Honor, the
13 vast majority of those documents may have no
14 relevancy to Jerry Sandusky, Coach Paterno, or
15 more narrowly any of the actual claims in the
16 litigation.

17 THE COURT: And I'm sure that's
18 correct.

19 MS. DOBLICK: So that's all we're
20 asking for in that regard. It's not as if
21 we're trying to put up a curtain to block
22 access of those underlying documents. We
23 propose that the Court in the ordinary course
24 of things work with the parties to come up with
25 search terms. If they ask us to search for the

1 name Joe Paterno and it produces two million
2 hits, that is not a feasible discovery
3 obligation, but we would work through that
4 during the ordinary discovery process. So I do
5 just want to make clear, though, as to that
6 category of documents, it's not a wholesale
7 failure to participate in discovery.

8 The second category of documents is
9 what I'm calling the non-source documents, but
10 it's really the Freeh firm work product and its
11 communications with the university in the
12 course of the investigation. They have asked
13 for outright copies of interview notes, which
14 by any account are protected attorney work
15 product. They have asked for drafts of the
16 Freeh report. They have asked for internal
17 memoranda among the Freeh lawyers.
18 Pennsylvania does not require that the attorney
19 work product doctrine -- that the person
20 invoking it establish that the materials were
21 created in anticipation of litigation. That's
22 not a requirement of Pennsylvania law. But the
23 materials clearly were prepared in anticipation
24 of litigation, entitling them under
25 Pennsylvania law to the broadest possible

1 MS. DOBLICK: A lot of them are
2 employees of the university who were instructed
3 to cooperate. Others, though, it's not
4 attorney -- even if it's not an attorney-client
5 communication, it's the attorney's mental
6 impression of what the attorney --

7 THE COURT: Even what these witnesses
8 said?

9 MS. DOBLICK: Absolutely, Your Honor,
10 because as the case law indicates, unless he's
11 got a verbatim transcript of the witness
12 statement, mental impressions are what the
13 questions the lawyers thought to ask and what
14 the lawyer thought was significant to reduce to
15 writing in the notes. You will see from the
16 cases cited in our brief that that's considered
17 under both Pennsylvania and federal law
18 quintessential attorney work product. And
19 further to the point, only a small subsection
20 of the interviews that were taken -- the Freeh
21 report itself says they took 430 interviews --
22 and if you go and count citations, only a small
23 fraction of them are even mentioned in the
24 report, again countering this notion of some
25 broad subject matter waiver that makes

1 protection. So as to that category of
2 documents, the waiver with respect to the Freeh
3 firm releasing its report was limited. It was
4 limited to the four corners of the report.

5 Pennsylvania does not recognize a
6 blanket subject matter waiver of attorney work
7 product. We released what we released. That
8 document is now in the public domain. As to
9 the interviews of the 430 individuals who were
10 interviewed and who had an expectation of
11 confidentiality and privacy in connection with
12 those interviews, that is inherent work product
13 that not only does the subpoena seek to obtain
14 those materials indirectly, it's a frontal
15 assault on the existence of that privilege,
16 which is one of the reasons that we claim it
17 can't be issued.

18 With respect to communications with
19 third parties that the Freeh firm may have had,
20 Mr. Loveland was talking about the different
21 circles.

22 THE COURT: Well, even all the
23 interviews, I mean, they're not all within the
24 context of an attorney dealing with a client,
25 are they?

1 everything fair game.

2 Again, Mr. Loveland was talking
3 about --

4 THE COURT: And you're indicating your
5 interpretation is the waiver applies only to
6 the report itself? That's your position?

7 MS. DOBLICK: Yes, Your Honor.

8 With respect to these communications
9 with third parties, we're not claiming that
10 those are privileged, either. We have said
11 very clearly in our objections and in our brief
12 that to the extent that the Freeh firm
13 communicated with the NCAA or with the Big Ten
14 or with law enforcement and have those
15 documents in their files, we are not claiming
16 those are subject to a privilege. However,
17 this gets to one of our other objections, which
18 is the timing of the issuance of any subpoena.

19 There have been preliminary objections
20 raised to many counts of the second amended
21 complaint, including the conspiracy claim, and
22 as I understand it the notion of seeking
23 documents that the Freeh firm communicated --
24 you know, communications between the Freeh firm
25 and the NCAA, for example, those may or may not

1 be relevant depending on how the preliminary
2 objections shake out. What we're suggesting is
3 a simple, orderly process that I think Your
4 Honor helped facilitate today by having all of
5 the arguments at the same time, whereby the
6 preliminary objections are ruled upon first, we
7 understand what claims are in the case, which
8 claims are against the university, and which
9 plaintiffs have standing to bring them. At
10 that point -- and, Your Honor, another critical
11 element is the issuance of a protective order.
12 The parties have been talking about protective
13 order, but I understand we're still fairly far
14 apart.

15 THE COURT: I gather there's been no
16 agreement on that.

17 MS. DOBLICK: There has been no
18 agreement on that yet, and once a subpoena
19 issues, the clock starts running, and there are
20 significant -- both given the sensitivity of
21 the underlying Sandusky activities as well as
22 the sensitivity and confidentiality
23 expectations of people who participated in the
24 investigation, it is imperative that an
25 appropriate confidentiality order be in place

1 likelihood there's not 3.5 million
2 communications that in some manner relate to
3 this case?

4 MR. LOVELAND: Of course not. And if
5 the database --

6 THE COURT: Hopefully there aren't.

7 MR. LOVELAND: Hopefully there aren't.
8 If the database is provided to us, we will run
9 search terms against it. We'll do exactly what
10 the Freeh firm did and others did. We'll run
11 the search terms. We'll find out what's in
12 there and access it. If there's something,
13 though, that's privileged -- I mean, we have
14 this unique situation where Penn State is
15 essentially saying, "We let Mr. Freeh's firm
16 come in and take anything and everything they
17 wanted. All right. And we don't know what's
18 in it, and we don't know whether there's
19 anything in it that's privileged, but don't let
20 the plaintiffs, who are suing over this, get
21 exactly the same material that we gave to the
22 Freeh firm." They don't contend that material
23 is privileged in toto. They think there could
24 be something in it that's privileged. They
25 give the example of --

1 before a discovery clock starts ticking with
2 respect to any third party. So that's what
3 we're asking for here, Your Honor, is that we
4 let the pleadings get settled, that we let the
5 Court negotiate any differences and enter an
6 effective protective order, that we be given an
7 opportunity to review both the source documents
8 and the Freeh-created documents for privileges,
9 for confidentiality, and for relevance, and
10 that we engage in discovery along those lines.

11 THE COURT: Thank you very much.

12 MS. DOBLICK: Thank you, Your Honor.

13 THE COURT: And the next chapter...

14 MR. LOVELAND: If I might briefly
15 respond, Your Honor, I think counsel's
16 breakdown of the categories of documents is
17 helpful and is similar to ours. Let's start
18 with that, the source documents. The comment
19 was they're not claiming privilege with regard
20 to the vast majority of them. They don't know
21 whether any of them are privileged. There
22 might be some note --

23 THE COURT: Well, how do we solve
24 that? I mean, how do we solve that when again
25 we are faced with pleadings, but in all

1 THE COURT: Well, I guess the question
2 is we've got the database out there, who runs
3 the searches? Is it Penn State or is it
4 plaintiffs? Isn't that really what we're
5 talking about, given -- now that we've heard
6 from counsel for Penn State?

7 MR. LOVELAND: And what I hear Penn
8 State saying now is -- and I think this is
9 different from what I understood -- but if Penn
10 State is saying they now have possession,
11 custody, and control --

12 THE COURT: I think that's what
13 they're saying.

14 MR. LOVELAND: Is that what they're
15 saying?

16 THE COURT: Counsel is agreeing with
17 that.

18 MR. LOVELAND: All right. If Penn
19 State is saying they have custody and control
20 of the database at this point in time and
21 access to it, then I think their obligation,
22 which already exists -- because for that at
23 least we're not really talking about a subpoena
24 to Pepper Hamilton. They have objected to
25 that, but what we're really talking about is

1 Penn State producing the documents that are in
2 its possession, custody, and control that were
3 previously in the Freeh firm's possession and
4 in Pepper Hamilton's possession. I think their
5 obligation as the successors to that material
6 is to run the searches. We gave requests for
7 production. I mean, we gave them in the
8 subpoena what we wanted.

9 THE COURT: You gave them the terms?

10 MR. LOVELAND: We said we want these
11 materials. We want these things. I think
12 their obligation is to say, "Fine. We've done
13 a reasonable, good-faith effort of searching
14 the database to answer that."

15 THE COURT: Excuse me, but maybe I'm
16 not comprehending this correctly, but it seems
17 that that's exactly what Ms. Doblick has
18 offered to do. Am I correct on that, ma'am?

19 MS. DOBLICK: Your Honor, it's correct
20 that that's what we agreed to do to see if they
21 could reach a reasonable number. What Mr.
22 Loveland is talking about is an issue with just
23 standard document requests that say things like
24 produce all documents that evidence or reflect
25 that at the time of Jerry Sandusky's --

1 that we believe not to be relevant, that we
2 believe could have privileges, could have
3 sensitive and personal information, so that's
4 again something I'm hearing for the first time
5 today, but it's a nonstarter.

6 As to the suggestion of providing the
7 search terms, we have made that suggestion in
8 the meet and confer, and if it produced two
9 million hits and it's not feasible, then we
10 need to be thinking of more refined search
11 terms.

12 THE COURT: Okay. Thank you, Ms.
13 Doblick.

14 MS. DOBLICK: You're welcome.

15 THE COURT: With that, counsel.

16 MR. LOVELAND: Yes, Your Honor. The
17 issue, however, that causes me great pause is
18 -- because contrary to what I think we heard
19 today in Penn State's objections on page 9,
20 Category A says the vast majority of the
21 documents Paterno requests in the proposed
22 subpoena are privileged, so there's an
23 assertion of privilege, if I am to quote, "the
24 vast majority," and we have no idea what Penn
25 State is talking about there.

1 THE COURT: Well --

2 MS. DOBLICK: -- resignation from the
3 coaching staff, Joe Paterno suspected or
4 believed that Sandusky was a sexual predator.

5 THE COURT: Well, aren't we talking,
6 though --

7 MS. DOBLICK: Those aren't search
8 terms.

9 THE COURT: Aren't we talking we have
10 got this enormous database, and there are
11 search terms that could be utilized to shrink
12 it down to matters of relevance for discovery
13 purposes? And obviously that's a fairly broad
14 standard. Aren't you both saying pretty much
15 the same thing; that you can come up with terms
16 that will suffice to do that search of that
17 database? And you're saying that if they give
18 you terms, you will do that? I'm trying to --

19 MS. DOBLICK: Your Honor, that's what
20 we told them in the meet and confer, but what
21 we can't do, and which I'm hearing really for
22 the first time today, is just to give them a
23 copy of the entire bank database or give them
24 access to it for all the reasons I explained.
25 There's a vast majority of documents in there

1 If you take these categories, the
2 source documents, the vast, vast majority of
3 them, there's no suggestion of privilege. For
4 the non-source documents, as Your Honor pointed
5 out, the interview notes are not privileged.
6 These are not interviews that the Freeh firm
7 was conducting with a client. Their engagement
8 was clear. The only client was the task force
9 of the board. That was their only client. So
10 interview notes that they compiled, what
11 someone said, that's not privileged, nor is it
12 properly protectable as work product unless
13 it's reflecting mental impressions and
14 conclusions.

15 Your Honor, we cite a number of cases
16 in our brief, but I ask the Court to review the
17 Adhesive Specialists, Inc. case, which is cited
18 in our brief. The Adhesive Specialists case
19 deals with work done, an internal memorandum of
20 a Labor Department lawyer that was disclosed in
21 a case to the Pennsylvania State Police for
22 purposes of internal investigation, et cetera,
23 and then they said, "Whoops. That was work
24 product and it's attorney-client privilege."
25 And the Court goes through a detailed analysis

1 and applies the law and concludes it's not.

2 But here is the point that counsel
3 made that I think underscores most of this, and
4 it's the waiver issue, because counsel's point
5 is that -- and she said it expressly -- that
6 the waiver is limited to the report itself.

7 THE COURT: That's what she said.

8 MR. LOVELAND: There is simply no
9 basis for that statement. Once the report has
10 been disclosed, there is a subject matter
11 waiver with regard to the matters in the
12 report, and otherwise the privilege becomes a
13 complete sword and shield. We're waiving it in
14 order to say what we want to, and then we're
15 going to put down the blanket of privilege and
16 say, "You don't get anything that went behind
17 the back," and there is simply no law for that.

18 The Westinghouse Electric Corp. versus
19 Philippines case is a Third Circuit case
20 dealing with that, but the whole idea of the
21 limited disclosure is discussed in other cases
22 that are cited in our brief. Think about it
23 for a moment. How in the world could that
24 work? Mr. Freeh gets to stand in front of
25 cameras and make statements about what his

1 investigation, his 400 interviews, his review
2 of 3.5 million documents has led him to
3 conclude that Joe Paterno did X and Y, and that
4 Mr. Spanier did X and Y, and other things of
5 that nature. And then when you say, "Well,
6 what facts support those statements?" Penn
7 State says, "Oh, that is all privileged."
8 There is no law that allows that. It's just
9 made up.

10 THE COURT: That is the question.

11 MR. LOVELAND: And we think on that
12 point -- I mean, they had a choice to make.
13 They retained Mr. Freeh. They did it pursuant
14 to, as we have shown in the engagement letter
15 and in the consent decree a waiver of the
16 attorney-client privilege. That was a choice
17 Penn State made, to waive the attorney-client
18 privilege and to go public with all of this.
19 Having made that choice, they've lifted the
20 curtain, and they cannot say it's lifted for
21 the words in Louis Freeh's report, but it's not
22 lifted for the facts behind it. That is
23 unsupported by the law, and it makes no sense.

24 Now, finally, let me say as to
25 timing --

1 THE COURT: And I think that's a very
2 legitimate issue. As it has turned out,
3 obviously, we are arguing everything at the
4 same time, and optimistically the Court would
5 be prepared to rule on everything at more or
6 less the same time. With that premise --

7 MR. LOVELAND: With that premise, Your
8 Honor, the timing sounds like we should wait
9 till the Court rules.

10 THE COURT: That's what it sounds like
11 to me.

12 (Laughter)

13 MR. LOVELAND: Didn't just fall off
14 that turnip truck.

15 (Laughter)

16 MR. LOVELAND: I would say, Your
17 Honor, that I am concerned, particularly when
18 you deal with this issue of the privilege, that
19 given the statements they're making, we would
20 really ask the Court to focus in and
21 concentrate on that issue then, because we
22 think there's been a broad-based waiver. As I
23 said, there may be some communications between
24 the task force and Mr. Freeh that haven't been
25 waived. Those should be listed. They should

1 be logged, and we should know what they're
2 talking about in that regard, and they ought to
3 be able to run that search right now and know
4 what they're talking about. That's probably
5 not part of the 3.5 million source documents.
6 That's other communications with the Freeh
7 firm. I'm assuming they know where they are,
8 and they can run a log on that right now, and
9 we can assess it. And otherwise, Your Honor, I
10 think if we need to wait for a ruling, we wait
11 for a ruling, but I do think the question of
12 the waiver and the notion that Mr. Freeh says
13 what he says and nothing else comes out is
14 simply absolutely contrary to the law.

15 Thank you.

16 THE COURT: Thank you.

17 Ms. Doblick, do you wish to respond?

18 MS. DOBLICK: Yes, just briefly, Your
19 Honor. I know we've got a full day, so I won't
20 belabor the point unnecessarily. But if you
21 look at page 15 of the brief that we filed last
22 week, it cites cases, including the Upjohn case
23 in the United States Supreme Court that say
24 things like interview memoranda of a lawyer
25 will be discovered only in rare situations, and

1 in part because they reveal the attorney's
2 mental processes and has limited utility,
3 especially where the witness is available,
4 Third Circuit cases talking about an attorney's
5 memo of a telephone conversation...it's so much
6 comprised of a lawyer's thinking and so little
7 probative of the witness's actual words, it is
8 absolutely protected from disclosure. So we
9 are proceeding here from two fundamentally
10 different premises when we're talking about
11 that category of documents, in particular. And
12 again, as I said, Pennsylvania law does not
13 recognize blanket waivers of the attorney work
14 product doctrine.

15 Again, with respect to the documents,
16 what we're calling source documents and even
17 with respect to their attempts to get what we
18 believe are privileged documents and documents
19 protected by the work product doctrine, I think
20 it's also important to remember that this
21 shouldn't be defined, as the subpoena proposes
22 to do, by the recommendations and opinions and
23 conclusions set forth in the Freeh report. The
24 Freeh report, which I'm sure Your Honor has
25 read, is extremely broad and comprehensive and

1 makes recommendations on things from better
2 Cleary Act compliance to how the university can
3 improve corporate governance and oversight.

4 THE COURT: It certainly was very
5 broad.

6 MS. DOBLICK: It was very broad, and
7 many of those recommendations have absolutely
8 nothing to do with anything that can be fairly
9 described as a claim in this actual litigation,
10 so the touchstone of relevancy can't be
11 whether, if it appeared in the Freeh report,
12 plaintiffs are entitled to it. They have to
13 have a better fit between the discovery they're
14 seeking, whether from a third party or from the
15 university, and the actual claims that remain
16 in the case.

17 And lastly, I think it goes without
18 saying, but I'll say it. At the appropriate
19 time, when the subpoena is issued or document
20 requests are issued, we have no objection to
21 producing a log of documents for which we claim
22 privilege or work product. At this point the
23 notion that we needed to come up with that in
24 order to assert an objection to the issuance of
25 a subpoena just isn't how Pennsylvania law

1 works. Once we get to a point of if a subpoena
2 is allowed or a document request is permitted,
3 we will screen for relevancy, we will run the
4 searches, and at that point we will produce
5 privilege logs in the ordinary course.

6 THE COURT: Thank you.

7 MS. DOBLICK: Thank you, Your Honor.

8 THE COURT: Any last words on the
9 issue from plaintiffs?

10 MR. LOVELAND: We obviously have a
11 fundamental disagreement on the scope of
12 waiver.

13 THE COURT: Yes.

14 MR. LOVELAND: And we have a
15 fundamental disagreement on the obligation of
16 Penn State to document any claims of privilege.
17 That being said, assuming that it's okay with
18 the Court, what I would propose to do to
19 expedite the process a little bit is we will go
20 ahead and prepare a list of terms and give
21 those to Penn State and ask them to run them,
22 since they now have possession, custody, and
23 control of the database. That's the database.
24 I want to be clear. I don't think they have
25 all of the other documents that the subpoena

1 addressed to Pepper Hamilton is designed to
2 get. Do you have all of them there?

3 MS. DOBLICK: No. As we explained
4 during the meet and confer, Pepper Hamilton, we
5 expect, we will have some documents that may be
6 relevant or responsive to some of those
7 requests.

8 MR. LOVELAND: Well, for example, we
9 talked about these so-called interview notes.
10 Do you guys have those or does Pepper Hamilton
11 have those?

12 MS. DOBLICK: I'm not sure if Pepper
13 Hamilton has those or not. My understanding is
14 Pepper Hamilton still has somewhat of the file
15 that would be responsive to some of the
16 requests.

17 MR. LOVELAND: But Penn State does not
18 have those?

19 THE COURT: Well, I don't think she's
20 saying that.

21 MR. LOVELAND: That's why I'm asking.

22 THE COURT: I'm not sure that --

23 MS. DOBLICK: We -- Penn State --

24 THE COURT: Although this is argument,
25 not a debate.

EXHIBIT B

**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**

**Freeh Sporkin & Sullivan, LLP
July 12, 2012**

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SCOPE OF REVIEW AND METHODOLOGY

Freeh Sporkin & Sullivan LLP, ("FSS"), was engaged by the Special Investigations Task Force ("Task Force") on behalf of The Pennsylvania State University's Board of Trustees ("Board" or "Trustees")^a as Special Investigative Counsel on November 21, 2011. As Special Investigative Counsel, FSS was asked to perform an independent, full and complete investigation of:

- The alleged failure of Pennsylvania State University personnel to respond to, and report to the appropriate authorities, the sexual abuse of children by former University football coach Gerald A. Sandusky ("Sandusky");
- The circumstances under which such abuse could occur in University facilities or under the auspices of University programs for youth.

In addition, the Special Investigative Counsel was asked to provide recommendations regarding University governance, oversight, and administrative policies and procedures that will better enable the University to prevent and more effectively respond to incidents of sexual abuse of minors in the future.

To achieve these objectives the Special Investigative Counsel developed and implemented an investigative plan to:

- Identify individuals associated with the University at any level or in any office, who knew, or should have known, of the incidents of sexual abuse of children committed by Sandusky, the substance of their knowledge, and the point at which they obtained that knowledge;
- Examine how these incidents became known to, and were handled by, University Trustees, staff, faculty, administrators, coaches or others, with

^a The members of the Special Investigations Task Force are: Chairman, Kenneth C. Frazier, Chief Executive Officer and President, Merck & Co., Inc.; Vice Chairman, Ronald J. Tomalis, Secretary of the Pennsylvania Department of Education; H. Jesse Arnelle, Attorney; Guion S. Bluford, Jr., Ph.D., Colonel, United States Air Force (retired); Mark H. Dambly, President, Pennrose Properties, LLC; Keith W. Eckel, Sole Proprietor and President, Fred W. Eckel & Sons Farms, Inc.; Daniel R. Hagen, Ph.D., Immediate Past-Chair, The Pennsylvania State University Faculty Senate, Professor, College of Agricultural Sciences; Rodney P. Hughes, Doctoral Student, The Pennsylvania State University; Karen B. Peetz, Chairman, Board of Trustees, The Pennsylvania State University, Vice Chairman and Chief Executive Officer, Financial Markets and Treasury Services, Bank of New York Mellon.

particular regard to institutional governance, decision making, oversight and culture.

- Identify any failures and their causes on the part of individuals associated with the University at any level or in any office, or gaps in administrative processes that precluded the timely and accurate reporting of, or response to, reports of these incidents.

The Special Investigative Counsel implemented the investigative plan by:

- Conducting over 430 interviews of key University personnel and other knowledgeable individuals to include: current and former University Trustees and Emeritus Trustees; current and former University administrators, faculty, and staff, including coaches; former University student-athletes; law enforcement officials; and members of the State College community at the University Park, Behrend, Altoona, Harrisburg and Wilkes-Barre campuses, and at other locations in Delaware, Pennsylvania, New York, Maryland and the District of Columbia, and by telephone;
- Analyzing over 3.5 million pieces of pertinent electronic data and documents;
- Reviewing applicable University policies, guidelines, practices and procedures;
- Establishing a toll-free hotline and dedicated email address to receive information relevant to the investigation, and reviewing the information provided from telephone calls and emails received between November 21, 2011 and July 1, 2012;
- Cooperating with law enforcement, government and non-profit agencies, including the National Center for Missing and Exploited Children (NCMEC), and athletic program governing bodies;
- Benchmarking applicable University policies, practices and procedures against those of other large, public and private universities and youth-serving organizations; and
- Providing interim recommendations to the Board in January 2012 for the immediate protection of children.

The information in this report was gathered under the applicable attorney-client privilege and attorney work product doctrine, and with due regard for the privacy of the interviewees and the documents reviewed. All materials were handled and

maintained in a secure and confidential manner. This report sets forth the essential findings of the investigation, pursuant to the appropriate waiver of the attorney-client privilege by the Board.

Citations in this report have been redacted to protect the identity of people who spoke with the Special Investigative Council. Citations also include references to the internal database maintained by the Special Investigative Council to collect and analyze documents and emails. The references include citation to a unique identifying number assigned to each individual piece of information and are located in the endnotes and footnotes of this report.

INDEPENDENCE OF THE INVESTIGATION

The Special Investigative Counsel's mandate was made clear in the public statement of Trustee Kenneth C. Frazier announcing this investigation. "No one is above scrutiny," Frazier said. "[Freeh] has complete rein to follow any lead, to look into every corner of the University to get to the bottom of what happened and then to make recommendations that ensure that it never happens again." Frazier assured the Special Investigative Counsel that the investigation would be expected to operate with complete independence and would be empowered to investigate University staff, senior administrators, and the Board of Trustees.

The Special Investigative Counsel operated with total independence as it conducted this investigation. Its diverse membership included men and women with extensive legal, law enforcement and child protection backgrounds who were experienced in conducting independent, complex and unbiased investigations. None of the Special Investigative Counsel's attorneys or investigators attended The Pennsylvania State University or had any past or present professional relationship with the University. The Special Investigative Counsel maintained a secure workspace that was separate from all other University offices and classrooms. The workspace was accessible to the public only when accompanied by a member of the Special Investigative Counsel team. The Special Investigative Counsel's computer systems were not connected to the University's network.

The Special Investigative Counsel had unfettered access to University staff, as well as to data and documents maintained throughout the University. The University staff provided a large volume of raw data from computer systems, individual computers and communications devices. The Special Investigative Counsel performed the forensic analysis and review of this raw data independent of the University staff. From this review and analysis, the Special Investigative Counsel discovered the most important documents in this investigation – emails among former President Graham B. Spanier, former Senior Vice President-Finance and Business Gary C. Schultz and Athletic Director Timothy M. Curley from 1998 and 2001 – relating to Sandusky's crimes. The Special Investigative Counsel immediately provided these documents to law enforcement when they were discovered.

The Special Investigative Counsel interviewed a cross-section of individuals including current and former University faculty and staff members, Trustees, and student-athletes. The interviews covered a wide range of academic, administrative and athletic topics relating to Sandusky's crimes and the allegations against Schultz and Curley; as well as the governance and oversight function of the University's administrators and Board of Trustees. The temporal scope of the interviews ranged from the late 1960s, when Sandusky first attended the University, to the present.

The witnesses interviewed in this investigation, with few exceptions, were cooperative and forthright. Very few individuals declined to be interviewed, including some who declined on the advice of counsel (i.e., Sandusky, Schultz, Curley and former University outside legal counsel Wendell Courtney). At the request of the Pennsylvania Attorney General, the Special Investigative Counsel did not interview former Pennsylvania State University Director of Public Safety Thomas Harmon or former coach Michael McQueary, among others. Although the information these individuals could have provided would have been pertinent to the investigation, the findings contained in this report represent a fair, objective and comprehensive analysis of facts. Moreover, the extensive contemporaneous documentation that the Special Investigative Counsel collected provided important insights, even into the actions of those who declined to be interviewed.

No party interfered with, or attempted to influence, the findings in this report. The Special Investigative Counsel revealed this report and the findings herein to the Board of Trustees and the general public at the same time. No advance copy was provided to the Board or to any other person outside of the Special Investigative Counsel's team, and the work product was not shared with anyone who was not part of the Special Investigative Counsel's team.

EXECUTIVE SUMMARY

On November 4, 2011 the Attorney General of the Commonwealth of Pennsylvania ("Attorney General") filed criminal charges against Gerald A. Sandusky ("Sandusky") that included multiple counts of involuntary deviate sexual intercourse, aggravated indecent assault, corruption of minors, unlawful contact with minors and endangering the welfare of minors. Several of the offenses occurred between 1998 and 2002, during which time Sandusky was either the Defensive Coordinator for The Pennsylvania State University ("Penn State" or "University") football team or a Penn State professor Emeritus with unrestricted access to the University's football facilities. On November 4, 2011, the Attorney General filed criminal charges against the University's Athletic Director ("AD") Timothy M. Curley ("Curley") and Senior Vice President Finance and Business ("SVP-FB"), Gary C. Schultz ("Schultz") for failing to report allegations of child abuse against Sandusky to law enforcement or child protection authorities in 2002^b and for committing perjury during their testimony about the allegations to the Grand Jury in Dauphin County, Pennsylvania, in January 2011.

On June 22, 2012, a Centre County jury in Bellefonte, Pennsylvania found Sandusky guilty of 45 counts of the criminal charges against him. As of the date of this report, the charges against Curley and Schultz have not been heard by the court.

The criminal charges filed against these highly respected University and community leaders are unprecedented in the history of the University. Several senior University leaders who had knowledge of the allegations did not prepare for the possibility that these criminal charges would be filed. In the days and weeks surrounding the announcement of the charges, University leaders (referred to on campus as "Old Main") and the University's Board of Trustees ("Board" or "Trustees"), struggled to decide what actions the University should take and how to be appropriately transparent about their actions. The high degree of interest exhibited by members of the University community, alumni, the public and the national media put additional pressure on these leaders to act quickly.

On November 11, 2011, the Trustees formed the "Special Investigations Task Force ("Task Force") of the Board of Trustees of The Pennsylvania State University" and

^b This date was later determined by the Special Investigative Counsel to be 2001.

selected Trustees Kenneth C. Frazier and Ronald J. Tomalis to lead its efforts. On November 21, 2011 the Task Force engaged the law firm of Freeh Sporkin & Sullivan, LLP ("FSS") as Special Investigative Counsel, to conduct an investigation into the circumstances surrounding the criminal charges of sexual abuse of minors in or on Penn State facilities by Sandusky; the circumstances leading to the criminal charges of failure to report possible incidents of sexual abuse of minors; and the response of University administrators and staff to the allegations and subsequent Grand Jury investigations of Sandusky. In addition, the Special Investigative Counsel was asked to provide recommendations regarding University governance, oversight and administrative procedures that will better enable the University to effectively prevent and respond to incidents of sexual abuse of minors in the future.

The Pennsylvania State University is an outstanding institution nationally renowned for its excellence in academics and research. There is a strong spirit of community support and loyalty among its students, faculty and staff. Therefore it is easy to understand how the University community was devastated by the events that occurred.

FINDINGS

The most saddening finding by the Special Investigative Counsel is the total and consistent disregard by the most senior leaders at Penn State for the safety and welfare of Sandusky's child victims. As the Grand Jury similarly noted in its presentment,¹ there was no "attempt to investigate, to identify Victim 2, or to protect that child or any others from similar conduct except as related to preventing its re-occurrence on University property."

Four of the most powerful people at The Pennsylvania State University – President Graham B. Spanier, Senior Vice President-Finance and Business Gary C. Schultz, Athletic Director Timothy M. Curley and Head Football Coach Joseph V. Paterno – failed to protect against a child sexual predator harming children for over a decade. These men concealed Sandusky's activities from the Board of Trustees, the University community and authorities. They exhibited a striking lack of empathy for Sandusky's victims by failing to inquire as to their safety and well-being, especially by not attempting to determine the identity of the child who Sandusky assaulted in the Lasch Building in 2001. Further, they exposed this child to additional harm by alerting

Sandusky, who was the only one who knew the child's identity, of what McQueary saw in the shower on the night of February 9, 2001.

These individuals, unchecked by the Board of Trustees that did not perform its oversight duties, empowered Sandusky to attract potential victims to the campus and football events by allowing him to have continued, unrestricted and unsupervised access to the University's facilities and affiliation with the University's prominent football program. Indeed, that continued access provided Sandusky with the very currency that enabled him to attract his victims. Some coaches, administrators and football program staff members ignored the red flags of Sandusky's behaviors and no one warned the public about him.

By not promptly and fully advising the Board of Trustees about the 1998 and 2001 child sexual abuse allegations against Sandusky and the subsequent Grand Jury investigation of him, Spanier failed in his duties as President. The Board also failed in its duties to oversee the President and senior University officials in 1998 and 2001 by not inquiring about important University matters and by not creating an environment where senior University officials felt accountable.

Once the Board was made aware of the investigations of Sandusky and the fact that senior University officials had testified before the Grand Jury in the investigations, it should have recognized the potential risk to the University community and to the University's reputation. Instead, the Board, as a governing body, failed to inquire reasonably and to demand detailed information from Spanier. The Board's overconfidence in Spanier's abilities to deal with the crisis, and its complacent attitude left them unprepared to respond to the November 2011 criminal charges filed against two senior Penn State leaders and a former prominent coach. Finally, the Board's subsequent removal of Paterno as head football coach was poorly handled, as were the Board's communications with the public.

Spanier, Schultz, Paterno and Curley gave the following reasons for taking no action to identify the February 9, 2001 child victim and for not reporting Sandusky to the authorities:

- Through counsel, Curley and Schultz stated that the "humane" thing to do in 2001 was to carefully and responsibly assess the best way to handle vague but

troubling allegations. According to their counsel, these men were good people trying to do their best to make the right decisions.²

- Paterno told a reporter that “I didn’t know exactly how to handle it and I was afraid to do something that might jeopardize what the university procedure was. So I backed away and turned it over to some other people, people I thought would have a little more expertise than I did. It didn’t work out that way.”³
- Spanier said, in his interview with the Special Investigative Counsel, that he never heard a report from anyone that Sandusky was engaged in any sexual abuse of children. He also said that if he had known or suspected that Sandusky was abusing children, he would have been the first to intervene.⁴

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

The avoidance of the consequences of bad publicity is the most significant, but not the only, cause for this failure to protect child victims and report to authorities. The investigation also revealed:

- A striking lack of empathy for child abuse victims by the most senior leaders of the University.
- A failure by the Board to exercise its oversight functions in 1998 and 2001 by not having regular reporting procedures or committee structures in place to ensure disclosure to the Board of major risks to the University.
- A failure by the Board to make reasonable inquiry in 2011 by not demanding details from Spanier and the General Counsel about the nature and direction of the grand jury investigation and the University’s response to the investigation.
- A President who discouraged discussion and dissent.
- A lack of awareness of child abuse issues, the Clery Act, and whistleblower policies and protections.

- A decision by Spanier, Schultz, Paterno and Curley to allow Sandusky to retire in 1999, not as a suspected child predator, but as a valued member of the Penn State football legacy, with future “visibility” at Penn State and ways “to continue to work with young people through Penn State,” essentially granting him license to bring boys to campus facilities for “grooming” as targets for his assaults. Sandusky retained unlimited access to University facilities until November 2011.
- A football program that did not fully participate in, or opted out, of some University programs, including Clery Act compliance. Like the rest of the University, the football program staff had not been trained in their Clery Act responsibilities and most had never heard of the Clery Act.
- A culture of reverence for the football program that is ingrained at all levels of the campus community.

RECOMMENDATIONS FOR UNIVERSITY GOVERNANCE, ADMINISTRATION, AND THE PROTECTION OF CHILDREN IN UNIVERSITY FACILITIES AND PROGRAMS

From the results of interviews with representatives of the University’s Office of Human Resources, Office of Internal Audit, Office of Risk Management, Intercollegiate Athletics, Commonwealth Campuses, Outreach, the President’s Council, Faculty Senate representatives and the Board of Trustees, and benchmarking similar practices at other large universities, the Special Investigative Counsel developed 120 recommendations for consideration by University administrators and the Board in the following eight areas:

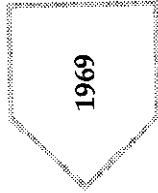
- The Penn State Culture
- Administration and General Counsel: Structure, Policies and Procedures
- Board of Trustees: Responsibilities and Operations
- Compliance: Risk and Reporting Misconduct
- Athletic Department: Integration and Compliance
- University Police Department: Oversight, Policies and Procedures
- Programs for Non-Student Minors and Access to Facilities
- Monitoring Change and Measuring Improvement

These recommendations are detailed in Chapter 10 of this report, and include several that the Special Investigative Counsel recommended to the Board in January 2012. The recommendations made at that time were designed to assist the University in preparing for its upcoming summer programs for children.

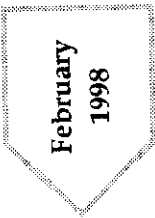
These steps should assist the University in improving structures, policies and procedures that are related to the protection of children. Some of these recommendations will help the University more fully comply with federal and state laws and regulations dealing with the protection of children. Other recommendations support changes in the structure and operations of the Board, or promote enhancements to administrative processes and procedures. Most importantly, the recommendations should create a safer environment for young people who participate in its programs and use its facilities.

One of the most challenging of the tasks confronting the Penn State community is transforming the culture that permitted Sandusky's behavior, as illustrated throughout this report, and which directly contributed to the failure of Penn State's most powerful leaders to adequately report and respond to the actions of a serial sexual predator. It is up to the entire University community – students, faculty, staff, alumni, the Board, and the administration – to undertake a thorough and honest review of its culture. The current administration and Board of Trustees should task the University community, including students, faculty, staff, alumni, and peers from similar institutions and outside experts in ethics and communications, to conduct such a review. The findings from such a review may well demand further changes.

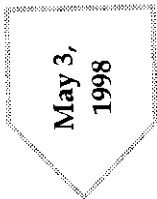
TIMELINE OF SIGNIFICANT EVENTS



- Sandusky joins the Penn State football coaching staff.



- After learning that Paterno has told Sandusky that he would not become the next head football coach, Curley begins discussions with Sandusky about other positions at the University, including an Assistant AD position that Sandusky turns down. Curley keeps Spanier and Schultz informed by email.



- *Sandusky assaults Victim 6^e in Lasch Building shower.*

^e The young boys victimized by Sandusky are designated in this report in the same manner as the Grand Jury presentment.

May 4-30,
1998

- Victim 6's mother reports to the University Police Department that Sandusky showered with her 11-year old son in the Lasch Building on Penn State campus. The police promptly begin an investigation.
- Schultz is immediately informed of the investigation and notifies Spanier and Curley. Schultz's confidential May 4, 1998 notes about Sandusky state: "Behavior – at best inappropriate @ worst sexual improprieties" and "At min – Poor Judgment." Schultz also notes: "Is this opening of pandora's box?" and "Other children?"
- University Police Department Chief Harmon emails Schultz: "We're going to hold off on making any crime log entry. At this point in time I can justify that decision because of the lack of clear evidence of a crime."
- Curley notifies Schultz and Spanier that he has "touched base with" Paterno about the incident. Days later, Curley emails Schultz: "Anything new in this department? Coach is anxious to know where it stands."
- Board meeting on May 15: Spanier does not notify the Board of the ongoing investigation.

June
1998

- District Attorney declines to bring charges against Sandusky.
- University Police detective and Department of Public Welfare caseworker interview Sandusky in Lasch Building so as not to put Sandusky "on the defensive." Sandusky admits hugging Victim 6 in the shower but says there was nothing "sexual about it." The detective advised Sandusky not to shower with any child. Sandusky stated he "wouldn't."
- Harmon emails Schultz: officers "met discreetly" with Sandusky and "his account of the matter was essentially the same as the child's." Sandusky said "he had done this with other children in the past. Sandusky was advised that there was no criminal behavior established and that the matter was closed as an investigation."
- Schultz emails Curley and Spanier: "I think the matter has been appropriately investigated and I hope it is now behind us."

January
1999

- Curley emails Spanier and Schultz: Sandusky wants to coach one more year and then transition to an outreach program.

May-August
1999

- Sandusky writes a letter to Curley saying, because he will not be next head football coach, he is considering retirement. Sandusky also seeks "to maintain a long-term relationship with the University."
- Curley emails Spanier and Schultz, discussing Sandusky's retirement options: "Joe did give him the option to continue to coach as long as he was the coach." Suggests possibility of Sandusky "coaching three more seasons."
- Sandusky proposes continuing connection with Penn State, including running a middle school youth football camp and finding "ways for [Sandusky] to continue to work with young people through Penn State." Paterno handwriting on the note states: "Volunteer Position Director – Positive Action for Youth."
- A retirement agreement with Sandusky is reached in June 1999, including an unusual lump sum payment of \$168,000, an agreement for the University to "work collaboratively" with Sandusky on Second Mile and other community activities, and free lifetime use of East Area Locker Room facilities.
- As the retirement package is being finalized, Curley requests the emergency re-hire of Sandusky for the 1999 football season, which is approved.
- In August 1999, Sandusky is granted "emeritus" rank, which carries several privileges, including access to University recreational facilities. Documents show the unusual request for emeritus rank originated from Schultz, was approved by Spanier, and granted by the Provost, who expressed some uneasiness about the decision given Sandusky's low academic rank and the precedent that would be set.

December
1999

- Sandusky brings Victim 4 to 1999 Alamo Bowl in Texas.
- *Sandusky assaults Victim 4 at team hotel.*

November
2000

- *Sandusky assaults Victim 8 in Lasch Building shower.*
- Janitor observes assault by Sandusky, but does not report the assault for fear that "they'll get rid of all of us." Another janitor concludes that the University will close ranks to protect the football program.

February 9,
2001

- *Sandusky assaults Victim 2 in Lasch Building Shower.*
- McQueary witnesses the assault by Sandusky.

February 10-12, 2001

- McQueary reports the assault to Paterno on Saturday, February 10; Paterno tells McQueary, "you did what you had to do. It's my job now to figure out what we want to do."
- Paterno reports the incident to Curley and Schultz on Sunday, February 11 as Paterno did not "want to interfere with their weekends."
- On Sunday, February 11, Schultz consults with University outside counsel Wendell Courtney "re reporting of suspected child abuse."
- On Monday, Spanier, Schultz and Curley meet to discuss a situation that Spanier describes as "unique", and a "heads-up" meeting; Schultz's confidential notes indicate he spoke to Curley, reviewed the history of the 1998 incident, and agreed that Curley would discuss the incident with Paterno and recommend that Curley meet with Sandusky. Schultz notes state: "Unless he confesses to having a problem, [Curley] will indicate we need to have DPW review the matter as an independent agency concerned w child welfare."
- Schultz asks University Police Department Chief Harmon if the report of the 1998 incident is in police files; Harmon responds that it is.

February 25-26,
2001

- Spanier, Schultz and Curley meet and devise an action plan, reflected in Schultz's notes: "3) Tell chair* of Board of Second Mile 2) Report to Dept of Welfare. 1) Tell JS [Sandusky] to avoid bringing children alone into Lasch Bldg *who's the chair??" The plan is confirmed in a subsequent email from Schultz to Curley.

February 27-28, 2001

- Curley emails Schultz and Spanier and says he [Curley] has changed his mind about the plan "after giving it more thought and talking it over with Joe [Paterno] yesterday." Curley now proposes to tell Sandusky "we feel there is a problem" and offer him "professional help." "If he is cooperative we would work with him to handle informing" the Second Mile; if Sandusky does not cooperate, "we don't have a choice and will inform" DPW and the Second Mile. "Additionally, I will let him know that his guests are not permitted to use our facilities."
- Spanier emails Curley and Schultz: "This approach is acceptable to me." He adds: "The only downside for us is if the message isn't 'heard' and acted upon, and we then become vulnerable for not having reported it. But that can be assessed down the road. The approach you outline is humane and a reasonable way to proceed."
- Schultz concurs with the plan in an email to Curley and Spanier: "this is a more humane and upfront way to handle this." Schultz adds, "we can play it by ear" about informing DPW of the assault.

March 5, 2001

- Scheduled date of meeting between Curley and Sandusky. In his 2011 Grand Jury testimony, Curley said he told Sandusky "we were uncomfortable" about the incident and would report it to the Second Mile. Curley says he also told Sandusky to stop bringing children to the athletic facilities. Sandusky's counsel later reports that no accusation of sexual abuse was made at this meeting and that Sandusky offered to provide the name of the boy to Curley, but Curley did not want the boy's name.

March
16,
2001

- Board of Trustees meeting: Spanier does not report the Sandusky incident to the Board.

March
19, 2001

- Curley meets with the executive director of the Second Mile and "shared the information we had with him." The Second Mile leadership concludes the matter is a "non-incident," and takes no further action.

July 24,
2001

- Schultz leads a transaction to sell a parcel of University property to The Second Mile for \$168,500 – the same as the University's 1999 acquisition cost.

August
2001

- *Sandusky assaults Victim 5 in Lasch Building shower.*

September
21, 2001

- Board of Trustees meeting: Board approves land sale to The Second Mile; neither Spanier nor Schultz disclose any issue concerning Sandusky.

January 7,
2010

- The University receives subpoenas from the Pennsylvania Attorney General for personnel records and correspondence regarding Sandusky.

September
16, 2010

- *Patriot-News* reporter contacts Spanier; the two exchange emails as to Spanier's knowledge of an investigation of Sandusky for suspected criminal activity while he was a Penn State employee.

December 28, 2010 - January 11, 2011

- Then-Penn State General Counsel Cynthia Baldwin speaks to the Attorney General's Office staff about Grand Jury subpoenas for Schultz, Paterno and Curley; alerts Spanier of subpoenas; meets with Schultz, Paterno and Curley to discuss Sandusky; and calls former University outside counsel Wendell Courtney about his knowledge of Sandusky.
- Courtney emails Schultz: Baldwin "called me today to ask what I remembered about JS issue I spoke with you and Tim about circa eight years ago. I told her what I remembered. She did not offer why she was asking, nor did I ask her. Nor did I disclose that you and I chatted about this."
- Courtney emails Baldwin that "someone ... contacted Children and Youth Services to advise of the situation so that they could do whatever they thought was appropriate under the circumstances, while being apprised of what PSU actions were, i.e., advising JS to no longer bring kids to PSU's football locker rooms."

January
12, 2011

- Schultz, Paterno and Curley testify before the Grand Jury.

March
31,
2011

- *Patriot-News* publishes article on Sandusky investigation.

April 1, 2011

- A Trustee emails Spanier, asking if the Board will be briefed about the Sandusky investigation reported in the paper. Spanier tells the Trustee: "Grand Jury matters are by law secret, and I'm not sure what one is permitted to say, if anything. I'll need to ask Cynthia [Baldwin] if it would be permissible for her to brief the Board on the matter."

April 13, 2011

- The Trustee emails Spanier again: "despite grand jury secrecy, when high ranking people at the university are appearing before a grand jury, the university should communicate something about this to its Board of Trustees." Spanier responds, downplaying the significance of the investigation: "I'm not sure it is entirely our place to speak about this when we are only on the periphery of this." Spanier asks Baldwin to call the Trustee.
- Spanier appears before the Grand Jury.
- Spanier separately emails Baldwin, noting "[the Trustee] desires near total transparency. He will be uncomfortable and feel put off until he gets a report."

April
17, 2011

- Spanier, Baldwin and then Board Chair Garban have a conference call to discuss the Sandusky Grand Jury.

May 12,
2011

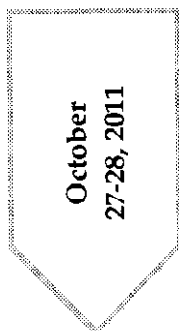
- Board of Trustees meeting: Spanier and Baldwin brief Board on status of Grand Jury investigation; Spanier and Baldwin downplay importance of the investigation to Penn State. The Board asks a few limited questions.

July 15,
2011

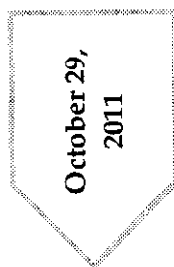
- Board of Trustees meeting: Spanier and Baldwin do not update the Board on the Sandusky investigation. The Board does not ask about the Sandusky investigation.

September
9, 2011

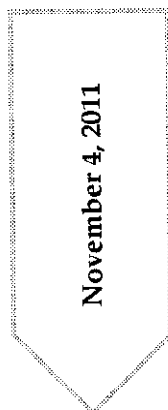
- Board of Trustees meeting: Spanier and Baldwin do not update the Board on the Sandusky investigation. The Board does not ask about the Sandusky investigation.



- Baldwin receives information on upcoming Grand Jury indictment.
- Baldwin, Spanier and Curley meet; Baldwin and Spanier also meet with Garban.
- Spanier, Baldwin, Garban and staff draft press statement expressing “unconditional support” for Schultz and Curley.



- Sandusky attends Penn State home football game and sits in Nittany Lion Club in Beaver Stadium.



- Courtney emails Schultz a newspaper story about the Sandusky charges. Schultz replies: “I was never aware that ‘Penn State police investigated inappropriate touching in a shower’ in 1998.”
- Criminal charges filed against Sandusky in Centre County; Grand Jury presentment attached as Exhibit A to criminal complaint.
- Criminal charges are filed against Schultz and Curley in Dauphin County; Grand Jury presentment attached as Exhibit A to criminal complaint.

November 5, 2011

- Sandusky is arrested.
- Grand Jury presentment released, noting there was no "attempt to investigate, to identify Victim 2 or to protect that child or any others from similar conduct, except as related to preventing its re-occurrence on University property."
- A Trustee asks Spanier, "What is going on, and is there any plan to brief the Board before our meeting next week?" Baldwin advises Spanier to tell the Trustee, "you are briefing the chair and the Board will be briefed next week."
- Spanier issues a press release expressing "unconditional support" for Schultz and Curley; with regard to child victims, Spanier only states, "Protecting children requires the utmost vigilance."
- Spanier emails Baldwin: Spanier says that if the Board is briefed, "it will be nothing more than what we said publicly." The Board meets on a conference call that evening.
- A senior administrator suggests an independent review of Penn State's intercollegiate athletics. Baldwin replies, "If we do this, we will never get rid of this group in some shape or form. The Board will then think that they should have such a group." Spanier agrees.

November
6, 2011

- Board of Trustee meeting: Board places Curley on administrative leave; Schultz re-retires. Spanier issues a second press release stating that Curley and Schultz voluntarily changed their employment status. Board members disagree and express frustration at changed tone of press release. Spanier says he only made "grammatical" edits to the press release.

November 7, 2011

- Pennsylvania Attorney General and Pennsylvania State Police Commissioner announce charges against Sandusky, Schultz and Curley at a press conference.
- A Trustee writes to other Board members: "Unfortunately the statement that was issued last night, in my opinion, did not reflect the sense of the Board."

November 8,
2011

- Board of Trustees conference call: Third press release issued, expressing "outrage" at the "horrifying details" of the Grand Jury presentment, and announcing the formation of an investigative task force to review issues relating to the criminal charges.

November 9, 2011

- Board of Trustees meeting: Board removes Spanier as President; names Rodney Erickson as Interim President (becomes permanent President on November 17, 2011); removes Paterno as Head Football Coach.
- Board sends message to Paterno to phone the Board Vice Chair, who telephonically notifies Paterno that he is no longer Penn State's Head Football Coach.
- Board holds press conference announcing its actions.
- Students demonstrate in protest on Penn State campus.

CHAPTER 1

THE PENNSYLVANIA STATE UNIVERSITY – GOVERNANCE AND ADMINISTRATION

KEY FINDINGS

- Although the University has a central Human Resources department headed by an Associate Vice President, each school and other large departments (such as Intercollegiate Athletics) has its own HR staff. Those individual departments sometimes relaxed or opt out of the standard rules or procedures in implementing University policies and rules.
- The University's administrative controls include over 350 policies and related procedures, however, oversight of compliance with these policies is decentralized and uneven.
- The University has no centralized office, officer or committee to oversee institutional compliance with laws, regulations, policies and procedures; certain departments monitored their own compliance issues with very limited resources.
- The Department of Intercollegiate Athletics ("Athletic Department"), involving approximately 800 student-athletes, has an Associate Athletic Director responsible for compliance and was significantly understaffed.
- Responsibility for Clery Act compliance previously resided with a sergeant in the University Police Department who was only able to devote minimal time to Clery Act compliance.

The Pennsylvania State University ("Penn State" or "University") is one of four public universities within the Commonwealth System of Higher Education and the only "land-grant" educational institution in Pennsylvania. In 1989, the Pennsylvania Legislature designated the University as a "state-related" institution that receives some state appropriated funding, yet remains autonomous from the state's direct control, maintaining its own Board of Trustees ("Board" or "Trustees").

University Park is the central administrative campus for the University located in State College, Pennsylvania. The University has 19 additional campuses located throughout the state, and offers degrees in 160 majors and 150 graduate disciplines. There are 76,460 undergraduate students and 9,745 graduate students that currently attend the University.⁵ The University's annual operating budget is approximately \$4.1 billion⁶ and its endowment is valued at approximately \$1.7 billion.⁷

The University's President is responsible for the academic and administrative functions of the institution, including the University's College of Medicine.⁸ The academic program includes 17 colleges within the undergraduate and graduate programs, and six research institutes.⁹ The President, along with other senior administrators and officials, is responsible for administering University policies and procedures; managing the endowment; handling legal matters; and overseeing the operation of the University's 10 business units, including those related to campus safety, internal audit, human resources, and facilities.

I. KEY LEADERSHIP POSITIONS

A. President

The Board delegates operations and control of the University to the President and his/her designees.¹⁰ As the chief executive officer, the President establishes policies and procedures for operation of the University and reports to the Board on a regular basis.¹¹ The President also meets regularly with the President's Council, which consists of 17 direct reports including the General Counsel, the Director of the Board of Trustees, and the Senior Vice President - Finance and Business.¹² Graham B. Spanier was President from September 1, 1995 to November 9, 2011. Rodney A. Erickson, appointed on November 9, 2011,¹³ is the current President.

B. Executive Vice President and Provost (“EVP-Provost”)

The Executive Vice President and Provost serves as chief executive officer in the President’s absence and is involved in nearly all operations of the University. The Provost also is the University’s chief academic officer, responsible for the academic administration of the University’s academic units (colleges, schools and campuses) and research, as well as the general welfare of the faculty and students.¹⁴ The EVP-Provost is a member of the President’s Council. Rodney A. Erickson was EVP-Provost from July 1, 1999 until November 9, 2011.¹⁵ Robert N. Pangborn was named the Interim EVP-Provost on November 15, 2011.¹⁶

C. Senior Vice President – Finance and Business (“SVP-FB”)

The Senior Vice President – Finance and Business sits on the President’s Council and manages the University’s endowment (with assistance from the University Investment Council). The SVP-FB also oversees 10 business units involved with the University’s daily operations, including University Police and Public Safety, Office of Internal Audit, and Human Resources. Gary C. Schultz was the SVP-FB from January 1, 1995 to June 30, 2009, when he retired.¹⁷ Albert Horvath replaced Schultz from July 1, 2009 until he resigned on September 14, 2011.¹⁸ Spanier asked Schultz to temporarily return to the position in 2011 while a search was conducted for a successor to Horvath. Schultz held the temporary position from September 15, 2011 until November 6, 2011.¹⁹

D. General Counsel

Until 2010, the University outsourced most of its legal work to McQuaide Blasko, a law firm in Centre County, Pennsylvania. The Board of Trustees reassessed this legal services model in 2009 based on a study conducted by the SVP-FB and approved the establishment of the Office of General Counsel for the University. The General Counsel is a member of the President’s Council. In January 2010, Spanier appointed Cynthia Baldwin, a former Board member and Chair, as the first General Counsel and Vice President of the University. The Board approved Baldwin’s appointment on January 22, 2010.²⁰ Baldwin retired on June 30, 2012 and has been succeeded by Stephen S. Dunham, pending final approval by the Board of Trustees.

II. Principal Administrative Areas

The University has 22 principal administrative areas:²¹

Office of the President	Government Affairs
Alumni Relations	Health Affairs and Medicine
Affirmative Action Office	Human Resources
Athletics	Outreach and Cooperative Extension
Commonwealth Campuses	Research and Graduate School
Development	Undergraduate Education
Diversity	University Relations
Educational Equity	Student Affairs
Executive Vice President and Provost	Physical Plant
Finance and Business	Planning, Institutional Assessment
General Counsel	Vice President for Administration

Several components of these principal administrative areas are particularly important to this investigation: the University Police and Public Safety Department; the Office of Human Resources; the Office of Risk Management; the Office of Internal Audit; Outreach and Intercollegiate Athletics.²²

A. University Police and Public Safety (“University Police Department”)

The University Police Department is part of the Finance and Business unit. It has jurisdiction over all crimes that occur on University grounds. Its officers have the same authority as municipal police officers and enforce both the laws of the Commonwealth of Pennsylvania and University regulations. As part of its responsibilities, the University Police Department collects campus crime statistics that the University must publish annually to comply with The Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, 20 U.S.C. § 1092(f) (“Clery Act”).²³

The University Police Department is currently staffed with 46 full-time sworn officers. They are assisted by approximately 200 auxiliary officers and escorts who assist with crowd and traffic control at special events and security at residence halls.²⁴ The police officers provide 24-hour patrol services to the campus and University-owned properties. In addition to the police officers at University Park, approximately 73 full-time and 30 part-time sworn officers work at the various Commonwealth campuses. University Police work regularly with the Pennsylvania State Police, State College Borough Police and surrounding police agencies.²⁵

The University Police Department is headed by a Director who reports to the Assistant Vice President of Police and Public Safety ("AVP-Police and Public Safety") who, in turn, reports to the SVP-FB.²⁶ David E. Stormer was the AVP-Police and Public Safety until April 1998,²⁷ after which the AVP-Police and Public Safety position was eliminated.²⁸ In 1998, Thomas R. Harmon was the Director. When Harmon retired in 2005, Stephen G. Shelow became Director. In April 2011, Shelow took over the re-created position of AVP-Police and Public Safety.²⁹ Tyrone Parham is the current Director and reports to Shelow.³⁰

B. Office of Human Resources ("OHR")

The University's OHR is responsible for employee recruitment and background checks, compensation and benefits, professional development and employee relations.³¹ Its senior official, Associate Vice President Susan M. Basso, also reports to the SVP-FB.³² Basso replaced Billie Sue Willits who was Associate Vice President from 1989 until 2010.³³ Although there is a central HR department headed by an Associate Vice President, each school and other large departments (such as Intercollegiate Athletics) has its own HR staff.³⁴ Those individual departments are charged with enforcing University rules and policies in their own groups but, in practice, they sometimes relaxed or opted out of the standard rules or procedures.³⁵

C. Department of Intercollegiate Athletics ("Athletic Department")

The Athletic Department is organized into 30 sports teams and oversees approximately 800 athletes.³⁶ The Athletic Department is headed by a Director who is not a Vice President, but who sits by invitation on the President's Council and reports to the President. Timothy M. Curley was the Director of Athletics from December 1993 until November 6, 2011.³⁷ On November 16, 2011, David M. Joyner was named the Acting AD.³⁸

The largest sport in the Athletic Department is the football program, which is led by a Head Coach who reports to the AD. Joseph V. Paterno was Head Coach of the football program from 1966 until November 9, 2011.³⁹ Bill O'Brien was named the new Head Coach on January 6, 2012.⁴⁰

The Athletic Department also conducts sports camps for children. Historically, the Associate Athletic Director for Football Operations and assistant football coaches

have directed the football sports camps without the involvement of the Head Coach.⁴¹ Richard J. Bartolomea has been the Sports Camp Coordinator since 1993.

D. Outreach

The Penn State Outreach program conducts numerous activities, including running various youth camps on campus. The Outreach program is led by the Vice President of Outreach, who also sits on the President's Council. Dr. James H. Ryan was the Vice President of Outreach in 1998 and continued in that position until 2003, when Dr. Craig D. Weidemann took over the position, which he still holds.⁴² Outreach oversaw the sports camps until November 2010, when the responsibility was transferred to the Athletic Department.⁴³

III. ADMINISTRATIVE CONTROLS

The University's administrative controls include over 350 policies and related procedures designed to ensure reasonable control over its operations.⁴⁴ However, as discussed further below, oversight of compliance with such policies is decentralized throughout various University departments and of uneven quality among the departments.

A. Policies and Procedures

The University has had a fairly comprehensive set of policies and procedures in place to safeguard the campus community, promote ethical conduct and encourage crime reporting since 1986. Examples of relevant policies include the following:

- AD12 – Sexual Assault, Relationship and Domestic Violence, and Stalking (created in 1996)
- AD39 – Minors Involved in University-Sponsored Programs or Programs Held at the University and/or Housed in University Facilities (created in 1992)
- AD41 – Sexual Harassment (created in 1998)
- AD47 – General Standards of Professional Ethics (created in 1986)
- AD67 – Disclosure of Wrongful Conduct and Protection from Retaliation (created in 2010)
- AD99 – Background Check Process (created in 2012)
- RA20 – Individual Conflict of Interest (created in 2009)

- RA21 – Institutional Financial Conflict of Interest Involving Sponsored Projects, Dedicated Gifts, Research, Scholarship, and Technology Transfer (created in 2003)
- The Penn State Principles (created in 2001)⁴⁵

B. Oversight and Internal Controls

1. Compliance. The University has no centralized office, officer or committee to oversee institutional compliance with laws, regulations, policies and procedures.⁴⁶ Rather, certain departments monitor their own compliance issues, some with very limited resources. As an example, the Athletic Department has an Associate Athletic Director responsible for National Collegiate Athletic Association (“NCAA”) compliance, but that group is significantly understaffed.⁴⁷ The responsibility for Clery Act compliance previously resided with a sergeant in the University Police Department who was able to devote only minimal time to Clery Act compliance.⁴⁸ The University Police Department appointed a full-time Clery Compliance Officer on March 26, 2012.⁴⁹

2. Risk Management. The University’s Office of Risk Management (“ORM”) identifies and manages potential risks throughout the University relating to financial, physical and reputational loss. The scope of the ORM’s work includes managing risks involving physical, personnel and financial resources, privacy, and legal and regulatory compliance,⁵⁰ but in reality, most of its work centers on assessing contract-based risks.⁵¹

3. Audit. The University has internal and external auditing processes that focus on financial and business matters. The Office of Internal Audit (“OIA”), established in 2003, evaluates a range of operational risks throughout the University and oversees an “Ethics Hotline” for reporting financial fraud and human resources issues.⁵² The OIA has full access to all University activities, records, property and personnel, including direct access to the President of the University and the Board of Trustees.⁵³ The OIA is led by an Internal Audit Director who reports to the SVP-FB, and to the Chairman of the Board of Trustees’ Subcommittee on Audit⁵⁴ (recently renamed the Committee on Finance, Business and Capital Planning).

The OIA has conducted audits relating to compliance with various University policies and procedures, although it is not responsible for ensuring compliance with such policies.⁵⁵ The OIA has reviewed the University policies for screening summer camp counselors, but not the policies regarding background checks of University

employees.⁵⁶ The OIA has not conducted any audits regarding Clery Act compliance or the safety of minors on campus or summer camps.⁵⁷

The internal auditors issue annual reports on financial matters, which are shared with the Board at its annual meetings. They also perform annual audits on the University's compliance with certain NCAA rules.⁵⁸ In addition to the internal audits conducted by the OIA, independent accountants also audit the University.⁵⁹

CHAPTER 2

RESPONSE OF UNIVERSITY OFFICIALS TO THE ALLEGATION OF CHILD SEXUAL ABUSE AGAINST SANDUSKY – 1998

KEY FINDINGS

- Before May 1998, several staff members and football coaches regularly observed Sandusky showering with young boys in the Lasch Building (now the East Area Locker Building or "Old Lasch"). None of the individuals interviewed notified their superiors of this behavior.
- University Police and the Department of Public Welfare responded promptly to the report by a young boy's mother of a possible sexual assault by Sandusky in the Lasch Building on May 3, 1998.
- While no information indicates University leaders interfered with the investigation, Spanier, Schultz, Paterno and Curley were kept informed of the investigation.
- On May 5, 1998, Schultz's notes about the incident state: "Is this opening of pandora's box? Other children? "
- On June 9, 1998, Schultz emails Spanier and Curley: "I think the matter has been appropriately investigated and *I hope it is now behind us* [emphasis added]."
- Detective recalled interviewing Sandusky in the Lasch Building so as not to put him "on the defensive." The detective advised Sandusky not to shower with any child and Sandusky said he "wouldn't." At the conclusion of the investigation, no charges were filed against Sandusky.
- Spanier, Schultz, Paterno and Curley did not even speak to Sandusky about his conduct on May 3, 1998 in the Lasch Building.
- Despite their knowledge of the criminal investigation of Sandusky, Spanier, Schultz, Paterno and Curley took no action to limit Sandusky's access to Penn State facilities or took any measures to protect children on their campuses.
- Spanier and Schultz failed to report the 1998 investigation to the Board of Trustees.
- Sandusky was convicted of several assaults that occurred after the 1998 incident. Some of these sexual assaults against young boys might have been prevented had Sandusky been prohibited from bringing minors to University facilities and University football bowl games.

I. Sandusky's Association with Penn State

Gerald A. Sandusky ("Sandusky") was a student at Penn State from 1962-1966. While an undergraduate he played on the football team, and after his graduation in 1966 he became a graduate assistant in the football program for one year. Sandusky was a physical education instructor and coach at Juniata College from 1967-1968 and at Boston University from 1968-1969. He returned to Penn State in 1969 as an assistant football coach and assistant professor of physical education. He held the positions for 30 years until his retirement in 1999. Sandusky reported to Head Football Coach Joseph Paterno ("Paterno") for his entire career at Penn State. Sandusky was granted tenure in 1980.

Sandusky gained a national reputation as a successful defensive coach. He was well-known in the community and highly thought of for his work with youth.

Sandusky authored or coauthored three books - two about coaching linebackers, and *Touched: The Jerry Sandusky Story*, an autobiography that focuses on his claimed passion for helping disadvantaged youth. According to Sandusky's autobiography, it was his interest in young people that motivated him to found the "Second Mile," a non-profit organization that provides various services and activities for disadvantaged boys and girls in Pennsylvania. Many Penn State officials and some members of the Board of Trustees ("Board" or "Trustees") or their families supported the Second Mile through volunteer service and donations. Over the years, the University has allowed the Second Mile to use its facilities for a variety of educational and support programs for youth.

A. Sandusky's Criminal Activity 1995-1998

Before May 1998, several staff members and football coaches regularly observed Sandusky showering with young boys in the Lasch Building (now the East Area Locker Building or "Old Lasch"). None of the individuals interviewed by the Special Investigative Counsel notified their superiors of this behavior. Former Coach Richard Anderson testified at Sandusky's trial in June 2012 that he often saw Sandusky in the showers with children in the football facilities but he did not believe the practice to be improper.⁶⁰

The Centre County jury convicted Sandusky in June 2012 of assaulting three different boys at Penn State's football facilities and other places on campus before May 1998. These assaults occurred against Victim 4 (assaults on various dates from October 1996 to December 2000 at, among other places, the East Area Locker Building ("Old Lasch") and Lasch Football Building ("Lasch Building"); Victim 7 (assaults on various dates from September 1995 to December 1996 at East Area Locker Building and elsewhere); and Victim 10 (assaults on various dates from September 1997 to July 1999 in an outdoor pool at University Park and elsewhere).⁶¹

Another adult male, not part of the June 2012 Sandusky trial, alleged that he was molested by Sandusky over 100 times as a child and that Sandusky took him to the Penn State Rose Bowl game in Pasadena, California in 1995.⁶² He also said that Sandusky brought him to the Penn State football locker room showers where Sandusky fondled him and performed oral sex on him.

II. Events of May 3, 1998 at the Lasch Building

According to Centre County court records and University Police Department records, on the afternoon of May 3, 1998, Sandusky called the home of an 11-year-old boy⁶³ and invited him to go to a Penn State athletic facility that evening to exercise.⁶⁴ The boy, who met Sandusky through the Second Mile youth organization about a month earlier, accepted the invitation.⁶⁵ Sandusky picked up the boy at about 7:00 p.m., and took him to the Lasch Building on the Penn State campus.⁶⁶ As the central facility for Penn State football, the Lasch Building contained a number of exercise machines as well as dressing rooms, showers and Sandusky's office, which for many years was the office closest to Paterno's.

Sandusky and the boy went to a coaches' locker room, where the two wrestled and Sandusky tried to "pin" the boy.⁶⁷ After wrestling, the boy changed into clothes that Sandusky provided and followed him to work out on exercise machines.⁶⁸ When they finished exercising, Sandusky kissed the boy's head and said, "I love you."⁶⁹ Sandusky and the boy then went to a coaches' locker room⁷⁰ where Sandusky turned on the showers and asked the boy if he wanted to shower.⁷¹ The boy agreed and began to turn on a shower several feet from Sandusky.⁷² Sandusky directed him to a shower head closer to Sandusky, saying it took some time for the water to warm up.⁷³

While in the shower, Sandusky wrapped his hands around the boy's chest and said, "I'm gonna squeeze your guts out."⁷⁴ The boy then washed his body and hair.⁷⁵ Sandusky lifted the boy to "get the soap out of" the boy's hair, bringing the boy's feet "up pretty high" near Sandusky's waist.⁷⁶ The boy's back was touching Sandusky's chest and his feet touched Sandusky's thigh.⁷⁷ The boy felt "weird" and "uncomfortable" during the time in the shower.⁷⁸

Sandusky brought the boy home around 9:00 p.m. and left. The boy's mother noticed that her son's hair was wet and he told her that he had showered with Sandusky. The mother also observed that her son was acting in a way that he did when he was upset about something,⁷⁹ that he did not sleep well and took another shower the next morning.⁸⁰

III. Investigation of Sandusky – 1998

A. May 4–6, 1998: Police Report, Initial Investigation and Psychological Evaluation of the Victim

At 7:43 a.m. on May 4, 1998, the boy's mother called Alycia Chambers, a licensed State College psychologist⁸¹ who had been working with her son, to see if she was "overreacting" to Sandusky's showering with her son.⁸² The psychologist assured the mother that she was not overreacting and told her to make a report to the authorities.⁸³ The boy's mother called the University Police Department and reported the incident to Detective Ron Schreffler around 11:00 a.m.⁸⁴

Around 11:30 a.m., Detective Schreffler interviewed the boy.⁸⁵ The boy told Schreffler what happened with Sandusky the previous evening,⁸⁶ and added that a 10-year-old friend of his had been in a shower with Sandusky on another occasion where Sandusky similarly squeezed the friend.⁸⁷

Later that day, Chambers met with the boy⁸⁸ who told her about the prior day's events and that he felt "like the luckiest kid in the world" to get to sit on the sidelines at Penn State football games.⁸⁹ The boy said that he did not want to get Sandusky in "trouble," and that Sandusky must not have meant anything by his actions.⁹⁰ The boy did not want anyone to talk to Sandusky because he might not invite him to any more games.⁹¹ Chambers made a report to the Pennsylvania child abuse line⁹² and also consulted with colleagues. Her colleagues agreed that "the incidents meet all of our

definitions, based on experience and education, of a likely pedophile's pattern of building trust and gradual introduction of physical touch, within a context of a 'loving,' 'special' relationship."⁹³

That afternoon Schreffler contacted John Miller, a caseworker with the Centre County Children and Youth Services ("CYS") about the allegation.⁹⁴ However, there were several conflicts of interest with CYS's involvement in the case⁹⁵ (e.g., CYS had various contracts with Second Mile - including placement of children in a Second Mile residential program;⁹⁶ the Second Mile's executive director had a contract with CYS to conduct children's evaluations;⁹⁷ and the initial referral sheet from Chambers indicated the case might involve a foster child).⁹⁸ In light of these conflicts, the Department of Public Welfare ("DPW") took over the case from CYS on May 5, 1998. DPW officials in Harrisburg, Pennsylvania took the lead because of Sandusky's high profile and assigned it to caseworker Jerry Lauro.⁹⁹

Schreffler also contacted Karen Arnold, Centre County prosecutor in the District Attorney's office, to discuss the case.¹⁰⁰ Schreffler had decided to call the prosecutor at the outset of the investigation so he did not "have to worry about Old Main sticking their nose in the investigation," which he knew from experience could occur.¹⁰¹

Around 8:00 p.m. on May 4, 1998, Schreffler and Miller spoke with the boy's friend about his contact with Sandusky.¹⁰² The friend stated that he had gone to the Penn State campus on two occasions with Sandusky, whom he met through the Second Mile.¹⁰³ Sandusky took him to the Lasch Building, where they wrestled and then showered together.¹⁰⁴ While in the shower, Sandusky came from behind and lifted him in a bear hug.¹⁰⁵ Following this interview, Schreffler and Miller re-interviewed the first boy.

On May 6, 1998, Schreffler reviewed voicemail messages and caller identification information from the home of the victim. Sandusky had called the boy twice on May 3, 1998 and once on May 6, 1998. Sandusky left a voicemail on May 6, 1998, inviting the boy to work out. The boy did not return the call.¹⁰⁶

B. May 7–9, 1998: A Second Evaluation of the Victim

On May 7, 1998, Chambers provided a copy of her written report to Schreffler. Chambers said she was pleased with the response of the agencies involved, as the “gravity of the incidents seems to be well appreciated.”¹⁰⁷

Also on May 7, 1998, Lauro interviewed the boy’s mother. According to Schreffler’s notes, Lauro had received copies of the boy’s recorded statement,¹⁰⁸ yet Lauro advised the Special Investigative Counsel that he did not have full access to the facts of the case and was unaware of psychologist Chambers’ evaluation.¹⁰⁹ Lauro said that if he “had seen [Chambers’] report, I would not have stopped the investigation,” which he thought at the time fell into a “gray” area and involved possible “boundary” issues.¹¹⁰

Schreffler had a discussion with Arnold that day as well. Arnold told Schreffler to postpone a second psychological evaluation of the boy until an additional investigation could be completed.¹¹¹ Nonetheless, a second evaluation of the boy occurred on May 8, 1998 as part of DPW’s investigation. Counselor John Seasock, who had a contract to provide counseling services to CYS, conducted the evaluation.¹¹²

During the meeting with Seasock the boy described the incident with Sandusky.¹¹³ Given that the boy did not feel forced to engage in any activity and did not voice discomfort to Sandusky, Seasock opined that “there seems to be no incident which could be termed as sexual abuse, nor did there appear to be any sequential pattern of logic and behavior which is usually consistent with adults who have difficulty with sexual abuse of children.”¹¹⁴ Seasock’s report ruled out that the boy “had been placed in a situation where he was being ‘groomed for future sexual victimization.’”¹¹⁵ Seasock recommended that someone speak with Sandusky about what is acceptable with young children and explained, “The intent of the conversation with Mr. Sandusky is not to cast dispersion (sic) upon his actions but to help him stay out of such gray area situations in the future.”¹¹⁶

On May 9, 1998, Schreffler discussed the outcome of Seasock’s evaluation with Seasock.¹¹⁷ While Seasock said he identified some “gray areas,” he did not find evidence of abuse and had never heard of a 52-year-old man “becoming a pedophile.”¹¹⁸ When Schreffler questioned Seasock’s awareness of details of the boy’s experience, Seasock acknowledged he was not aware of many of the concerns Schreffler raised but

stated Sandusky “didn’t fit the profile of a pedophile,”¹¹⁹ and that he couldn’t find any indication of child abuse.

Seasock served as an independent contractor at Penn State from 2000 to 2006. His first payment from Penn State was made on April 20, 2000 for \$1,236.86.¹²⁰ His total payments were \$11,448.86.¹²¹ The Special Investigative Counsel did not find any evidence to suggest that these payments had any relation to Seasock’s work on the Sandusky case in 1998. According to the Second Mile’s counsel, there was no business relationship between Seasock and the Second Mile.¹²²

C. May 12-19, 1998: Police Overhear Sandusky Admit to Showering with the Victim

On May 12, 1998, Sandusky called the boy again and arranged to pick him up at his house the next day. On May 13, 1998, Schreffler and a State College police officer went to the boy’s house and hid inside. When Sandusky arrived they covertly listened in to his conversation with the boy’s mother.¹²³ Schreffler overheard Sandusky say he had gone to the boy’s baseball game the night before but found the game had been cancelled.¹²⁴ The boy’s mother told Sandusky that her son had been acting “different” since they had been together on May 3, 1998¹²⁵ and asked Sandusky if anything had happened that day. Sandusky replied, “[w]e worked out. Did [the boy] say something happened?”¹²⁶ Sandusky added that the boy had taken a shower, and said “[m]aybe I worked him too hard.”¹²⁷ Sandusky also asked the boy’s mother if he should leave him alone, and she said that would be best. Sandusky then apologized.¹²⁸

On May 19, 1998, at the direction of the police, the boy’s mother met with Sandusky again in her home. As they listened from another room,¹²⁹ the officers heard the mother ask Sandusky about the bear hug in the shower, and whether his “private parts” touched the boy while they hugged. Sandusky said, “I don’t think so ... maybe.”¹³⁰ He also said he had showered with other boys before, but denied having “sexual feelings” when he hugged her son.¹³¹ He admitted telling the boy that he loved him. Sandusky asked to speak with her son and the mother replied that she did not feel that was a good idea as her son was confused and she did not want Sandusky to attend any of the boy’s baseball games. Sandusky responded, “I understand. I was wrong. I wish I could get forgiveness. I know I won’t get it from you. I wish I were dead.”¹³²

The law enforcement officers did not question Sandusky at this time. Had the officers been better trained in the investigation of child sexual abuse they would have

interrogated Sandusky directly after his confrontation with the boy's mother. A timely interview with Sandusky may have elicited candid responses such as the identification of other victims.

D. Late May 1998: District Attorney's Decision to Not Prosecute Sandusky

Sometime between May 27, 1998 and June 1, 1998, the local District Attorney declined to prosecute Sandusky for his actions with the boy in the shower in the Lasch Building on May 3, 1998. A senior administrator of a local victim resource center familiar with the 1998 incident said the case against Sandusky was "severely hampered" by Seasock's report.¹³³

The District Attorney at the time of the 1998 incident has been missing for several years and has been declared dead. The prosecutor assigned to the Sandusky case declined to be interviewed by the Special Investigative Counsel.

E. June 1, 1998: University Police Speak with Sandusky

On June 1, 1998, Schreffler and Lauro interviewed Sandusky. Lauro said he did not discuss an interview strategy with Schreffler before meeting with Sandusky. Lauro recalled that the interview took place in a small weight room in the Lasch Building while Sandusky was seated on a weight bench and ¹³⁴ that Lauro asked most of the questions.¹³⁵ Schreffler recalled that the interview was conducted in an office in the Lasch Building so as not to put Sandusky on the defensive.¹³⁶

According to the interview notes in the case file, Sandusky told the interviewers that he hugged the boy in the shower but said there "wasn't anything sexual about it." Sandusky also said that he had showered with other boys in the past. Lauro advised Sandusky that it was a mistake to shower with kids. Sandusky agreed and said, "honest to God nothing happened."¹³⁷ Schreffler advised Sandusky not to shower with any child and Sandusky replied that he "wouldn't."¹³⁸ Schreffler and Lauro also told Sandusky that the police¹³⁹ could not determine if a sexual assault occurred. No notes or records reflect that Schreffler or Lauro consulted with the District Attorney during or after the interview.

Lauro also told the Special Investigative Counsel that he never spoke to Schreffler about whether improper actions took place between Sandusky and the boy.¹⁴⁰ Lauro stated, "it wasn't until Schreffler told me that there wasn't anything to the case

that I closed mine.”¹⁴¹ Schreffler’s file notes state that Lauro agreed that no sexual assault occurred.¹⁴²

IV. Involvement of University Officials in The Sandusky Investigation

A. May 4 - 30, 1998: Notifications and Updates to Spanier, Schultz, Paterno and Curley

On the advice of counsel, Schultz and Curley declined to meet with the Special Investigative Counsel to discuss their knowledge and actions pertaining to the 1998 Sandusky incident. However, the Special Investigative Counsel discovered and reviewed numerous emails between Spanier, Schultz and Curley concerning the incident, and reviewed some of Schultz’s files and handwritten notes as well. These documents provide a contemporaneous record of the 1998 events.

It is not known how Schultz learned of the incident involving Sandusky, but it is clear that he knew of it by the time he attended a meeting about it at 5:00 p.m. on May 4, 1998. In documents Schultz held confidentially in his office and that had been concealed from the Special Investigative Counsel, Schultz had handwritten notes summarizing this meeting.⁴ Other notes written by Schultz and contemporaneous records pertaining to the matter indicate that then-University Police Department Chief Thomas Harmon regularly informed Schultz of the investigation’s progress. In fact, when the case began, Harmon told Schreffler that he wanted to be kept updated on the case so he could “send everything up the flag pole” and advise Schultz.¹⁴³

Schultz’s confidential notes dated May 4, 1998 state: a woman reported that her “11 1/2 yr old son” who had been involved with the Second Mile was taken by “Jerry” to the football locker rooms; that taped police interview reflected “Behavior - at best inappropriate @ worst sexual improprieties;” the conduct was “At min – Poor Judgment;” that Sandusky and the child were in the shower, and Sandusky “came up behind & gave him a bear hug - said he would squeeze guts out – all;” and that the boy’s ten-year-old friend “claims same thing went on with him.” The notes conclude with the words “Critical issue - contact w genitals? Assuming same experience w the second boy? Not criminal.”¹⁴⁴

⁴Exhibit 2-H. Schultz’s notes do not indicate who was present at the meeting.

It is not clear if Schultz, or another person, determined the matter was "not criminal" on the first day of the investigation. Schultz's confidential notes also show that sometime before 9:00 a.m. on May 5, 1998, Harmon reported to Schultz that the victim had been re-interviewed and had provided additional details about the incident¹⁴⁵ and demonstrated "on chair how Jerry hugged from back hands around abdmn (sic) & down to thighs - picked him up and held him at shower head - rinse soap out of ears."^e The notes also state that "the mother had spoken to a psychologist who had been seeing the boy, who would call child abuse hot line & will generate an incident no - with Dept of Public Welfare;" and that the police interviewed the second boy who reported "Similar acct. Locker room. Wrestling. Kissed on head. Hugging from behind in shower. No allegation beyond that."¹⁴⁶ Schultz's notes end with these questions: "Is this opening of pandora's box? Other children?"¹⁴⁷

By May 5, 1998, Schultz had communicated with Curley about the Sandusky incident. In an email from Curley to Schultz and Spanier at 5:24 p.m. captioned "Joe Paterno," Curley reports, "I have touched base with the coach. Keep us posted. Thanks."^f In an interview with the Special Investigative Counsel, Spanier said he did not recall this email, and pointed out that he received numerous emails everyday that provide him with updates on various issues.¹⁴⁸ In a written statement from Spanier, he characterized the May 5, 1998 email as a "vague reference with no individual named."^g

On May 5, 1998, Schultz also learned from Harmon that the Penn State University Police were "going to hold off" making any crime log entry for the Sandusky allegations.¹⁴⁹ The crime log entry would have been a public record of the incident concerning Sandusky with the boy, yet Harmon reported to Schultz before noon on May 5 that "[w]e're going to hold off on making any crime log entry. At this point in time I can justify that decision because of the lack of clear evidence of a crime."¹⁵⁰

Schreffler said he delayed pulling an incident number for the Sandusky investigation because it was his normal procedure for drug investigations and he was not initially sure of what type of investigation he had.¹⁵¹ Schreffler did not know why the report ultimately was opened as an "Administrative Information" file but said he

^eExhibit 2-I.

^fExhibit 2-A (Control Number 00643730).

^gExhibit 2-J.

may have been the one who decided on the label.¹⁵² All pages of the police report are labeled "Administrative Information."¹⁵³

Schreffler also noted that no referral of the Sandusky incident was made to the Penn State Office of Human Resources ("OHR").¹⁵⁴ Schreffler said such referrals routinely were made in other cases.¹⁵⁵ A senior OHR official recalled no report of the Sandusky incident in 1998, and the OHR files contained no such report.¹⁵⁶ The official thought the Sandusky case was so "sensitive" that it was handled by Schultz alone.¹⁵⁷ The official said no written policy required OHR to be notified by the campus police of incidents involving employees, but it was "very rare" for OHR not to be notified.¹⁵⁸

Harmon continued to provide Schultz with information about DPW's role in the investigation and their potential conflict of interest with the Second Mile.¹⁵⁹ Harmon provided an update to Schultz on May 8, 1998 reporting that Lauro "indicated that it was his intent to have a psychologist who specializes in child abuse interview the children. This is expected to occur in the next week to week and a half. I don't anticipate anything to be done until that happens."¹⁶⁰

As the investigation progressed, Curley made several requests to Schultz for updates. On May 13, 1998 at 2:21 p.m., Curley emailed Schultz a message captioned "Jerry" and asked, "Anything new in this department? Coach is anxious to know where it stands."^h Schultz forwarded Curley's note to Harmon,¹⁶¹ who provided an email update that Schultz then forwarded to Curley.¹⁶² The reference to Coach is believed to be Paterno.

On May 18, 1998, Curley requested another update by email.ⁱ Schultz responded that there was no news and that he did not expect to hear anything before the end of the week.

On May 30, 1998, Curley asked for another update by email.¹⁶³ Schultz was on vacation at the time, but responded on June 8, 1998, saying that he understood before he left for vacation that "DPW and Univ Police services were planning to meet with him. I'll see if this has happened and get back to you."¹⁶⁴

^hExhibit 2-B (Control Number 00641616).

ⁱExhibit 2-C (Control Number 00644098).

B. June 1 - 10, 1998: Report to University Officials on Sandusky Interview and Case Closure

Sometime between May 27 and June 1, 1998, when he learned Sandusky would not face criminal charges, Harmon called Schultz to advise him of the District Attorney's decision.¹⁶⁵ On June 1, 1998, the same day as Sandusky's interview, Harmon sent Schultz an email describing the interview. Harmon reported that the DPW caseworker and Schreffler "met discreetly" with Sandusky, and his "account of the matter was essential[ly] the same as the child's."¹ Sandusky said "he had done this with other children in the past." The investigators told Sandusky there "was no criminal behavior established [and] that the matter was closed as an investigation." Sandusky was "a little emotional" and concerned as to how this incident might affect the boy. Harmon's message to Schultz did not mention that Sandusky was told not to shower with children.

On June 9, 1998, after returning from a vacation, Schultz updated Curley and Spanier on the Sandusky interview by email. He wrote that the investigators:

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

Schultz's message to Curley and Spanier also did not mention that Sandusky was advised not to shower with children.

Neither Harmon nor Schultz's emails set forth, or suggest, that they planned to discuss the incident with Sandusky, to review or monitor his use of University facilities, to discuss his role at the Second Mile and his involvement in Second Mile overnight programs operated in Penn State facilities, or to consider the propriety of a continuing

¹Exhibit 2-D (Control Number 00645223).

^kExhibit 2-E (Control Number 00646346).

connection between Penn State and the Second Mile. There also is no mention of whether Sandusky should receive counseling.¹

Further, the emails do not indicate that any officials attempted to determine whether Sandusky's conduct violated existing University policy or was reportable under The Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, 20 U.S.C. § 1092(f) ("Clery Act"). The emails also do not indicate if any person responsible for Penn State's risk management examined Sandusky's conduct. A risk management review might have resulted in the University providing contractual notice to its insurers about the incident, imposition of a general ban on the presence of children in the Lasch Building, or other limitations on Sandusky's activities.^m

After Curley's initial updates to Paterno, the available record is not clear as to how the conclusion of the Sandusky investigation was conveyed to Paterno.¹⁶⁶ Witnesses consistently told the Special Investigative Counsel that Paterno was in control of the football facilities and knew "everything that was going on."¹⁶⁷ As Head Coach, he had the authority to establish permissible uses of his football facilities. Nothing in the record indicates that Curley or Schultz discussed whether Paterno should restrict or terminate Sandusky's uses of the facilities or that Paterno conveyed any such expectations to Sandusky. Nothing in the record indicates that Spanier, Schultz, Paterno or Curley spoke directly with Sandusky about the allegation, monitored his activities, contacted the Office of Human Resources for guidance, or took, or documented, any personnel actions concerning this incident in any official University file.

Spanier told the Special Investigative Counsel that no effort was made to limit Sandusky's access to Penn State.¹⁶⁸ Spanier said he was unaware that Sandusky

¹ When Penn State officials considered meeting with Sandusky in 2001 in response to allegations that he brought children into the Lasch Building showers, Curley wrote "I would plan to tell him we are aware of the first situation. I would indicate we feel there is a problem and we want to assist the individual to get professional help." Exhibit 2-F (Control Number 00679428).

^m Penn State officials were familiar with the issues of liability that could arise from Sandusky bringing minors to the Lasch Building. For example, notes maintained by Paterno reflect that Sandusky proposed several continuing connections with Penn State when he retired in 1999. Among these connections was that he would have continuing "[a]ccess to training and workout facilities." A handwritten note on this proposal reads: "Is this for personal use or 2nd Mile kids. No to 2nd Mile. Liability problems." Exhibit 2-G (Control Number JVP000027).

continued to run camps at Penn State and have access to children sleeping in Penn State dormitories.¹⁶⁹

Spanier never declared Sandusky a “persona non grata” on Penn State campuses, as he did toward a sports agent who, before the 1997 Citrus Bowl, bought \$400 worth of clothing for a Penn State football player. Spanier was very aggressive in that case¹⁷⁰ and banned the agent from campus. Spanier said the agent “fooled around with the integrity of the university, and I won't stand for that.”¹⁷¹ The University conducted its own investigation, and provided the results to law enforcement.¹⁷² In an email dated May 13, 1998, Spanier said, “The idea is to keep [the sports agent] off campus permanently, to keep him away from current athletes, and to keep him away from current graduates or students whose eligibility has recently expired.”¹⁷³

Despite his initial concern about “Old Main sticking their nose in the investigation” Schreffler told the Special Investigative Counsel that no one from the University interfered with the Sandusky investigation.¹⁷⁴ The Special Investigative Counsel did not find any evidence of interference by University administrators with the 1998 Sandusky investigation.

C. 2011 Grand Jury Testimony of Spanier, Schultz, Paterno and Curley

When he appeared before the Grand Jury in January 2011, to answer questions about the 1998 incident involving Sandusky, Schultz testified that he did not recall that he, “knew anything about the details of what the allegation was from the mother.” He stated, “I do recall there was a mother with a young boy who reported some inappropriate behavior of Jerry Sandusky. But I don't recall it being reported in the Lasch Building or anything of that sort.”¹⁷⁵ On November 4, 2011, Schultz emailed Wendell Courtney, Penn State's former outside legal counsel, stating, “I was never aware that ‘Penn State police investigated inappropriate touching in a shower’ in 1998.”¹⁷⁶

At the same Grand Jury hearing in January 2011, Curley was asked if an incident involving alleged criminal conduct by a coach on campus would be brought to his attention. Curley said he thought so, but did not know. Curley then was asked, “[b]ut the 1998 incident was never brought to your attention?” He replied, “[n]o, ma'am, not that I recall.”¹⁷⁷

Paterno also testified in January 2011 before the Grand Jury. Paterno was asked, "Other than the [2001] incident that Mike McQueary reported to you, do you know in any way, through rumor, direct knowledge or any other fashion, of any other inappropriate sexual conduct by Jerry Sandusky with young boys?" Paterno responded, "I do not know of anything else that Jerry would be involved in of that nature, no. I do not know of it. You did mention — I think you said something about a rumor. It may have been discussed in my presence, something else about somebody. I don't know. I don't remember, and I could not honestly say I heard a rumor."¹⁷⁸ The Special Investigative Counsel requested an interview with Paterno in December 2011. Through his counsel, Paterno expressed interest in participating but died before he could be interviewed. Paterno's family has publicly denied that Paterno had knowledge of the 1998 incident.¹⁷⁹

Spanier told the Special Investigative Counsel that his first knowledge of the 1998 event came when he was before the Grand Jury on April 13, 2011.¹⁸⁰ Yet notes from Spanier's interview on March 22, 2011 with members of the Attorney General's Office reflect he was asked, "[d]id you have info @ the 1998 incident?"¹⁸¹ Cynthia Baldwin, who was then General Counsel, confirmed to the Special Investigative Counsel that Spanier was asked about the 1998 event in the interview before the Grand Jury appearance.¹⁸² According to Baldwin, after the interview, Spanier said the interview "was no big deal" and he was "quite comfortable" going before the Grand Jury.¹⁸³ Finally, on January 4, 2011, when State Police came to Penn State to obtain a copy of the 1998 police report concerning Sandusky, Albert Horvath, then Senior Vice President - Finance and Business said he would "let Graham and Tim know" that the police requested the 1998 report as part of a "Jerry Sandusky investigation which has been ongoing for the past year."¹⁸⁴

D. University Officials Do Not Notify the Board of the Sandusky Investigation

The Penn State Board of Trustees met on May 14 and 15, 1998. Nothing in the Board's records or from the Special Investigative Counsel's interviews of Trustees indicates that Spanier, or any University official, notified the Board of the Sandusky investigation, or that there were any contemporaneous discussions with Board members of the 1998 Sandusky investigation. In 1998, the Board of Trustees did not have a process or a committee structure for receiving regular reports from University officials on risk issues such as the Sandusky investigation.

E. Sandusky's Criminal Activity 1998 - 2001

The Centre County jury convicted Sandusky in June 2012 of assaulting five different boys at Penn State's football facilities and other places on campus after May 1998. These assaults occurred against Victim 2 (assault in the Lasch Building in February 2001); Victim 3 (assaults on various dates from July 1999 to December 2001 in the Lasch Building and at other places); Victim 4 (assaults on various dates from 1999 to 2000 in Old Lasch and the Lasch Building and a Penn State football bowl trip to Texas in December 1999); Victim 5 (assault in August 2001 in the Lasch Building); and Victim 8 (assault in November 2000 in the Lasch Building).¹⁸⁵

CHAPTER 3

SANDUSKY'S RETIREMENT FROM THE UNIVERSITY – 1999

KEY FINDINGS

- Before the May 1998 incident, Sandusky knew that he was not going to be selected to succeed Joseph Paterno as Head Football Coach at Penn State.
- Curley talked with Sandusky about his future role with the football program and offered him the possibility of an Assistant Athletic Director position.
- Sandusky explored taking an early retirement and requested several benefits from Penn State (i.e., a \$20,000 yearly annuity in addition to his pension; to run a middle school youth football camp; "active involvement in developing an outreach program featuring Penn State Athletics;" and finding "ways for [Sandusky] to continue to work with young people through Penn State."
- On June 29, 1999, Spanier approved a one-time lump sum payment to Sandusky of \$168,000. A senior University Controller's office official and a retired Senior Vice President both stated that they had never known the University to provide this type of payment to a retiring employee.
- While Sandusky's retirement agreement was being finalized, Curley sought and received authorization for Sandusky to be re-employed as an "emergency hire" for the 1999 football season.
- Sandusky was also awarded "emeritus" rank, with special privileges including access to the University's East Area locker room complex. Sandusky's positions in the University did not meet the general eligibility requirements for this honor, yet University administrators found themselves in a "bind" because Spanier had promised the emeritus rank to Sandusky.
- The Special Investigative Counsel found no evidence to indicate that Sandusky's retirement was related to the police investigation of him in 1998.

I. Sandusky's Decision to Retire

Before the May 3, 1998 incident in the Lasch Building, Curley had already spoken with Sandusky about his future role in the University's football program. On February 8, 1998, for example, Curley emailed Spanier and Schultz, stating that he had several conversations over the past week with Sandusky about taking an Assistant Athletic Director position.ⁿ Curley stated in the email that Paterno had also met with Sandusky about his future with Penn State football.¹⁸⁶

On February 9, 1998, Curley emailed Schultz and Spanier reporting that Sandusky did not want the Assistant Athletic Director position, and would continue coaching for the next year.^o Curley told them Sandusky "will have 30 years in the system next year, which will give him some options after next season."¹⁸⁷ He added, "Joe tells me he made it clear to Jerry he will not be the next head coach."¹⁸⁸

Curley's reference to the "system" is the Pennsylvania State Employees' Retirement System ("SERS") to which Sandusky belonged. From July 1, 1998 to June 30, 1999, SERS provided a "30-and-out" retirement window, allowing members like Sandusky who had 30 years of service to retire at any age without the usual early retirement penalty, and receive all retirement benefits earned to that date.¹⁸⁹ Without the window, the SERS code required that members have 35 years of credited service at any age - or reach age 60 - before they could retire with full benefits.¹⁹⁰

Sandusky and others explored the possibility of starting a Division III football program at the University's Altoona campus where Sandusky could coach. Sandusky even spoke with a businessman who was a supporter of Penn State athletics in March 1998 about financing for the plan.¹⁹¹ Paterno's undated, handwritten notes, maintained in his home office and provided to the Special Investigative Counsel by his attorney, discussed the plan, and suggested that Sandusky work on making "FB at Altoona Happen" until the "window closes."¹⁹² If Sandusky could not get the program established before the window closed, "he retires with a pension fully vested with a severance pkg. which could include deferred income or a supplemental payment for 20 year (sic)."¹⁹³

ⁿExhibit 3-A (Control Number 00644655).

^oExhibit 3-B (Control Number 03008143).

On May 19, 1998, a senior administrator in University Development and Alumni Relations emailed Spanier, Curley, Schultz and others raising questions to consider while conducting "a limited feasibility study" of football at Altoona that Spanier had requested.¹⁹⁴ The administrator reported that the financial support needed for the program could not be raised.¹⁹⁵ The Special Investigative Counsel found no evidence that the decision regarding the establishment of a football program at Altoona was related to the incident in the Lasch Building on May 3, 1998.¹⁹⁶

II. Negotiating the Agreement

On January 19, 1999, Curley wrote to Spanier and Schultz to report on a meeting with Sandusky.^p Curley told them that Sandusky "is interested in going one more year and then transition into a spot that handles our outreach program."¹⁹⁷ Curley noted as a postscript that "[Sandusky] is not pleased about the entire situation as you might expect."¹⁹⁸

Several notes and documents provided by Paterno's attorney to the Special Investigative Counsel pertain to Sandusky's retirement.¹⁹⁹ One page of these notes, which appear to be in Paterno's handwriting, relate a conversation, or planned conversation, between Paterno and Sandusky concerning Sandusky's coaching future. The notes state:

We know this isn't easy for you and it isn't easy for us or Penn State. Part of the reason it isn't easy is because I allowed and at times tried to help you with your developing the 2nd Mile. If there were no 2nd Mile then I believe you belief [sic] that you probably could be the next Penn State FB Coach. But you wanted the best of two worlds and I probably should have sat down with you six or seven years ago and said look Jerry if you want to be the Head Coach at Penn State, give up your association with the 2nd Mile and concentrate on nothing but your family and Penn State. Don't worry about the 2nd Mile – you don't have the luxury of doing both. One will always demand a decision of preference. You are too deeply involved in both.^q

^pExhibit 3-C (Control Number 03013385).

^qExhibit 3-D (JVP000017).

One of the documents provided from Paterno's file is a letter signed by Sandusky, dated May 28, 1999. In the letter Sandusky acknowledged that he would not be the next Penn State football head coach, and outlined options for his future.^r Sandusky wanted an on-going relationship between the Second Mile and Penn State, as well as continuing "visibility" at Penn State.²⁰⁰ Sandusky also wanted "active involvement in developing an outreach program featuring Penn State Athletes"²⁰¹ and sought "ways for [him] to continue to work with young people through Penn State."²⁰²

Also in the file was a "Retirement Requests" list from Sandusky.^s This list included a request for a \$20,000 yearly annuity to cover the difference between Sandusky's retiring with 30 years of service and retiring with 35 years of service,²⁰³ and a title reflecting his relationship with Penn State. Sandusky also asked to run a middle school youth football camp.²⁰⁴ Handwriting on the note states: "Volunteer Position Director – Positive Action for Youth."²⁰⁵ An employee who worked closely with Paterno for 10 years and knew his handwriting identified this note as written by Paterno.²⁰⁶

On June 13, 1999, Curley updated Spanier and Schultz by email advising that Sandusky was leaning toward retirement if Penn State would agree to the \$20,000 yearly annuity. Curley noted, "Joe did give him the option to continue to coach as long as [Paterno] was the coach."^t Curley suggested another option of Sandusky "coaching three more seasons and we get creative with his base salary or some other scheme that makes him whole and then some, but doesn't cost us an arm and a leg," and stated he was not comfortable with the annuity.²⁰⁷ Curley noted that "[s]ince Joe is okay with [Sandusky] continuing to coach this might make more sense to all concerned."²⁰⁸ The Special Investigative Counsel did not find evidence that Sandusky's retirement was caused by the May 3, 1998 incident at the Lasch Building.

On June 13, 1999, Curley emailed Spanier and Schultz that he "touched base with Joe and we are in agreement that we should not do anything more for Jerry."²⁰⁹ Two days later, Curley emailed Spanier that Sandusky appeared headed for taking retirement.²¹⁰ The next day, Schultz and Sandusky met to talk "about the supplemental annuity."²¹¹ Schultz's notes say that he told Sandusky "we wanted to help [Sandusky]

^rExhibit 3-E (JVP000025-26).

^sExhibit 3-F (JVP000027).

^tExhibit 3-G (Control Number 03014658).

though [sic] this important decision."²¹² Undated notes from Paterno indicated: "Jerry Annuity: Take 138 Buy Insurance > amount his retirement fund is worth. Variable Annuity and take full retirement."²¹³

On June 17, 1999, Wendell Courtney, the University's then outside legal counsel, provided Curley with a draft "retirement perquisites" agreement for Sandusky that included having the University pay Sandusky a lifetime annuity of \$12,000 per year.²¹⁴ The draft also provided that Sandusky and Penn State would "work collaboratively in the future in community outreach programs, such as the Second Mile."²¹⁵ A June 21, 1999 revision of the agreement added free use for life of "University weight rooms and fitness facilities available to faculty and staff."²¹⁶ On June 22, 1999, Sandusky and Curley agreed to revise the permitted use to include "a locker, weight rooms, fitness facilities and training room in the East Area locker room complex."²¹⁷

After an issue arose over the taxation of annual annuity payments, the parties amended the draft agreement to provide Sandusky with a one-time lump sum payment of \$168,000. The parties agreed to these terms on June 29, 1999.^u

III. Sandusky's Retirement Agreement

Penn State's payroll records show that Sandusky received a \$168,000 special payment on June 30, 1999. After tax withholding and other deductions, the net amount was \$111,990.18.²¹⁸ A senior official in the University Controller's office advised the Special Investigative Counsel that in his many years at the University, he had never heard of a payment being made to a retiring employee like the one made to Sandusky.²¹⁹ A retired Senior Vice President who worked at Penn State for over 32 years similarly said he had never heard of this type of lump sum payment being made to a retiring employee.²²⁰ While the \$168,000 lump sum payment made to Sandusky at his retirement in 1999 was unusual, the Special Investigative Counsel did not find evidence to show that the payment was related to the 1998 incident at the Lasch Building.

At the same time Sandusky's retirement agreement was being finalized, Curley sought to have him re-employed as an "emergency hire," because Sandusky had been "integrally involved in the planning and instructional aspects of preparation for this coming [1999] football season and is essential to the continuity of the program's success

^uExhibit 3-H (Control Number 006_0000043).

during this time frame.”²²¹ Curley submitted a request for Sandusky’s re-hire on June 30, 1999.²²² Sandusky was re-hired for 95 days at his existing salary plus a six percent cost of living increase.²²³

On August 31, 1999, Sandusky also was awarded “emeritus” rank, which carries with it a number of special privileges including access to the University’s recreational facilities.²²⁴ According to Penn State policy, this rank is granted to those who leave and hold the title of professor, associate professor, librarian, associate librarian, senior scientist, or senior research associate, or to personnel classified as executive, associate dean, or director of an academic unit in recognition of their meritorious service to the University.²²⁵ Age and service qualifications also exist.²²⁶ The President may grant or deny emeritus rank on “an exception basis.”²²⁷

When he retired, Sandusky held the positions of assistant football coach and assistant professor of physical education, neither of which are among the positions listed as eligible for emeritus rank. On August 13, 1999, the then Assistant Vice President of Human Resources sent a fax to the Dean of the College of Health and Human Development (“Dean”).²²⁸ The fax included a draft memo from Schultz to Spanier that contained handwritten edits that changed the name of the memo’s originator from Schultz to the Dean.²²⁹ The former Dean did not recall the request but advised the Special Investigative Counsel that the request did take an unusual path.²³⁰ The former Assistant Vice President, after being shown the Sandusky emeritus paperwork by the Special Investigative Counsel, said it was clear the request had come from Schultz or at least Schultz’s office and was forwarded by the former Assistant Vice President to the former Dean for submission.²³¹

When the Provost’s office received the emeritus request, the staff conducted research to see if similar situations existed.²³² While not able to find “specific precedent,” the staff found itself in a “bind” as Spanier had promised the emeritus rank to Sandusky.²³³ A contemporaneous email from a staff member to the Provost explained that:

[Spanier] told [Sandusky] that we would do this – he was wholly within his rights here since the policy [HR 25] says “The President may grant (or deny) Emeritus Rank on an exception basis” – then informed [Curley], who suggested going through the college and went to [the Dean], who then made the request of

us. (I had wrongly assumed all along that the request originated with [the Dean].)^v

On August 31, 1999, Rodney Erickson, who had been Provost since July 1, 1999, honored Spanier's promise to grant Sandusky emeritus rank given the President's broad discretion under the policy.²³⁴ He told the staff member that he hoped that "not too many others take that careful notice."²³⁵ In an interview with the Special Investigative Counsel, Erickson described feeling "uneasiness" about the decision on Sandusky because of Sandusky's low academic title and the prior history of who was granted emeritus rank.²³⁶ While the decision to grant Sandusky emeritus rank was unusual, the Special Investigative Counsel found no evidence to show that the emeritus rank was related to the 1998 events at the Lasch Building.

^vExhibit 3-I (Control Number RAE_000001).

CHAPTER 4

RESPONSE OF UNIVERSITY OFFICIALS TO THE ALLEGATION OF CHILD SEXUAL ABUSE AGAINST SANDUSKY – 2001

KEY FINDINGS

- In the Fall of 2000, a University janitor observed Sandusky sexually assault a young boy in the East Area Locker Building and advised co-workers of what he saw. Also that evening, another janitor saw two pairs of feet in the same shower, and then saw Sandusky and a young boy leaving the locker room holding hands. Fearing that they would be fired for disclosing what they saw, neither janitor reported the incidents to University officials, law enforcement or child protection authorities.
- On Friday, February 9, 2001, University graduate assistant Michael McQueary observed Sandusky involved in sexual activity with a boy in the coach's shower room in the University's Lasch Building. McQueary met with and reported the incident to Paterno on Saturday, February 10, 2001. Paterno did not immediately report what McQueary told him, explaining that he did not want to interfere with anyone's weekend.
- McQueary testified that he reported what he saw to Paterno because "he's the head coach and he needs to know if things happen inside that program and inside that building." He said that Paterno's response was that he [Paterno] needed to "tell some people about what you saw" and would let McQueary know what would happen next. After Sandusky's arrest, Paterno told a reporter that he told McQueary, "I said you did what you had to do. It's my job now to figure out what we want to do."
- On Sunday, February 11, 2001, Paterno met with and reported the incident to Curley and Schultz.
- On Sunday, February 11, 2001, Schultz reached out to then University outside legal counsel Wendell Courtney to discuss the "reporting of suspected child abuse." Courtney conducted legal research on this issue and had another conference with Schultz about it that day.
- On February 12, 2001, Schultz and Curley met with Spanier to give him a "heads up" about the report concerning Sandusky. Spanier said this meeting was "unique" and that the subject matter of a University employee in a shower with a child had never come up before

- A contemporaneous “confidential” note of a February 12, 2001 meeting between Schultz and Curley reflects that the men “[r]eviewed 1998 history.” The note states that Schultz and Curley “[a]greed [Curley] will discuss w JVP [Paterno] & advise we think [Curley] should meet w JS [Sandusky] on Friday. Unless he confesses to having a problem, [Curley] will indicate we need to have DPW [Department of Public Welfare] review the matter as an independent agency concerned w child welfare.” Without ever speaking to McQueary, Schultz and Curley had already decided that not reporting Sandusky’s conduct to authorities may be an option.
- On February 12, 2001, Schultz asked University Police Chief Tom Harmon if a police report still existed of the 1998 incident. Harmon replied that it did.
- By February 12, 2001, Schultz and/or Curley had: met with Paterno who reported what McQueary had told him; had a “heads up” meeting with Spanier advising him about the incident; discussed the “reporting of suspected child abuse” with outside counsel; reviewed the history of the 1998 incident; checked to see if the incident was documented in police files; agreed that Curley would discuss with Paterno the idea of approaching Sandusky to see if he would “confess to having a problem;” and researched the Board membership of the Second Mile.
- There is no information indicating that Spanier, Schultz, Paterno or Curley made any effort to identify the child victim or determine if he had been harmed.
- At a February 25, 2001 meeting, Spanier, Schultz, and Curley discussed an action plan for addressing the Sandusky incident. Schultz’s handwritten notes from this meeting indicate: “3) Tell chair* of Board of Second Mile 2) Report to Dept of Welfare. 1) Tell JS [Sandusky] to avoid bringing children alone into Lasch Bldg* who’s the chair??”
- On February 26, 2001 Schultz emailed Curley, confirming the plan from the prior day’s meeting. This email and several that follow are written in unusually cryptic tones, without the use of proper names or titles.
- On February 27, 2001, however, after discussing the matter with Paterno the day before, Curley recommended a different course of action to Spanier and Schultz: they would offer Sandusky “professional help;” assist him in informing “his organization” (the Second Mile) about the allegation; and, if Sandusky was “cooperative,” not inform the Department of Public Welfare of the allegation.
- Advising Sandusky that the February 9, 2001 assault in the Lasch Building had been reported exposed the victim to additional harm because only Sandusky knew his identity.

- On March 5, 2001, Curley met with Sandusky and told him: we are "uncomfortable" with this information about the incident, that he was going to report the incident to the Executive Director of the Second Mile; and that Sandusky was not to be in athletic facilities with any young people. According to Sandusky's counsel, Curley never accused Sandusky of abusing children or used the words "sex" or "intercourse" during the discussion.
- Schultz and Spanier, having prior knowledge of the 1998 child sex abuse allegation against Sandusky, approved Curley's revised plan. Spanier noted in an email that the "only downside for us is if the message isn't 'heard' and acted upon, and we then become vulnerable for not having reported it. But that can be assessed down the road. The approach you outline is humane and a reasonable way to proceed."
- Curley met with the Second Mile executive director in March 2001, and reported that an unidentified person saw Sandusky in the locker room with a young boy, was "uncomfortable" with the situation, and that Curley had discussed the incident with Sandusky and determined nothing inappropriate had occurred.
- Curley told the Second Mile's executive director that Sandusky would not be permitted to bring children onto the Penn State campus in order to avoid publicity issues; Curley also asked the executive director to emphasize that to Sandusky.
- The Second Mile executive director informed two Second Mile Trustees about the incident involving Sandusky and they concluded it was a non-incident for Second Mile and there was no need for further action.
- The Second Mile executive director also met with Sandusky and passed on Curley's prohibition about bringing children on campus. Sandusky replied that the prohibition applied only to the locker rooms.
- Board meeting, March 15-16, 2001: There is no record that the President briefed the Board about the ongoing investigation of Sandusky.
- On September 21, 2001, Schultz obtained Board approval for the sale of a parcel of Penn State land to the Second Mile. The Board minutes do not reflect any contemporaneous discussion of the 2001 investigation, the propriety of a continuing relationship between Penn State and the Second Mile, or the risks involved by allowing Sandusky to be prominently associated with Penn State. Schultz even issued a press release about the transaction lauding Sandusky.
- After the February 2001 incident, Sandusky engaged in improper conduct with at least two children in the Lasch Building. Those assaults may well have been prevented if Spanier, Schultz, Paterno and Curley had taken additional actions to safeguard children on University facilities.

I. Janitors' Observations of Sandusky – 2000

According to the testimony of witnesses in Gerald A. Sandusky's ("Sandusky") trial in Centre County in June 2012,²³⁷ in the Fall of 2000, a temporary University janitor ("Janitor A")²³⁸ observed a man, later identified to him as Sandusky, in the Assistant Coaches' locker room showers of the Lasch Building with a young boy in the Fall of 2000. Sandusky had the boy pinned against the wall and was performing oral sex on him. The janitor immediately told one of his fellow janitors ("Janitor B") what he had witnessed, stating that he had "fought in the [Korean] War...seen people with their guts blowed out, arms dismembered... . I just witnessed something in there I'll never forget."

On that same night, Janitor B observed two pairs of feet in this same shower at the Lasch Building but could not see the upper bodies of the two persons.²³⁹ He waited for the two to finish their shower, and later saw Jerry Sandusky and a young boy, around the age of 12, exit the locker room holding hands.²⁴⁰ Janitor B frequently saw Sandusky in the Lasch Building after hours, usually accompanied by one or more young boys.²⁴¹ Janitor B closely followed Penn State football, and knew Sandusky from watching football games.²⁴²

A senior janitorial employee ("Janitor C") on duty that night spoke with the staff, who had gathered with Janitor A to calm him down.²⁴³ Janitor C advised Janitor A how he could report what he saw, if he wanted to do so. Janitor B said he would stand by Janitor A if he reported the incident to the police, but Janitor A said, "no, they'll get rid of all of us."²⁴⁴

Janitor B explained to the Special Investigative Counsel that reporting the incident "would have been like going against the President of the United States in my eyes."²⁴⁵ "I know Paterno has so much power, if he wanted to get rid of someone, I would have been gone."²⁴⁶ He explained "football runs this University," and said the University would have closed ranks to protect the football program at all costs.^{247w}

^w Some individuals interviewed identified the handling of a student disciplinary matter in 2007 as an example of Paterno's excessive influence at the University. The April 2007 incident involved a fight at an off-campus apartment in which several individuals were severely injured by Penn State football players. The former University official responsible for the student disciplinary process, who the Special Investigative Counsel interviewed, perceived pressure from the Athletics Department, and particularly

Later the same night, two of these janitors saw Sandusky in the parking lot, driving by slowly and looking into the windows of the Lasch building.²⁴⁸ The first time was around 11:00 p.m., the second was around 2:00 a.m.²⁴⁹ The young boy was not observed with Sandusky at these times. Janitor B thought that Sandusky had returned to determine whether anyone had called the police to report the incident.²⁵⁰

II. McQueary's Observations of Sandusky – 2001

The November 2011 Grand Jury presentment described an incident, observed by Penn State assistant football coach Michael McQueary, of a “sexual nature” between Sandusky and a boy in the Lasch Building that allegedly took place in March 2002. During this investigation, the Special Investigative Counsel found evidence that this incident actually occurred on or about February 9, 2001 and promptly reported this information to the Pennsylvania Attorney General's Office.²⁵¹

McQueary testified at a December 2011 Grand Jury hearing, and again on June 12, 2012 at Sandusky's criminal trial, about what he saw. At the time of the incident, McQueary was a graduate assistant with the football program and had gone to the support staff locker room in the Lasch Building around 9:00 or 9:30 p.m. on a Friday night.²⁵² Upon opening the locker room door, McQueary heard “rhythmic slapping sounds” from the shower.²⁵³ McQueary looked into the shower through a mirror and saw Sandusky with a “prepubescent” 10- or 12-year-old boy.²⁵⁴ McQueary saw Sandusky “directly behind” the boy with his arms around the boy's waist or midsection.²⁵⁵ The boy had his hands against the wall, and the two were in “a very sexual position.”²⁵⁶ McQueary believed Sandusky was “sexually molesting” the boy and “having some type of intercourse with him” although he “did not see insertion nor was there any verbiage or protest, screaming or yelling.”²⁵⁷

McQueary testified that he slammed his locker shut and moved toward the shower.²⁵⁸ He said Sandusky and the boy separated and looked directly at McQueary

the football program, to treat players in ways that would maintain their ability to play sports, including during the 2007 incident.[-] Interview (3-9-12) When the Student Affairs Office (“SAO”) sanctioned the players involved, the sanctions were subsequently reduced by Spanier to enable players to participate in football practice. [-] Interview (3-22-12) A senior staff member in the SAO advised that his office handles over 4,000 cases a year of off-campus student conduct violations. [-] Interview (12-12-11) In all of the cases he has managed over the years, this incident and one other involving a football player were the only incidents in which issued sanctions were reduced. [-] Interview (12-12-11); [-] Interview (3-22-12)

without saying a word.²⁵⁹ Seeing the two had separated, McQueary said he “thought it was best to leave the locker room.”²⁶⁰ McQueary went to his office and called his father^x for advice.²⁶¹ He then went to his father’s house to discuss the matter further.²⁶² The two decided McQueary should tell Head Football Coach Joseph V. Paterno (“Paterno”), who was McQueary’s immediate superior, about the incident.²⁶³

McQueary testified that he called Paterno at home around 7:30 or 8:00 a.m. the next morning and told him that he needed to meet with him.²⁶⁴ McQueary recalled Paterno said he did not have a job for McQueary,^y so “if that’s what it’s about, don’t bother coming over.”²⁶⁵ McQueary told him the matter was “something much more serious”²⁶⁶ and Paterno agreed to a meeting. McQueary went to Paterno’s home to talk, and according to his Grand Jury and trial testimony, he told Paterno he saw Sandusky and “a young boy in the shower and that it was way over the lines.”²⁶⁷ Recalling the activity as “extremely sexual in nature,” McQueary described the “rough positioning” of Sandusky and the boy “but not in very much detail” and without using the terms “sodomy” or “anal intercourse.”²⁶⁸

Paterno told the Grand Jury in 2011 that he recalled having this discussion with McQueary on a Saturday morning²⁶⁹ and that McQueary told him he saw Sandusky “fondling, whatever you might call it -- I’m not sure what the term would be -- a young boy” in the showers at the Lasch Building.²⁷⁰ Paterno explained, “[o]bviously, he was doing something with the youngster. It was a sexual nature. I’m not sure exactly what it was. I didn’t push Mike to describe exactly what it was because he was very upset.”²⁷¹

McQueary testified that he reported what he saw to Paterno because “he’s the head coach and he needs to know if things happen inside that program and inside that

^xJohn McQueary and his supervisor (a medical doctor) heard Mike McQueary’s initial report of the Lasch Building events the evening it happened. Preliminary Hearing Trans. (12-16-11), 134. John McQueary advised his son to report the matter to Paterno, and neither John McQueary nor his boss advised him to immediately call the police. *Id.* John McQueary later had a conversation with Schultz about what his son saw, and how Schultz handled the situation. *Id.* The conversation may have come up in discussions John McQueary had with Schultz in mid-May 2001 about a past due amount on a lease for a medical business where John McQueary worked. See Control Number 00675188.

^yMcQueary was hired as a permanent assistant football coach in 2004. The Special Investigative Counsel found no information to suggest that McQueary’s selection for that job was related to his witnessing Sandusky assault a boy in the shower room at the Lasch Building. Three witnesses stated that McQueary was very well-qualified for the position. [-] Interview (3-8-2012); [-] Interview (3-12-2012); [-] Interview (3-1-2012).

building.”²⁷² He said that Paterno’s response was that he [Paterno] needed to “tell some people about what you saw” and would let McQueary know what would happen next.²⁷³ After Sandusky’s arrest, Paterno told a reporter that he told McQueary, “I said you did what you had to do. It’s my job now to figure out what we want to do.”²⁷⁴

No record or communication indicates that McQueary or Paterno made any effort to determine the identity of the child in the shower or whether the child had been harmed.

III. University Leaders’ Response to McQueary’s Observations

A. February 11, 2001: Paterno Reports Sandusky Incident to Schultz and Curley

Paterno also testified to the Grand Jury that he “ordinarily would have called people right away, [after hearing McQueary’s report] but it was a Saturday morning and I didn’t want to interfere with their weekends.” Paterno thought he spoke to Curley “early the next week” or “within the week.”²⁷⁵ Paterno had a telephone call with Curley and said, “[h]ey, we got a problem, and I explained the problem to him.”²⁷⁶ When asked if the “information that [he] passed along was substantially the same information that [McQueary]” had given him, Paterno said “yes.”²⁷⁷

Curley testified to the same Grand Jury that Paterno called him on a Sunday and asked him and Schultz to come to Paterno’s home²⁷⁸ where Paterno related that an assistant coach saw “two people” in the shower of the football building locker room.²⁷⁹ Curley recalled that Paterno said the assistant saw the people through a mirror, “was uncomfortable with the activity in the shower area,” and had reported the issue to Paterno.²⁸⁰

Schultz testified to the same Grand Jury in 2011 that he attended the meeting with Paterno and Curley and that it occurred in Schultz’s office or “possibly” at Paterno’s house.²⁸¹ Schultz told the Grand Jury that Paterno said “someone” had seen Sandusky and “some unnamed boy” engaging in “some behavior in the football locker room that was disturbing.” He testified, “I believe the impression I got was it was inappropriate and he wanted to bring that to Tim Curley and my attention.”²⁸² Schultz did not recall Paterno’s precise words, and said Paterno described the events “in a very general way.”²⁸³ Schultz thought the conduct might involve “wrestling around activity” and Sandusky “might have grabbed the young boy’s genitals or something of that

sort.”²⁸⁴ Schultz said the “allegations came across as not that serious. It didn’t appear at that time, based on what was reported, to be that serious, that a crime had occurred. We had no indication a crime had occurred.”²⁸⁵

B. February 11, 2001: Schultz Discusses “Reporting of Suspected Child Abuse” with University’s Outside Legal Counsel

On Sunday, February 11, 2001, Schultz had a conference call about the “reporting of suspected child abuse” with Penn State’s then outside legal counsel, Wendell Courtney.^z Courtney conducted legal research on this issue and had another conference that day with Schultz about the matter.²⁸⁶ Courtney charged 2.9 hours of time to Penn State for his legal work. Courtney’s work on the 2001 matter is confirmed in an email Courtney sent to Schultz in 2011 when Penn State received subpoenas for testimony by Schultz and others concerning the criminal investigation of Sandusky.^{aa}

Nearly 10 years later, on January 10, 2011, Courtney emailed Schultz and said, *“Gary - Cynthia Baldwin called me today to ask what I remembered about JS issue I spoke with you and Tim about circa eight years ago [emphasis added]. I told her what I remembered. She did not offer why she was asking, nor did I ask her. Nor did I disclose that you and I chatted about this.”*²⁸⁷ The initials “JS” in Courtney’s 2011 email appear to indicate Jerry Sandusky.

Courtney served as Penn State’s outside legal counsel for 28 years and was a partner at a law firm that performed legal work for the University for nearly 50 years. Based on the advice of counsel, Courtney declined to be interviewed by the Special Investigative Counsel. Thus, the Special Investigative Counsel was unable to learn Courtney’s explanation about the legal work he performed on February 11, 2001.

C. February 12, 2001: Initial Response of Spanier, Schultz and Curley to Sandusky Incident

After the Commonwealth brought criminal charges against Schultz in November 2011, Schultz’s assistant removed some of the Sandusky files from Schultz’s Penn State office and delivered them to Schultz. The assistant failed to disclose in two interviews with the Special Investigative Counsel that the Sandusky files had been removed.²⁸⁸

^zExhibit 5-A (McQuaide Blasko documents).

^{aa}Exhibit 5-B (Control Number 11118161).

Only in May 2012 did the existence of these important files come to light so that the documents could be retrieved.²⁸⁹

Schultz's handwritten notes, which he marked as "confidential," reflect a Monday, February 12, 2001 meeting with Curley to discuss the Sandusky allegations. According to Schultz's notes, Curley and Schultz talked and first "[r]eviewed 1998 history."^{bb} The notes state that Schultz and Curley "[a]greed [Curley] will discuss w JVP & advise we think [Curley] should meet w JS on Friday. Unless he 'confesses' to having a problem, TMC will indicate we need to have DPW review the matter as an independent agency concerned w child welfare."²⁹⁰ The initials "JVP" in Schultz's notes appear to indicate Joseph V. Paterno. The initials "JS" in Schultz's notes appear to indicate Jerry Sandusky. The initials "TMC" appear to indicate Curley.

In an interview with the Special Investigative Counsel, Spanier said that he met with Schultz and Curley to discuss Sandusky around 2:30 p.m. on February 12, 2001.²⁹¹ Spanier said the men gave him a "heads up" that a member of the Athletic Department staff had reported to Paterno that Sandusky was in an athletic locker room facility showering with one of his Second Mile youth after a workout. Sandusky and the youth, according to Spanier, were "horsing around" or "engaged in horseplay."²⁹² Spanier said the staff member "was not sure what he saw because it was around a corner and indirect."²⁹³ Spanier said this meeting was "unique" and that the subject matter of a University employee in a shower with a child had never come up before.²⁹⁴ Spanier also said that he did not ask, nor did Schultz or Curley define, what was meant by "horsing around" or "horseplay."²⁹⁵

Spanier said he asked two questions: (i) "Are you sure that it was described to you as horsing around?" and (ii) "Are you sure that that is all that was reported?"²⁹⁶ According to Spanier, both Schultz and Curley said "yes" to both questions. Spanier said the men agreed that they were "uncomfortable" with such a situation, that it was inappropriate, and that they did not want it to happen again.²⁹⁷ Spanier says he asked Curley to meet with Sandusky and tell him that he must never again bring youth into the showers. Spanier said the men also agreed to inform the Second Mile that this direction was given to Sandusky and "we did not wish Second Mile youth to be in our showers."²⁹⁸ Spanier said there was no mention of anything abusive or sexual, and he

^{bb}Exhibit 5-C (Schultz documents).

was not aware of the hour of day, the specific building involved, the age of the child, or any other prior shower incident.²⁹⁹ Spanier also said he did not ask for such details.

When then-Penn State General Counsel Cynthia Baldwin first heard that the Attorney General's office planned to subpoena Schultz, Paterno, and Curley to appear before the Grand Jury, she called Spanier to inform him of the news.³⁰⁰ Baldwin's notes from this call on December 28, 2010 reflect that Baldwin informed Spanier of the situation.³⁰¹ Baldwin's notes of the call reflect that Spanier said he "[m]ay have consulted w/Wendell when Tim, Gary & Graham spoke" when he first heard of the 2001 incident.³⁰²

On February 12, 2001, at about 11:10 a.m., Schultz researched the internet about the Board members of the Second Mile, the charitable organization Sandusky founded.³⁰³ On February 12, 2001, Schultz also asked Penn State University Police Chief Tom Harmon if a police file still existed for the 1998 event.³⁰⁴ At 9:56 p.m., Harmon emailed Schultz to report, "[r]egarding the incident in 1998 involving the former coach, I checked and the incident is documented in our imaged a[r]chives."^{cc}

By February 12, 2001, Schultz and/or Curley had: (i) given Spanier a "heads up" concerning a "unique" situation involving Sandusky in the showers with a child;³⁰⁵ (ii) met with Paterno, who reported to them the "same information" McQueary had given to Paterno; (iii) discussed the "reporting of suspected child abuse" with Penn State's then outside legal counsel and also with Spanier,³⁰⁶ (iv) reviewed the history of the 1998 Sandusky incident;³⁰⁷ (v) checked to see if the 1998 police report on Sandusky was documented in University police files;³⁰⁸ (vi) agreed that Curley would discuss with Paterno the idea about approaching Sandusky to see if he "confesses to having a problem;"³⁰⁹ and, (vii) researched the Board membership of the Second Mile.³¹⁰ There is no indication that Spanier, Schultz, Paterno, Curley or any other leader at Penn State made any effort to determine the identity of the child in the shower or whether the child had been harmed.

D. Schultz and Curley Meet with McQueary – February 2001

Schultz and Curley did not meet with McQueary to hear directly from him as to what he observed in the Lasch Building shower before taking these actions. McQueary

^{cc}Exhibit 5-D (Control Number 00675162).

testified at the Grand Jury that he first heard from Curley when Curley called to arrange a meeting to discuss what McQueary had reported to Paterno on a Saturday morning, about "nine or 10" days earlier.³¹¹ Curley could not recall how many days it was after hearing from Paterno that he met with McQueary to get the information directly from him, but he thought it was within a week.³¹²

McQueary also testified to the Grand Jury that he met with Schultz and Curley either the same day he received Curley's call or the next day. McQueary said he told the men he saw Sandusky in the shower with a young boy, with Sandusky's arms wrapped around the boy.³¹³ McQueary said he told the men that the situation was "extremely sexual" and that McQueary "thought that some kind of intercourse was going on."³¹⁴ Curley testified to the Grand Jury that McQueary told him he had heard people in the shower who were "horsing around, that they were playful, and that it just did not feel appropriate."³¹⁵

Schultz told the same Grand Jury that he did not recall specifically what McQueary reported, but his impression was that there was some physical conduct, some horsing around, some wrestling that resulted in contact with a boy's genitals in the context of wrestling.³¹⁶ Schultz testified that he did not understand the incident to have involved sexual conduct or intercourse.³¹⁷

E. February 25, 2001: Spanier, Schultz and Curley Meet Again to Discuss Sandusky Incident

On Thursday, February 22, 2001, Schultz sent an email to Spanier and Curley, stating, "Graham, Tim and I will meet at 2:00 p.m. on Sunday in Tim's office."³¹⁸ Spanier acknowledged the 2:00 p.m. meeting in an email to Schultz and Curley on February 23, 2001.³¹⁹ The February 25 meeting was arranged 12 days after McQueary notified Paterno about seeing Sandusky in the Lasch Building sexually abusing a young boy. McQueary testified before the Grand Jury that he met with Curley and Schultz about "nine or 10" days after the Saturday morning discussion with Paterno.³²⁰

Among documents that Schultz held confidentially in his office and that had been withheld from the Special Investigative Counsel, were handwritten notes for a meeting on "2/25/01." The notes do not identify who was present for the meeting, but

indicate: "3) Tell chair* of Board of Second Mile 2) Report to Dept of Welfare. 1) Tell JS to avoid bringing children alone into Lasch Bldg * who's the chair??"^{dd}

Spanier's hardcopy calendar of February 25, 2001 indicates a 2:00 p.m. appointment in "TMC office."³²¹ Spanier told the Special Investigative Counsel that the February 25 meeting was with only Curley.³²² He denied that Schultz was present.³²³ He also denied that any mention was made of the Department of Public Welfare.³²⁴ He stated that Curley was worried about how to handle things if he informed Sandusky that he was forbidden to bring Second Mile youth to Penn State facilities and Sandusky disagreed.³²⁵ Spanier explained that he was concerned with Sandusky because the situation "doesn't look good, I was concerned with what people will think, the visibility and the public relations aspects of it. I was not concerned with criminality. There was no suggestion of anything about abuse or sexual contact."³²⁶

The next day, on February 26, 2001, Schultz sent an email to Curley confirming the plan from the prior day's meeting. Schultz wrote: "Tim, I'm assuming that you've got the ball to 1) talk with the subject ASAP regarding the future appropriate use of the University facility; 2) contacting the chair of the Charitable Organization; and 3) contacting the Dept of Welfare. As you know I'm out of the office for the next two weeks, but if you need anything from me, please let me know."^{ee}

The February 26, 2001 email and related emails that follow among Curley, Schultz and Spanier over the next two days are unique from the hundreds of thousands of other emails reviewed by the Special Investigative Counsel. These messages are the rare documents where proper names and identifying information are replaced with generic references. Spanier told the Special Investigative Counsel that Curley communicated in "code" in sensitive emails because the Athletic Department was notorious for leaks.³²⁷ When Curley communicated about other sensitive issues involving Sandusky, however, he did not use "code" words. For example, emails written between February 25 and February 28, 2001, refer to Sandusky as the "subject,"³²⁸ the "person involved,"³²⁹ or "the person."³³⁰ The emails refer to the Second Mile as "his organization;" and to the Department of Public Welfare as "the other organization"³³¹ and the "other one."³³² This contrasts with emails written in 1998, concerning the police investigation, in which Curley and Schultz frequently referred to

^{dd}Exhibit 5-E (Schultz documents).

^{ee}Exhibit 5-F (Control Number 00677433).

Sandusky as "Jerry."³³³ This also contrasts with emails written in 1999, concerning Sandusky's retirement, where Curley, Schultz and Spanier frequently referred to Sandusky as "Jerry."³³⁴

On March 22, 2011, Spanier met with members of the Pennsylvania Attorney General's Office accompanied by Baldwin.³³⁵ The General Counsel's notes of that meeting reflect Spanier's statement that Schultz and Curley met with Spanier to explain that an employee had seen Sandusky "horsing around" in a shower with a child and thought they should bring the issue to Spanier's attention.³³⁶ The notes also indicate that Spanier said to Schultz and Curley that if "nothing more detailed was reported, Tim should tell JS that we request that he not bring children into shower again. Since JS no longer employed that we advise chair of Board of Second Mile of what we heard."³³⁷

F. February 27-28, 2001: Curley Proposes Revised Response to the Sandusky Incident

On Tuesday, February 27, 2001, Curley emailed Schultz and Spanier:

I had scheduled a meeting with you this afternoon about the subject we discussed on Sunday. After giving it more thought and talking it over with Joe yesterday-- I am uncomfortable with what we agreed were the next steps. I am having trouble with going to everyone, but the person involved. I think I would be more comfortable meeting with the person and tell him about the information we received. I would plan to tell him we are aware of the first situation. I would indicate we feel there is a problem and we want to assist the individual to get professional help. Also, we feel a responsibility at some point soon to inform his organization and [sic] maybe the other one about the situation. If he is cooperative we would work with him to handle informing the organization. If not, we do not have a choice and will inform the two groups. Additionally, I will let him know that his guests are not permitted to use our facilities. I need some help on this one. What do you think about this approach?^{ffgg}

^{ff}Exhibit 5-G (Control Number 00679428).

^{gg} The Special Investigative Counsel discovered these emails after Joe Paterno died. When the Special Investigative Counsel questioned Paterno's representatives about the emails, they stated that because they did not have the benefit of the emails before Paterno's death, they were unable to inquire with Paterno about the emails.

Several people told the Special Investigative Counsel that Curley is a State College native with a long family history at Penn State, including his father and brothers who worked at Penn State.³³⁸ A senior Penn State official referred to Curley as Paterno's "errand boy."³³⁹ Athletic Department staff said Paterno's words carried a lot of weight with Curley, who would run big decisions by Paterno.³⁴⁰ Others interviewed described Curley as "loyal to a fault" to University management and the chain of command, someone who followed instructions regardless of the consequences, and someone who avoided confrontation.³⁴¹

Also on Tuesday, February 27, 2001, at 10:18 p.m., Spanier responded to Curley's proposal for dealing with Sandusky. Spanier emailed Curley and Schultz:

Tim: This approach is acceptable to me. It requires you to go a step further and means that your conversation will be all the more difficult, but I admire your willingness to do that and I am supportive. The only downside for us is if the message isn't "heard" and acted upon, and we then become vulnerable for not having reported it. But that can be assessed down the road. The approach you outline is humane and a reasonable way to proceed.³⁴²

A reasonable conclusion from Spanier's email statement that "[t]he only downside for us is if the message isn't 'heard' and acted upon, and we then become vulnerable for not having reported it" is that Spanier, Schultz and Curley were agreeing not to report Sandusky's activity.

It also is reasonable to conclude from this email statement that the men decided not to report to a law enforcement or child protection authority because they already had agreed to "report" the incident to Second Mile. Spanier's oral and written statements to the Special Investigative Counsel do not address this "reported it" reference. Spanier told the Special Investigative Counsel that the comment related "specifically and only to [Curley's] concern about the possibility that [Sandusky] would not accept our directive and repeat the practice. Were that the outcome of his discussion I would have worried that we did not enlist more help in enforcing such a directive."³⁴³

Spanier said that his use of the word "humane" refers "specifically and only to my thought that it was humane of [Curley] to wish to inform Sandusky first and allow him to accompany [Curley] to the meeting with the president of the Second Mile.

Moreover, it would be humane to offer counseling to Sandusky if he didn't understand why this was inappropriate and unacceptable to us."³⁴⁴

On Wednesday, February 28, 2001, at 7:12 p.m., Schultz responded to Curley's proposal for dealing with Sandusky. Schultz wrote to Curley and Spanier:

Tim and Graham, this is a more humane and upfront way to handle this. I can support this approach, with the understanding that we will inform his organization, with or without his cooperation (I think that's what Tim proposed). We can play it by ear to decide about the other organization.^{1h}

The "other organization" mentioned by Schultz appears to be a reference to the Department of Public Welfare. Again, at no time did Spanier, Schultz, Paterno or Curley try to identify the child in the shower or whether the child had suffered harm. By advising Sandusky, rather than the authorities, that they knew about the February 9, 2001 assault, they exposed this victim to additional harm because only Sandusky knew the child victim's identity at the time.

On February 28, 2001, Curley emailed Schultz and Spanier, explaining in part that he was "planning to meet with the person next Monday on the other subject."ⁱⁱ Spanier replied the same day, telling Curley, "[i]f you need to start in one direction without me, do so. I think we are on the same wavelength and I will support you."³⁴⁵

IV. Curley Meets with Sandusky – March 1998

Curley testified to the Grand Jury that he met twice with Sandusky, as Sandusky did not "initially" admit to being in the shower with a boy.³⁴⁶ According to Curley's testimony, Sandusky later returned to admit he had been present.³⁴⁷ Curley said he told Sandusky:

[a]bout the information that we received, that we were uncomfortable with the information and that I was going to take the information and report it to the executive director of the Second Mile and that I did not want him in the future to be in our athletic facilities with any young people.³⁴⁸

^{1h}Exhibit 5-G (Control Number 00679428).

ⁱⁱExhibit 5-H (Control Number 00676529).

While Sandusky declined an interview with the Special Investigative Counsel, Sandusky's counsel stated in a telephone call with the Special Investigative Counsel that Sandusky generally agreed with Curley's version of the 2002 incident, which Sandusky thought took place in 2001.³⁴⁹ Sandusky's counsel said Curley told Sandusky that they had heard Sandusky had been in the shower with a young child, and someone felt this was inappropriate.³⁵⁰ According to Sandusky's counsel, Curley never used the word sex or intercourse in the discussion.³⁵¹ Counsel said Sandusky offered to give the child's name to Curley, but Curley did not accept this invitation.³⁵² Counsel also said Curley told Sandusky he did not want Sandusky to bring children to the shower any more.³⁵³ Sandusky's counsel said no one accused Sandusky of abusing kids.³⁵⁴

On March 7, 2001, Schultz's assistant wrote to Curley, asking if he had updated Schultz on the actions set out in Schultz's February 26, 2001 email.[¶] Before he left for vacation, Schultz had left directions for his assistant to check on this issue.³⁵⁵ Curley reported to the assistant that he had updated Schultz.³⁵⁶

Schultz testified before the Grand Jury that he had the "impression that Tim did follow through and make sure Jerry understood that he was no longer permitted to bring Second Mile children into the football facility."³⁵⁷ Penn State's General Counsel's notes from a March 2011 conversation with Spanier, reflect that Spanier said he "[b]umped into Tim Curley and Tim advised" that he had a conversation with Sandusky not to bring children into the shower again.³⁵⁸

Spanier told the Special Investigative Counsel that a "few days after the brief Sunday interaction, [he] saw [Curley] and he reported that both of the discussions had taken place, that those discussions had gone well and our directive accepted, and that the matter was closed."³⁵⁹ Spanier did not know whether Sandusky ever received counseling.³⁶⁰

Paterno gave the following explanation to a reporter for the *Washington Post* as to why he did not more aggressively pursue the information that McQueary provided. "I didn't know exactly how to handle it and I was afraid to do something that might jeopardize what the University procedure was. So I backed away and turned it over to some other people, people I thought would have a little more expertise than I did. It

[¶]Exhibit 5-I (Control Number 00674655).

didn't work out that way." Paterno added, "In hindsight, I wish I had done more" and regretted that he had not.³⁶¹

V. March 19, 2001: Curley Meets with Second Mile Leadership

Curley testified at the Grand Jury that he met "the executive director of the Second Mile. I shared the information that we had with him." The Special Investigative Counsel found no written records concerning this meeting.

The Second Mile executive director declined to be interviewed. Counsel for the Second Mile told the Special Investigative Counsel, however, that the executive director told him that the executive director had a calendar entry for a meeting with Curley on March 19, 2001.³⁶² He also told counsel that during the executive director's meeting with Curley that Curley related that an unidentified person saw Sandusky in the locker room shower on campus with a boy and felt uncomfortable with the situation;³⁶³ and that Curley had discussed the issue with Sandusky and concluded that nothing inappropriate occurred.³⁶⁴ According to Counsel for the Second Mile, Curley told the executive director, that "to avoid publicity issues," the University would not permit Sandusky to bring kids on campus.³⁶⁵ Curley also told the executive director that he was telling Second Mile so that the executive director could emphasize the issue to Sandusky.³⁶⁶

The executive director later advised two Second Mile Trustees of the meeting, and they concluded the matter was a "non-incident for the Second Mile and there was no need to do anything further."³⁶⁷ He also talked to Sandusky, who admitted showering with boys but nothing more.³⁶⁸ The executive director passed on Curley's advice on the prohibition against bringing kids on campus, and Sandusky responded that it applied only to the locker rooms.³⁶⁹ The executive director urged him to get the issue clarified.³⁷⁰

VI. University Officials Do Not Notify the Board of the Sandusky Incident

The Penn State Board of Trustees ("Board" or "Trustees") met on March 15 and 16, 2001. Nothing in the Board records or interviews of Trustees indicate any contemporaneous discussions of the 2001 Sandusky incident and investigation during the meeting. The Board did not have a process or committee structure at that time for

receiving regular reports from University officials about matters of potential risk to the University, such as the allegation against Sandusky.

On July 24, 2001, Schultz met with leaders of the Second Mile and agreed to sell a parcel to the Second Mile for \$168,500.³⁷¹ The University had bought the property in 1999 for \$168,500.³⁷² On September 21, 2001, less than eight months after the Sandusky incident, the Board approved the sale of a parcel of land to the Second Mile.³⁷³ Nothing in the Board's records or interviews of Trustees indicate any contemporaneous discussions of the 2001 Sandusky incident and investigation, the propriety of a continuing relationship between Penn State and the Second Mile, or the risks created by a public association with Sandusky when the land transaction was discussed. Schultz, who oversaw the transaction, did not make any disclosure of the Sandusky incident during the Board's review of the land deal. In fact, Schultz approved a press release, issued September 21, 2001 announcing the land sale in which he praised Sandusky for his work with Second Mile.³⁷⁴

VII. Sandusky's Criminal Activity After 2001

The Centre County jury convicted Sandusky in June 2012 of assaulting two boys at Penn State's football facilities and other places on campus after February 2001. These assaults occurred against Victim 3 (assaults on various dates from July 1999 to December 2001 in the Lasch Building and at other places) and Victim 5 (assault in August 2001 in the Lasch Building).

At the preliminary hearing, Curley agreed that there was no "practical way to enforce [Sandusky] not bringing children onto the campus" after he was warned not to do so.³⁷⁵ There is no indication that Spanier, Schultz, Paterno, or Curley had discussions about any other enforceable actions that could have been taken to safeguard children. Spanier told the Special Investigative Counsel that he did not do anything to prohibit Sandusky from using Penn State facilities, nor did he instruct anyone else to do so.³⁷⁶

CHAPTER 5

RESPONSE OF UNIVERSITY OFFICIALS TO THE GRAND JURY INVESTIGATION - 2010, 2011

KEY FINDINGS

- In early 2010 the Pennsylvania Attorney General, in connection with a Grand Jury investigation of Sandusky, issued subpoenas to the University for certain documents; in late 2010 the Grand Jury issued subpoenas for Spanier, Schultz, Paterno, Curley and various members of the Athletic Department in relation to a Grand Jury investigation of Sandusky for child sexual abuse.
- In 2011, Spanier, Schultz, Paterno, Curley and various members of the Athletic Department testified before the Grand Jury. The Grand Jury appearances and the Sandusky investigation were reported in a news story on March 31, 2011.
- Neither Spanier nor the University's General Counsel, Cynthia Baldwin, briefed the Board of Trustees about the Grand Jury investigation of Sandusky or the potential risk to the University until the Board's meeting on May 11, 2011 and, then, only at the request of a Trustee who had read the March 31, 2011 article.
- After receiving a Trustee's request for more information about the Grand Jury investigation, Spanier emailed Baldwin noting that "[the Trustee] desires near total transparency. He will be uncomfortable and feel put off until he gets a report."
- At the May 2011 Board meeting, Spanier and Baldwin briefed the Board about the investigation, but minimized its seriousness by not fully describing the nature of the allegations or raising the issue of possible negative impact to the University.
- From March 31 – November 4, 2011, the Board did not make reasonable inquiry of Spanier or Baldwin about the Sandusky investigation or potential risks to the University.
- The Board did not take steps that might have protected the University, such as conducting an internal investigation, engaging experienced criminal counsel, or preparing for the possibility that the results of the Grand Jury investigation could have a negative impact on the University.
- Spanier and Baldwin opposed an independent investigation of the Sandusky issue, with Baldwin stating that "[i]f we do this, we will never get rid of this [outside investigative] group in some shape or form. The Board will then think that they should have such a group." Spanier agreed.

- Even after criminal charges were announced against Schultz and Curley in November 2011, Spanier continued to downplay the serious harm that could result to Penn State's reputation from the criminal charges, and issued a statement of "unconditional support" for Schultz and Curley.
- Within a few hours of the criminal charges becoming public, staff members advised Spanier that the Board needed to be updated. Spanier said that any briefing "will be nothing more than what we said publicly."
- Only after the presentment of criminal charges in November 2011 did the Board call for a Special Investigations Task Force to perform an independent investigation into the allegations, and to challenge Spanier's and Paterno's actions and failures.
- Until Sandusky's arrest in November 2011, Curley continued to invite him to numerous high-profile athletic events at the University, many of which he attended. During the Spring of 2011, Baldwin advised some University personnel that Sandusky's access to the Lasch Building could not be terminated because of his emeritus status and the fact that he had not been convicted of a crime.
- The Board was unprepared to handle the crisis that occurred when Sandusky, Curley and Schultz were charged. This contributed significantly to its poor handling of the firing of Paterno, and the subsequent severe reaction by the Penn State community and the public to the Board's oversight of the University and Paterno's firing.

I. Subpoenas Issued for the Grand Jury Testimony of Senior University Officials

On January 7, 2010, the Grand Jury issued a subpoena seeking production of all the University employment and personnel records for Gerald A. Sandusky ("Sandusky").³⁷⁷ The Penn State employee handling the subpoena consulted with a lawyer at McQuaide Blasko, the State College law firm that served at the time as outside legal counsel for Penn State, about how to respond to the subpoena.³⁷⁸ This lawyer, who had no grand jury experience, then spoke with colleague Wendell Courtney, although this lawyer told the Special Investigative Counsel that they did not discuss any potential reason for the subpoena or any prior incidents involving Sandusky.³⁷⁹ The lawyer also did not discuss the nature of the investigation with anyone from the Attorney General's Office.³⁸⁰

Through McQuaide Blasko, Penn State agreed with the Attorney General's Office on a non-disclosure order concerning the subpoena.³⁸¹ At the time, Penn State staff compiled a list of all persons who knew of the subpoena, which included Spanier, Paterno and Curley.³⁸²

On September 16, 2010, a *Patriot-News* reporter contacted Spanier. The two exchanged emails as to Spanier's knowledge of an investigation of Sandusky for suspected criminal activity while he was a Penn State employee.

On December 22, 2010, the McQuaide Blasko lawyer called then-University General Counsel Baldwin to inform her that a prosecutor from the Attorney General's Office had called McQuaide Blasko to say that the Grand Jury would like to hear testimony from "some very important people" at Penn State.³⁸³ The lawyer also provided Baldwin with background information about the January 2010 subpoena.³⁸⁴

On December 28, 2010, at 9:30 a.m., Baldwin spoke with two prosecutors from the Attorney General's office, who explained that the office would be issuing subpoenas for Schultz, Paterno and Curley to appear before the Grand Jury.³⁸⁵ Baldwin explained in an interview with the Special Investigative Counsel that she asked if the University or its staff were targets of the investigation.³⁸⁶ According to Baldwin, the prosecutors said that they were looking at Sandusky, although Baldwin's notes of the conversation do not reflect discussion of this issue.³⁸⁷ Baldwin did not seek the assistance of an

attorney experienced in addressing criminal investigations or conducting internal investigations at that time.

At 9:45 a.m. on December 28, 2010, Baldwin informed Spanier of the situation.³⁸⁸ Baldwin's notes of the call reflect: "[m]ay have consulted w/Wendell when Tim, Gary & Graham spoke."³⁸⁹ At 10:01 a.m., Baldwin³⁹⁰ met with Spanier and Schultz.³⁹¹

On December 28, 2010, after Schultz spoke to Baldwin, he contacted Courtney.³⁹² On December 30, 2010, Courtney emailed Schultz, "[t]he attached is the last thing in my Penn State file re Sandusky. There is nothing regarding the issues we discussed."³⁹³ The attachment to the email was a 1999 letter concerning Sandusky's retirement.³⁹⁴

On Monday, January 3, 2011, Baldwin met with Paterno.³⁹⁵ Baldwin's notes indicate that Paterno recalled McQueary coming to see him on a Saturday morning.³⁹⁶ According to the notes, Paterno said McQueary "[s]aw Jerry horsing around w the kid a young man in shower inappropriate behavior. Turned it over to Tim Curley. Notified Tim Curley didn't talk to Gary. No conv. since then."³⁹⁷ Baldwin told the Special Investigative Counsel that she did not investigate the Sandusky matter or look for Schultz, Paterno or Curley emails in the University system that might relate to the Grand Jury's investigation.³⁹⁸ Baldwin also met with Curley on January 3, 2011.

On January 3, 2011, a Pennsylvania State Police commander visited the University Police Department and reported that an investigation of "sexual allegations against a small child" involving Sandusky had been ongoing for the past year.³⁹⁹ The commander said they were "wrapping everything up but were also collecting any and all reports of similar situations."⁴⁰⁰ The University Police Department provided the commander with a copy of the 1998 police report.⁴⁰¹

The next day, January 4, 2011, when Baldwin learned that the State Police had received a copy of the 1998 police report,⁴⁰² she asked the University Police Department for a copy of the report.⁴⁰³ Baldwin told the Special Investigative Counsel that she reviewed the 1998 report to find out what happened and if there had been a full investigation.⁴⁰⁴

On January 9, 2011, Baldwin reached out to Courtney about the Grand Jury investigation. Courtney responded by email to Baldwin stating:

We don't have any file on the matter you and I discussed yesterday, and my recollection of events is as I stated yesterday. However, I also recall that someone (I don't think this was me, since if it was I would have written documentation of contact) contacted Children and Youth Services to advise of the situation so that they could do whatever they thought was appropriate under the circumstances, while being apprised of what PSU actions were, i.e., advising JS to no longer bring kids to PSU's football locker rooms.⁴⁰⁵

Baldwin advised the Special Investigative Counsel that, unknown to her at the time, Courtney emailed Schultz on January 10, 2011. In Courtney's email to Schultz he reported that: Baldwin "called me today to ask what I remembered about JS issue I spoke with you and Tim about circa eight years ago."⁴⁰⁶ In the email Courtney said he told her what he remembered, and added that Baldwin "did not offer why she was asking, nor did I ask her. Nor did I disclose that you and I chatted about this."⁴⁰⁷

On January 11, 2011, Baldwin provided an update to Spanier on the Grand Jury investigation.⁴⁰⁸ Baldwin told the Special Investigative Counsel that Spanier was surprised to hear of the subpoenas but was not excited over the matter.⁴⁰⁹ Spanier told her that things would be fine.⁴¹⁰

The next day, on January 12, 2011, Schultz, Paterno and Curley appeared before the Grand Jury. Baldwin told the Special Investigative Counsel that she went to the Grand Jury appearances as the attorney for Penn State,⁴¹¹ and that she told both Curley and Schultz that she represented the University and that they could hire their own counsel, if they wished.⁴¹²

A. Law Enforcement Interviews of University Personnel

On February 15, 2011, Baldwin met with several assistant football coaches to interview them about Sandusky, his interactions with young boys, rumors about him in the community and his decision to retire from Penn State.⁴¹³ The next day, investigators from the Pennsylvania Attorney General's Office and the Pennsylvania State Police interviewed approximately eight coaches, with Baldwin present.⁴¹⁴ Between interviews, the investigators told Baldwin that they also wanted to interview Spanier so she scheduled that interview for them.⁴¹⁵

On March 22, 2011, Spanier met with the Attorney General's investigators to answer questions about Sandusky. Baldwin attended the meeting and, according to her notes, the investigators asked Spanier about the 2002⁴¹⁶ incident and how Penn State handled the incident, why Sandusky retired in 1999, and the relationship between Penn State and the Second Mile.⁴¹⁷ On March 24, 2011, the Attorney General's Office issued a subpoena for Spanier to testify before the Grand Jury.⁴¹⁸

II. *Patriot-News* Article Reveals Sandusky Investigation – March 2011

On March 28, 2011, Curley received an email from a Harrisburg *Patriot-News* reporter asking about his testimony before the Grand Jury.⁴¹⁹ The reporter told Curley that the paper would be running a story soon about the investigation of Sandusky. Curley advised Baldwin, the Athletic Department and Penn State's communications staffs about the call and impending article.⁴²⁰ On March 28, 2011, another *Patriot-News* reporter approached Spanier at a budget hearing in Harrisburg to obtain his comments about the story.⁴²¹ On March 30, 2011, Spanier received word that the *Patriot-News* would be running a story about a "former football coach" the next day.⁴²²

On March 31, 2011, the *Patriot-News* ran an article under the headline, "Jerry Sandusky, Former Penn State Football Staffer, Subject of Grand Jury Investigation."⁴²³ The article reported that Sandusky was "the subject of a grand jury investigation into allegations that he indecently assaulted a teenage boy."⁴²⁴ The article referred to a 2009 incident with a boy at Central Mountain High School and the 1998 incident at Penn State involving Sandusky showering with a 12-year-old-boy in the football building on Penn State's campus.⁴²⁵ The article also noted that Schultz, Paterno and Curley were among those appearing before the Grand Jury.⁴²⁶

The day after the article was published, a Trustee emailed Spanier, asking "[w]hat is the story on allegations against Jerry Sandusky that required testimony by Joe Paterno and Tim Curley, and I heard, also Garry [sic] Schultz? Is this something the Board should know a [sic] be briefed on or what?"⁴²⁷ Spanier replied by email to the Trustee and copied Baldwin and then Board Chairman Steve Garban. He stated, "I believe that Grand Jury matters are by law secret, and I'm not sure what one is permitted to say, if anything." Spanier told the Trustee he would check with Baldwin on whether it was "permissible" to brief the Board.⁴²⁸ The next day, Baldwin emailed

Spanier to explain that those who “testify before the Grand Jury are not held to secrecy and can disclose if they so desire.”⁴²⁹ Baldwin offered to put together something for Spanier to provide to the Board.

On April 13, 2011, the Trustee emailed Spanier again and asked, “[w]hat is the outcome on this? I frankly think that, despite grand jury secrecy, when high ranking people at the university are appearing before a grand jury, the university should communicate something about this to its Board of Trustees.”⁴³⁰

Spanier replied to the Trustee on the same day that he had recently learned “through media reports that the Grand Jury has been investigating for two years and has not yet brought charges. They continue their investigation. I’m not sure it is entirely our place to speak about this when we are only on the periphery of this.”⁴³¹ Spanier went on to say that Baldwin would report on the issue at the next Board meeting.⁴³² Spanier separately emailed Baldwin, noting, “[the Trustee] desires near total transparency. He will be uncomfortable and feel put off until he gets a report.”⁴³³

Spanier told the Special Investigative Counsel in July 2012 that the Grand Jury investigation “struck me as a Second Mile issue. This did not strike me as a Penn State issue.”⁴³⁴

The same day that Spanier responded to the Trustee, he testified before the Grand Jury.⁴³⁵ Baldwin joined Spanier for his appearance, explaining to the court and Spanier that she represented the University.

In response to the Trustee’s emails concerning the Grand Jury investigation, Garban asked for a meeting with Baldwin and Spanier.⁴³⁶ Garban told the Special Investigative Counsel that he met with Baldwin and Spanier in April 2011.^{kk} Baldwin recalled that Spanier provided Garban with an update on the investigation and ⁴³⁷ that Spanier downplayed the Sandusky investigation.⁴³⁸ Garban recalled Spanier saying “it was the third or fourth Grand Jury and nothing would come of it.”⁴³⁹ Baldwin told the Special Investigative Counsel that she believed that Spanier, as a member of the Board, and Garban, as its then Chair, would have relayed this information to the other Board members.⁴⁴⁰

^{kk} Emails confirm the meeting was April 17, 2011.

Beyond one Trustee's request that Spanier brief the Board on the Grand Jury investigation of Sandusky, the March 31, 2011 *Patriot News* article went virtually unnoticed by the Board. The article was not disseminated to the full Board and many Board members did not read the article. The Board members who were aware of the article should have inquired further about Sandusky and the possible risks of litigation or public relations issues, and, most importantly, whether the University has effective policies in place to protect children on its campuses.

III. Board of Trustees Meeting – May 2011

In his interview with the Special Investigative Counsel, Spanier said that at a dinner the evening before the May 12, 2011 Board meeting, he told four Board members about the status of the Sandusky investigation.⁴⁴¹ Spanier stated he told these Trustees at the dinner that he had testified before the Grand Jury.⁴⁴² The Special Investigative Counsel re-interviewed the four Trustees present for the dinner. None of the Trustees recalled Spanier mentioning anything at the dinner about the Sandusky Grand Jury or his testimony.⁴⁴³

In her interview with the Special Investigative Counsel, Baldwin stated that she provided a briefing on the Sandusky investigation to the Board at its regular meeting on May 12, 2011. Fifty minutes were set aside for the briefing but Baldwin recalled that her report lasted 20 minutes before Spanier directed her to leave. Several Trustees described the briefing as a three to five minute, "oh by the way" presentation, at the end of the day.⁴⁴⁴

In an affidavit Baldwin prepared for the Board in January 2012 to provide her recollection of the May 2011 briefing, she stated that she told the Board that the University did not appear to be a focus of the investigation.⁴⁴⁵ Furthermore, she affirmed that she had also explained to the Board: (i) what a grand jury is; (ii) how it works; (iii) the fact that the grand jury process is confidential - although those who testify are free to divulge their testimony; (iv) that Schultz, Paterno, and Curley "had been interviewed" in January 2011 and Spanier "had been interviewed" in April 2011;⁴⁴⁶ and (v) that those who testified had been asked about a 2002 incident in the football building.¹¹ She also stated that she told the Board that the University Police Department,

¹¹Exhibit 6-A (Baldwin affidavit).

the District Attorney's Office, and Children and Youth Services had investigated an incident involving Sandusky in 1998 and that no charges had been filed.⁴⁴⁷

Baldwin told the Special Investigative Counsel that her affidavit had not been intended to list everything she told the Board.⁴⁴⁸ She said that she also explained to the Board that a grand jury could return a "presentment" that, even if not alleging a crime, can nonetheless contain negative information about an institution.⁴⁴⁹

Board members had differing recollections of Baldwin's May 2011 report. Several Trustees had the impression that the Sandusky investigation involved issues at the Second Mile and did not involve Penn State.⁴⁵⁰ Several Trustees recalled hearing that this was the third or fourth time a grand jury had investigated Sandusky and took that as an indication that criminal charges were not likely.⁴⁵¹ Some Trustees understood that some Penn State senior administrators had testified,⁴⁵² while others did not.⁴⁵³ A common perception was that this was not an "important" issue for the University and the investigation was not a cause for concern.⁴⁵⁴

Some Trustees faulted Spanier and Baldwin for not informing the Board about the Sandusky investigation in a more useful manner.⁴⁵⁵ The common complaint was that Spanier's and Baldwin's May 2011 report to the Board did not address the core question of why four senior Penn State officials needed to appear before the Grand Jury if the investigation did not "involve" Penn State. Their report also did not indicate that the Attorney General's investigators had spent two days interviewing the University's football coaching staff;⁴⁵⁶ that the investigators had subpoenaed all emails dating back to 1997 for Spanier, Schultz, Paterno and Curley;⁴⁵⁷ that investigators subpoenaed the names of all Penn State Physical Plant employees from 1990;⁴⁵⁸ and that more football program staff^{nm} were to testify before the Grand Jury.⁴⁵⁹

One Trustee said that Spanier may have been "left to float too freely by himself"⁴⁶⁰ because he felt he could fix anything.⁴⁶¹ Other Trustees expressed that Spanier "filtered"⁴⁶² issues in the best light of a desired outcome;⁴⁶³ showed Trustees "rainbows" but not "rusty nails;"⁴⁶⁴ and "scripted" or "baked" issues leaving no room to debate issues or confront Spanier even when disagreement arose.⁴⁶⁵ One Trustee

^{nm} On May 12, 2011, the same day as the Board meeting, Baldwin interviewed a football equipment manager who had been approached that day by Attorney General investigators. According to Baldwin's notes, the manager advised her that McQueary had told him "that [McQueary] saw something that changed his life. [McQueary] had to tell Coach Paterno." Control Number 09325388.

called Spanier's "managing of messages" and the Board's reactive nature a "recipe for disaster."⁴⁶⁶

Trustees generally recalled that members asked Baldwin or Spanier few questions about the investigation.⁴⁶⁷ The Trustees did not discuss whether the University should conduct an internal investigation to understand the facts and any potential liability issues, engage experienced criminal counsel, or prepare for the possibility that the Grand Jury investigation might result in some criticism of the University or its staff. One Trustee recalled that the Board did not ask for any investigation into the Sandusky issues because, from the way it was presented, the issue did not seem like a matter of concern.⁴⁶⁸ In their report to the Board, Spanier and Baldwin significantly downplayed the nature of the Sandusky investigation and the potential damage it could cause the University. Given the information that was presented to them, the Board members did not reasonably inquire if the University had taken any measures to limit Sandusky's access to its facilities.

IV. University Response to the Presentment and Criminal Charges Against Sandusky, Schultz and Curley - October and November 2011

A. Baldwin, Spanier and Garban Learn of Presentment and Criminal Charges – October and November 2011

In late October 2011, Baldwin learned from an employee at the Attorney General's Office that "Curley and Schultz will be in our presentment," meaning that Curley and Schultz, two prominent Penn State officials, were about to be indicted.⁴⁶⁹ Baldwin advised the Special Investigative Counsel that she understood the charges concerned the "duty to protect" and "reporting abuse." There was no mention of perjury.⁴⁷⁰ On October 27, 2011, at 3:43 p.m., Baldwin sent Curley an urgent message to meet her and Spanier that evening.⁴⁷¹ They met at 8:00 p.m. and Baldwin told Curley and Schultz that they may be indicted by the Grand Jury.⁴⁷²

On October 28, 2011, Spanier and Baldwin had a series of meetings concerning the charges, including one with the Penn State Communications Office staff.⁴⁷³ A staff member told the Special Investigative Counsel that during that meeting, Spanier said that he knew Curley and Schultz had done nothing wrong.⁴⁷⁴ By 1:00 p.m. on October

28, 2011, Spanier had distributed a draft statement to Garban and the Communications staff that read:

The allegations about a former coach are troubling, and it is appropriate that they be investigated thoroughly. Protecting children requires the utmost vigilance. With regard to the other indictments, I wish to say that Tim Curley and Gary Schultz have my unconditional support. I have known and worked daily with Tim and Gary for more than 16 years. I have complete confidence in how they have handled the allegations about a former University employee. Tim Curley and Gary Schultz operate at the highest levels of honesty, integrity and compassion. I am confident the record will show that these charges are groundless and that they conducted themselves professionally and appropriately.⁴⁷⁵

Spanier requested input from Baldwin and the Communications staff on the draft.⁴⁷⁶ One of the communications staff members stated to the Special Investigative Counsel that the Communications staff member thought the phrase “unconditional support” was “horrendous” but others at the meeting were “sheep” and went along with Spanier’s idea.⁴⁷⁷ This officer remembered that Spanier said he should back up Curley and Schultz because he had asked them to take care of something, they did it, and something bad happened, and that he should not abandon them merely because things did not turn out well.⁴⁷⁸

In his interview with the Special Investigative Counsel, Spanier stated that the media did not focus on the part of his statement that was empathetic to the victims. When asked if the six words “[p]rotecting children requires the utmost vigilance” sufficiently reflected the harm suffered by children who had been abused on the Penn State campus, Spanier said it was not his “place to jump to any conclusions or declare someone guilty before there was any due process.”⁴⁷⁹ Spanier said he had not made an effort to investigate the facts concerning Sandusky, and did not want to appear to interfere with the police work.⁴⁸⁰

Spanier and Baldwin met with Garban at noon on October 28, 2011.⁴⁸¹ Baldwin told the Special Investigative Counsel that Garban was the “conduit” to the Board, and Baldwin intended that he pass the information about the charges to the Board members.⁴⁸² Garban had a different understanding, however, telling the Special

Investigative Counsel that, in his meeting with Spanier and Baldwin, Spanier said that he still thought nothing would come of the investigation because other grand juries had reviewed the matter without bringing charges.⁴⁸³

Over the weekend of October 28-30, 2011, Garban had conversations with Trustees John Surma and Jim Broadhurst and told them what he learned from Spanier and Baldwin.⁴⁸⁴ Garban also spoke again with Spanier who told him Baldwin was going to try to convince the Attorney General's Office that they did not have a case.⁴⁸⁵ Garban told the Special Investigative Counsel that he was "astounded" to see Sandusky in the Nittany Lion Club at the football game on October 29, 2011, given what he had learned.⁴⁸⁶ Neither Garban, Spanier, Broadhurst, Surma nor Baldwin spoke to the remaining Board members about the impending charges until after the charges were filed against Sandusky, Curley and Schultz on November 4, 2011.

Spanier told the Special Investigative Counsel that Baldwin originally had been told that charges would not be brought until November 12, 2011.⁴⁸⁷ Spanier said he planned to "scrap" the Board agenda for November 10 and devote the meeting to discussing Sandusky.⁴⁸⁸ Spanier said that he took a senior Board staff person into his confidence on November 2 and told that person "we know charges are being brought. We will scrap the Trustee seminar agenda, and devote the day to this matter. It will be good timing, we will get ready."⁴⁸⁹ After Spanier's interview, the Special Investigative Counsel re-interviewed the senior Board staff person. The staff person did not recall any conversation with Spanier about scrapping the Board agenda, or about charges that would be filed against Sandusky.⁴⁹⁰

On Friday, November 4, 2011, at 2:26 p.m., newspapers reported that Sandusky had been indicted on charges of indecent assault of minors, among others.⁴⁹¹ The initial stories, however, did not mention charges against Schultz or Curley.⁴⁹² The presentment, which was attached to the charging documents, had been inadvertently released on November 4, 2011. On Saturday, November 5, 2011, law enforcement officers arrested Sandusky on the criminal charges, and released a press statement detailing the allegations against Sandusky, Curley, Schultz and others at Penn State.⁴⁹³

In his interview with the Special Investigative Counsel, Spanier said that it was his idea to bring the Board together when the presentment was released so the Board could be properly informed.

On November 5, 2011, at 1:41 p.m., a Trustee emailed Spanier and Garban, asking when the Board would be briefed.⁴⁹⁴ Ten minutes later, Baldwin advised Spanier that “[i]t may be best to tell [the Trustee] that you are briefing the chair and the Board will be briefed next week.”⁴⁹⁵ At 2:09 p.m., Spanier wrote to Baldwin, “Steve already said we should alert the Board, but at this point it will be nothing more than what we are saying publicly.” Shortly thereafter on that day, Spanier released the statement expressing his “unconditional support” for Curley and Schultz.⁴⁹⁶ Spanier remained “confident the record will show that these charges are groundless and that they conducted themselves professionally and appropriately.”⁴⁹⁷

B. Board of Trustees Conference Call - November 5, 2011

Senior administration staff suggested to Spanier that he brief the Board,⁴⁹⁸ and schedule a conference call for 5:00 p.m. on November 5, 2011. According to the Board’s notes, Spanier began the call by stating that the charges against Curley and Schultz were erroneous, unfair and unfortunate, and he expected “exoneration.”⁴⁹⁹ Some Trustees questioned the quality of the University’s investigation of the 2002 incident, but Spanier denied that the charges had anything to do with the University’s investigative process.⁵⁰⁰ One Trustee suggested an “independent investigation” by outside counsel and retention of a crisis management firm.⁵⁰¹ Another Trustee mentioned the employment status of Curley and Schultz.⁵⁰² A meeting was called for the next day in which crisis management and legal advisors would make presentations to the Board on how to approach the crisis.⁵⁰³

Spanier and Baldwin opposed an independent investigation of the Sandusky issue. Baldwin emailed Spanier that, “[i]f we do this, we will never get rid of this group in some shape or form. The Board will then think that they should have such a group.”⁵⁰⁴ Spanier agreed.⁵⁰⁵

In meetings with the Special Investigative Counsel, some Trustees recalled that Spanier wanted to wait for the regular Board meeting later in the week to discuss the matter.⁵⁰⁶ A Trustee recalled that Spanier said he managed crises every day at Penn State and he could handle this issue.⁵⁰⁷

C. Board of Trustees Meeting - November 6, 2011

Garban called another Board meeting for Sunday, November 6, 2011, at 7:00 p.m. According to the Board notes, several members advocated for the formation of a task force to work with outside counsel on crisis management.⁵⁰⁸ Other members questioned whether the Board had received the relevant information about the investigation.⁵⁰⁹ One Board member suggested that Curley, Schultz and Spanier should be suspended from their duties, but Garban said Spanier should not be suspended.⁵¹⁰ Some Board members also observed that Spanier's public statements did not sufficiently address harm to the victims of Sandusky's crimes.⁵¹¹

Later in the evening of November 6, 2011, the University issued another press release stating that Curley asked to be placed on administrative leave and Schultz would re-retire so that both men could devote time to defending themselves.⁵¹² The release also announced that a "task force" would review the University's policies and procedures on the protection of children.⁵¹³ The press release on November 7, 2011 reflected that Curley and Schultz had requested and been granted administrative leave. Some Board members were upset with the wording of the release, as they recalled that it was their decision to place Curley and Schultz on administrative leave.⁵¹⁴

In meetings with the Special Investigative Counsel, several Trustees described the second press release as a "turning point" for Spanier.⁵¹⁵ Changes that Spanier made to the statement after the Board had agreed on its points angered several members.⁵¹⁶ This led some Trustees to grow concerned with Spanier's ability to lead.⁵¹⁷ In an interview with the Special Investigative Counsel, Spanier denied making anything other than minor grammatical changes to the Board's statement.⁵¹⁸

Some Trustees thought Garban's history of being previously employed at Penn State, where as SVP-FB he reported directly to Spanier, hampered his ability to lead the Board.⁵¹⁹ Garban told the Trustees that he had not advised them about the presentment when he learned of it because he was not sure it would come to fruition.⁵²⁰

On November 7, 2011, a Board member questioned whether the prior day's statement reflected the "sense of the Board," and urged the Board to have another meeting.⁵²¹

D. Board of Trustees Conference Call - November 8, 2011

On November 8, 2011, the Board met again by conference call. Garban announced that he would turn the position of Board Chair over to Vice Chair John Surma. Surma then told the Board that he intended that they discuss forming a special investigative group of the Board, and deliberate on Paterno's and Spanier's leadership.⁵²²

The Board established the Special Investigations Task Force ("Task Force"). The Board also discussed University leadership,⁵²³ but the members quickly decided that this type of discussion should be held in person.⁵²⁴ Other members thought that no personnel action should occur until the investigation was completed.⁵²⁵ The Board reached a consensus to delay decisions until the next day, and to issue a more thorough press release to express the Board's concerns.⁵²⁶

During the evening of November 8, 2011, the Board issued its own statement, expressing its outrage over "the horrifying details" of the Sandusky case.⁵²⁷ The Board stated that it would appoint a special group to examine the circumstances of the charges, including "what failures occurred and who is responsible and what measures are necessary to ensure that this never happens at our University again and that those responsible are held fully accountable."⁵²⁸ The Board's statement concluded: "We are committed to restoring public trust in the university."⁵²⁹

E. Board of Trustees Meeting - November 9, 2011

The Board met again in person on the evening of November 9, 2011. Surma chaired the meeting.⁵³⁰ The Board discussed Spanier first, and the consensus was that he would be terminated without cause.⁵³¹ Executive Vice President and Provost Rodney Erickson was named interim President.⁵³²

In interviews with the Special Investigative Counsel, all of the Trustees who participated in the deliberations regarding the personnel actions said the decision concerning Spanier was their clear consensus.⁵³³ The decision to terminate Paterno was more difficult because Board members had different viewpoints about his role. Nevertheless, one Board member stated that each of the Trustees reached the same decision in a different way.⁵³⁴

Some Board members felt that Paterno could have done more after learning about Sandusky's activities.⁵³⁵ Some Board members recall former athletes stating that

Paterno had tremendous control over what happened in his program.⁵³⁶ Several Board members were disturbed by Paterno's attempt to usurp the Board's role by discussing his retirement plans for the end of the season and holding his own press conference.⁵³⁷ Others said Paterno could not continue to function as coach in the current environment and had become a distraction.⁵³⁸

The Trustees have differing recollections of Governor Thomas Corbett's role in the Board discussion. Some Trustees recall people asking if the Governor was still on the phone line, as he was quiet during parts of the call.⁵³⁹ Some Trustees, including Corbett himself, said Corbett did not assert himself more than other Trustees. At least one said Surma gave Corbett the opportunity to do so.⁵⁴⁰ Some Trustees recall Corbett saying something right before the vote on Paterno along the lines of "I hope you'll remember the children."⁵⁴¹ Others described him as being vocal and playing a leadership role in the meeting.⁵⁴² One Trustee recalled Corbett saying that the Board needed to take decisive action or there might be a loss of support for Penn State. Corbett told the Special Investigative Counsel that he did not attend the May briefing on Sandusky and his representatives did not report about the meeting to him. Corbett further told the Special Investigative Counsel that, if he had attended the briefing, he would have asked more questions or prompted other Trustees to ask further questions.

Some Trustees felt that the discussion on Paterno's future with the football program was rushed and not sufficient for the situation.⁵⁴³ One Trustee said the Board was seeking to act quickly when it instead should have acted in a more deliberate way, with all of the facts.⁵⁴⁴ The same Trustee feared "getting in front of the facts."⁵⁴⁵ Another Trustee argued for placing Paterno on administrative leave and for balancing the tremendous good Paterno did for Penn State against the "worst mistake of his life."⁵⁴⁶ A Trustee commented that it was a sad, but necessary, action the Board had to take.⁵⁴⁷ The Board did not explore the range of personnel actions available to them regarding Paterno's role in the football program before the Board concluded that Paterno should be removed as Head Football Coach."⁵⁴⁸

The Board did not have a plan in place to notify Paterno of its decision. None of the Board members seem to have considered alternative times or locations for meeting with Paterno and no one appears to have communicated with him in advance of the Board meeting that evening. In hindsight, some Trustees felt that they should have

found a way to go to Paterno's home to notify him in person but at the time they did not feel it was feasible.

Some Trustees were concerned that the crowds and media around Paterno's home precluded having Paterno come to their meeting place or having Trustees go to his home so that they could tell him of its decision. Neither University officials nor the Board contacted local law enforcement about the possible public reaction to its decision, despite the growing crowds on campus and in State College.⁵⁴⁹

Some Trustees also were concerned that the media would report their decision about Paterno before he could be notified. Therefore, in order to inform Paterno of its decision to remove him from his position, the Board directed a staff member from the Athletic Department to deliver a note to Paterno at his home. The note directed Paterno to call a phone number that belonged to Surma. When Paterno called, Surma advised him that the Board was removing him from his position as Head Football Coach. Paterno ended the call without speaking further to Surma. Shortly thereafter, Paterno's wife called Surma to complain about the Board's treatment of her husband. The consequences of this awkward termination resulted in an outpouring of criticism against the Trustees by students, alumni and other Penn State supporters. Students demonstrated on the campus in protest and the media coverage was extraordinary and generally unfavorable.

Most of the Trustees agreed that the Board did not properly handle the termination of Paterno.⁵⁵⁰ Some Trustees agreed that the Board was ill-prepared to address the situation.⁵⁵¹

CHAPTER 6

BOARD OF TRUSTEES

KEY FINDINGS

- The charter, by-laws and standing orders of the Penn State Board state that the Board “shall receive and consider thorough and forthright reports on the affairs of the University by the President or those designated by the President. It has a continuing obligation to require information or answers on any University matter with which it is concerned.”
- In 1998 and 2001, the Board of Trustees failed to exercise its oversight and reasonable inquiry responsibilities. In that time, the Board did not have regular reporting procedures or committee structures in place to ensure disclosure to the Board of major risks to the University.
- Because the Board did not demand regular reporting of such risks, the President and senior University officials in this period did not bring major risks facing the University to the Board.
- The Board did not create a ‘Tone at the Top’ environment wherein Sandusky and other senior University officials believed they were accountable to it.
- Spanier and senior University officials did not make thorough and forthright reports to the Board, which itself equally failed in its continuing obligation to require information or answers on any University matter with which it is concerned.
- Some Trustees reported that their meetings felt “scripted” or that they were “rubber stamping” major decisions already made by Spanier and a smaller group of Trustees.
- After the Sandusky investigation became publicly known in late March 2011, the Board did not independently assess this information or further inquire, up to and including the May 12, 2011 Board meeting.
- After the May 2011 Board briefing on the Sandusky investigation, the Board did not reasonably inquire about this serious matter at Board meetings in July or September 2011.

I. Board Structure and Responsibilities

Established by Charter, the Board of Trustees ("Board" or "Trustees") of The Pennsylvania State University ("Penn State" or "University") is the corporate body that has complete responsibility for the government and welfare of the University and all the interests pertaining thereto, including students, faculty, staff and alumni.⁵⁵²

The Board is composed of 32 members. Five are ex officio members: the University President; Governor of Pennsylvania; and secretaries of the departments of Agriculture, Education, and Conservation and Natural Resources. The Governor appoints six Trustees, the alumni elect nine Trustees, the Commonwealth's agricultural societies elect six Trustees, and the Board elects six members from business and industry groups. Elected terms and appointments begin on July 1 and Trustees serve three-year terms and can be reappointed. The six gubernatorial appointments are staggered with two appointed each year for three-year terms or "until their successors are appointed and confirmed." These appointments are subject to confirmation by the State Senate.⁵⁵³ On May 16, 2003, the Board adopted term limits of 15 years applicable to alumni, agricultural, and business and industry Trustees.⁵⁵⁴ Recently, President Erickson invited five additional representatives of several University constituencies, including alumni, faculty, staff and students, to participate in the University's Board committees and meetings, effective July 2012.

The Board also can confer "Trustee Emeritus" status on any living former member of the Board who served for 12 or more years with distinction. Trustees who served 20 years as of May 13, 2011, are entitled to automatic Emeritus status. Referred to as "Emeritus Trustees" or "Trustees Emeriti," these individuals are entitled to all Trustee privileges except those of making motions, voting and holding office.⁵⁵⁵ There are currently 16 Emeritus Trustees.⁵⁵⁶

The Board operates under a Charter, Corporate By-Laws and Standing Orders. In the exercise of its responsibilities, the Board is guided by the following policies:

1. The authority for day-to-day management and control of the University, and the establishment of policies and procedures for the educational program and other operations of the University shall be delegated to the President, and by him/her, either by delegation to, or consultation with, the faculty and the student body in accordance with a general directive of

the Board. This delegation of authority requires that the Board rely on the judgment and decisions of those who operate under its authority. However, this reliance of the Board must be based upon its continuing awareness of the operations of the University. *Therefore, the Board shall receive and consider thorough and forthright reports on the affairs of the University by the President or those designated by the President. It has a continuing obligation to require information or answers on any University matter with which it is concerned.* Finally, upon request the Board shall advise the President on any University matter of concern to him/her. [emphasis added].

2. The Board of Trustees shall carry out certain responsibilities as a Board, without delegation. These responsibilities are:
 - a. The selection of the President of the University;
 - b. The determination of the major goals of the University and the approval of the policies and procedures for implementation of such goals;
 - c. The review and approval of the operating and capital budget of the University;
 - d. Such other responsibilities as law, governmental directives, or custom require the Board to act upon.
3. The Board of Trustees shall inform the citizens of the Commonwealth of Pennsylvania of the University's performance of its role in the education of the youth of Pennsylvania.
4. The Board of Trustees shall assist the President in the development of effective relationships between the University and the various agencies of the Commonwealth of Pennsylvania and the United States of America which provide to the University assistance and direction.⁵⁵⁷

The Board provides oversight to the University through its standing committees. As of 1998 the Board had three standing committees: (1) Committee on Educational Policy; (2) Committee on Finance and Physical Plant; and (3) Committee on Campus

Environment.⁵⁵⁸ The Board established by Standing Order a Subcommittee for Audit on March 19, 2004, and a Subcommittee for Finance on September 19, 2008.⁵⁵⁹

At its meeting of March 16, 2012, the Board replaced the three standing committees with five new committees: (1) Committee on Academic Affairs and Student Life; (2) Committee on Finance, Business and Capital Planning; (3) Committee on Governance and Long-Range Planning; (4) Committee on Audit, Risk, Legal and Compliance; and (5) Committee on Outreach, Development and Community Relations. Each committee oversees its designated area(s) of responsibility and makes recommendations to the full Board for actions that enhance the functionality of the University.ⁿⁿ The Board meets six times each year.⁵⁶⁰

II. The Board's Duty of Oversight and Reasonable Inquiry

An effective board exercises objective and independent judgment while overseeing systems to ensure that the institution operates according to the law and its governing framework. Under Pennsylvania law concerning non-profit boards, board members have not only a duty of loyalty, but also a duty of care, including "reasonable inquiry, skill and diligence, as a person of ordinary prudence would use under similar circumstances."⁵⁶¹ Indeed, the standing orders of the Penn State Board reflect this duty of inquiry, directing that the Board "shall receive and consider thorough and forthright reports on the affairs of the University by the President or those designates by the President. It has a continuing obligation to require information or answers on any University matter with which it is concerned."⁵⁶²

A board can breach its duty when it "utterly fails to implement any reporting or information system or controls" or having implemented such system or controls "consciously fails to monitor or oversee its operations thus disabling themselves from being informed of risks or problems requiring their attention."⁵⁶³ The board breaches its duty not because a mistake occurs, but because the board fails to provide reasonable oversight in a "sustained or systematic" fashion.⁵⁶⁴

ⁿⁿDuring the course of this investigation, the Special Investigative Counsel interviewed all current members of the Board, the majority of emeriti members and several former members. The Trustee interviews yielded a number of pertinent recommendations that are included in Chapter 10 of this report.

A. The Board's Failure of Oversight and Reasonable Inquiry in 1998 and 2001

In 1998 and 2001, the Penn State Board failed to exercise its oversight functions. In that time, the Board did not have regular reporting procedures or committee structures in place to ensure disclosure to the Board of major risks. Because the Board did not demand regular reporting of these risks, Spanier and other senior University officials in this period did not bring up the Sandusky investigations. For example, the Board met in May 1998 and March 2001, but was not advised by Spanier regarding the Sandusky incidents. While Spanier failed to disclose these facts, the Board has a continuing obligation to require information about such an important matter. Similarly, in September 2001, the Board approved a favorable land deal to Sandusky's Second Mile, just six months after Sandusky was investigated for assaulting a young boy in the Lasch Building showers. The Board should have elicited such important information from senior University officials before the sale.

Some Trustees reported that their meetings felt "scripted" or that they were "rubber stamping" major decisions already made by Spanier and a smaller group of Trustees.⁵⁶⁵ Sometimes Trustees learned of the President's decisions in public meetings where there were no questions or discussions.⁵⁶⁶

B. The Board's Failure of Reasonable Inquiry in 2011

In 2011, the Board failed to perform its duty of inquiry, especially when it was on notice that the University was facing a major risk involving the Grand Jury investigation. While Spanier and Baldwin's May 2011 briefing to the Board downplayed the nature of the Grand Jury investigation of Sandusky, the Board members did not independently assess the information or demand detailed reporting from Spanier and Baldwin on this serious matter.⁵⁶⁷ For example, Spanier and Baldwin indicated that the investigation did not involve the University, yet they did not explain why the Grand Jury called four senior Penn State officials to testify.⁵⁶⁸ The Board did not inquire about the details of the Attorney General's investigation, including the request for subpoenas seeking historic email information for Spanier, Schultz, Paterno and Curley. When a Board member asked for more information, Spanier complained about this member, noting to Baldwin that "[the Trustee] desires near total transparency. He will be uncomfortable and feel put off until he gets a report."⁵⁶⁹

After the May 2011 briefing, Board members did not ask for further updates on the investigation at Board meetings in July and September 2011. The Board therefore did not meet its "continuing obligation to require information or answers on any University matter with which it is concerned."⁵⁷⁰

Further, because the Board did not push Spanier and other senior officials on such an important matter, Spanier did not feel accountable for keeping the Board immediately informed on serious developments, such as advance notice that Sandusky, Schultz and Curley faced criminal charges. The Board allowed itself to be marginalized by not demanding "thorough and forthright reports on the affairs of the University."⁵⁷¹

Spanier's communications reflected his attitude toward keeping the Board informed of major developments. For example, hours after Spanier appeared before the Grand Jury, he communicated with a Trustee who asked about the status of the investigation. Spanier avoided the Trustee's question and asserted that he was "not sure it is entirely our place to speak about this when we are only on the periphery of this."⁵⁷² However, Spanier did not disclose that he had just been before the Grand Jury. Within a few hours of the criminal charges becoming public, staff members advised Spanier that the Board needed to be updated. Spanier said that any briefing "will be nothing more than what we said publicly."⁵⁷³ He considered advising the Board that he was "briefing the Chair and the Board will be briefed next week."⁵⁷⁴ When he finally briefed the Board, he focused on issues of alleged bias in the government's investigation, calling the charges "erroneous unfair and unfortunate."⁵⁷⁵

It was only on November 5, 2011, that members of the Board first began to press Spanier about the criminal charges. Noting that the charges presented a picture of a "sexual predator" and "perjury," one Trustee asserted that the Board had a duty of oversight and reporting.

CHAPTER 7

SANDUSKY'S POST-RETIREMENT INTERACTIONS WITH THE UNIVERSITY

KEY FINDINGS

- Despite Spanier's, Schultz's, Paterno's and Curley's knowledge of criminal investigations of Sandusky regarding child abuse as early as 1998, they failed to control Sandusky's access to the University's facilities and campuses. In fact, Sandusky was allowed to have a key for, and continued to work out in, the Lasch Building until November 2011, and had keys to other Penn State facilities.
- Even after the Attorney General's investigation became public in March 2011, former Penn State General Counsel Baldwin said that because of Sandusky's "emeritus" status and because he had yet to be convicted, his access to University facilities could not be terminated.
- Between 2002 and 2008 the University also allowed Sandusky to use the University facilities at the Altoona and Behrend (Erie) campuses to run "Jerry Sandusky" summer football camps for youth. Although University policy required a Memorandum of Agreement (MOA) with all third parties using University facilities, Sandusky, who some admired "like a god" because he was a former football coach, was allowed to operate the camps without any MOA.
- The University continued to support the Second Mile throughout this time by providing facilities and services for the organization's day camps and fund-raisers. Sandusky was a corporate officer, volunteer and public "face" of the Second Mile throughout this time.
- The University's visible support of the Second Mile provided Sandusky with numerous opportunities to bring young boys to campus and to interact with them through various camps and activities.
- After his retirement, Sandusky retained access to the Nittany Lion Club, an exclusive seating area at Beaver Stadium. Sandusky continued to be invited by senior University officials and attend Nittany Lion Club events until his November 2011 arrest.
- If University leaders had not granted Sandusky full use of Penn State's football facilities and supported his ways to "work with young people through Penn State," sexual assaults of several young boys on the Penn State campus might have been prevented.

I. Sandusky's Ongoing Contacts with The University

After his retirement from Penn State on June 30, 1999, Gerald A. Sandusky ("Sandusky") continued to maintain a prominent relationship with Penn State. Sandusky was able to use that relationship and the privileges he received in his retirement agreement to continue to bring young boys to University facilities and events.

Spanier, Schultz, Paterno and Curley were aware of the allegations against Sandusky in 1998 and 2001. Nonetheless, they put children in danger by permitting Sandusky to participate in these activities and by providing continued support to Second Mile activities.

A. Sandusky's Continued Access to University Facilities

Sandusky had access to Penn State's exclusive football fitness facilities (i.e., the Lasch Football Building and the East Area Locker Room Building ("Old Lasch")) as part of his retirement agreement,⁵⁷⁶ whereas emeritus rank provided him with access only to "University recreational facilities" (among other benefits).⁵⁷⁷ Until October 31, 2011, Penn State football staff regularly saw Sandusky working out in the Lasch Building weight room.⁵⁷⁸ Sandusky still had keys to the Lasch Building when he was arrested in November 2011.⁵⁷⁹ As recently as 2010, Sandusky had a "sub-master" key to the press box at Beaver Stadium, as well as a key for the stadium gates.⁵⁸⁰

The University also provided Sandusky with an office in Old Lasch as a term of his 1999 retirement agreement and emeritus status.⁵⁸¹ Between 2007 and 2008, Sandusky relinquished his office for other sports teams due to a space shortage.⁵⁸² Sandusky was able to use this office to store personal notes and documents.⁵⁸³ University officials were unaware that there were numerous boxes of Sandusky's documents and belongings in Old Lasch until the Attorney General's Office investigators and the Special Investigative Counsel found these documents in April 2012. The documents contained communications between Sandusky and Victim 4, as well as between Sandusky and other victims.

One of Sandusky's documents was a "contract" between Sandusky and Victim 4 that proposed various rewards, including a "possible bowl trip," for personal and school achievements.⁵⁸⁴ Victim 4 testified at Sandusky's trial in June 2012 as to the

existence of this contract. A former Second Mile counselor who worked with Sandusky at the Penn State camps recalled that Sandusky kept notes about campers during the camps. Campers were given written goals and benchmarks to achieve during the upcoming school year so the camper could return the following summer.⁵⁸⁵

B. Sandusky's Continued Access to the Nittany Lion Club at Beaver Stadium

After his retirement, Sandusky had regular access to premium season seats for Penn State home football games in the Nittany Lion Club, an exclusive seating area accessible by invitation only.⁵⁸⁶ In July 2011, for the first time, Curley deleted Sandusky's name from the annual invitation list for the 2011 football season.⁵⁸⁷ In early September 2011, Sandusky's wife called the Nittany Lion Club staff to inquire about his season tickets.⁵⁸⁸ The staff brought the issue to Curley, who reversed his previous decision and approved season tickets for Sandusky.⁵⁸⁹ On October 7 and 8, 2011, Sandusky participated in the 25th anniversary celebration of the 1986 Penn State national championship team.⁵⁹⁰ Sandusky attended six home games in the 2011 season, including the game played the week before criminal charges were filed against him.⁵⁹¹ After his arrest, Sandusky called the Nittany Lion Club and said that he would not attend the last game of the 2011 season.⁵⁹²

Several individuals advised the Special Investigative Counsel that, because of his continued attendance at the Nittany Lion Club, they were under the impression that Sandusky was cleared of the allegations in the newspaper reports and was no longer under investigation.⁵⁹³

C. Sandusky's Football Camps at University Campuses

After Sandusky retired, the University allowed him to operate summer youth football camps at University facilities through his company, Sandusky and Associates. Sandusky used two University campuses for his camps, Behrend (in Erie) and Harrisburg. The Behrend campus hosted Sandusky's football camps from 2000 to 2008⁵⁹⁴ and the Harrisburg campus hosted the Sandusky Football Camp in 2007 and 2008. Both of these campuses provided athletic and recreational facilities, food and lodging for the camps.

It was standard practice and procedure for the University to enter into a Memorandum of Agreement ("MOA")⁵⁹⁵ with all external parties that utilized

University facilities. However, the Sandusky Football Camp repeatedly was allowed access to the Behrend campus for its overnight youth football camps without an MOA. The Behrend campus did obtain an insurance certificate from Sandusky and Associates but required only “a handshake” with him to permit him to run his youth football camps each year from 2000 to 2008.⁵⁹⁶ Individuals interviewed by the Special Investigative Counsel stated that, during these years, Sandusky was treated as a celebrity and some University employees admired him “like a god.”⁵⁹⁷ He did not have to go through the usual administrative procedures because he was a former football coach at Penn State and a well-respected employee for over 30 years.⁵⁹⁸

D. Sandusky’s Continued Business Dealings with the University

The University continued to conduct business with Sandusky after his retirement. According to University accounting records, Penn State made 71 separate payments to Sandusky for travel, meals, lodging, speaking engagements, camps and other activities from January 5, 2000 through July 22, 2008.⁵⁹⁹ Some of these activities included a speech at the American Football Coaches Association meeting in 2000,⁶⁰⁰ a speech at the 2007 Penn State Leadership Conference for Student Organization leaders,⁶⁰¹ attendance at a 2000 Football Coaches Clinic held at the Behrend campus,⁶⁰² presentations at the 2002 Penn State Spring Conference⁶⁰³ and the 2002 National Association of College and University Food Services Region II Conference.⁶⁰⁴ On May 14, 2010, Curley wrote a letter of recommendation for Sandusky for the American Football Coaches Association Outstanding Achievement Award.

E. Failure to Prohibit Sandusky’s Access to University Facilities

Despite Spanier’s, Schultz’s, Paterno’s and Curley’s knowledge of criminal investigations of Sandusky regarding child abuse as early as 1998, they failed to control Sandusky’s access to the University’s facilities and campuses.

After news of the Sandusky investigation appeared in newspapers in March 2011, some members of the Athletic Department staff questioned Sandusky’s continued access to athletic facilities.⁶⁰⁵ Some members of the Athletics Department staff asked Penn State General Counsel Cynthia Baldwin if Sandusky could be restricted from the athletic facilities.^{606 607} She told them that the University could not take his keys.⁶⁰⁸

Baldwin advised the Special Investigative Counsel that because of Sandusky's emeritus status and the fact that he had not been charged with a crime, his access could not be eliminated without the University being sued.⁶⁰⁹ However, Baldwin said that she believed that either Curley or another Athletic Department staff member was going to ask Sandusky to return his keys voluntarily. Baldwin did not recall any further discussion of the topic until Sandusky was charged.⁶¹⁰ At that time, Baldwin requested a human resources supervisor in the Athletic Department to ask Sandusky's lawyer for Sandusky's keys.⁶¹¹ Before that was done, however, the University changed the locks on the building so that Sandusky would no longer have access.⁶¹²⁶¹³ The supervisor told the Special Investigative Counsel that the supervisor did not know if Sandusky ever returned his keys.

II. Sandusky's Post-Retirement Involvement In Second Mile Activities

A. Penn State and the Second Mile Organization

The Second Mile is a non-profit organization for underprivileged youth founded by Sandusky in 1977, when he was the Defensive Coordinator for the Penn State football team. Second Mile began as a group foster home for the purpose of helping troubled boys. Over the years, it evolved into a statewide, three-region charity dedicated to the welfare of children. Since its founding, Second Mile has been closely intertwined with the University. In 2011, more than three-quarters of the Second Mile Board were University alumni. University students served as interns and volunteers at Second Mile events and solicited donations from local businesses for these charitable events.

Wendell Courtney was the outside legal counsel at Penn State from 1980 until 2010. From 2008 to 2011, he was also legal counsel for the Second Mile and sat on its Board.

Sandusky acted as a corporate officer, key fundraiser, and the "face"⁶¹⁴ of the organization while continuing to coach football at the University. When he retired from the University in 1999 he became a paid consultant for the Second Mile until August 2010, when he retired⁶¹⁵ from that role. Sandusky remained a part of Second Mile through his presence and contacts even after his retirement.

B. "Collaborative Relationship" Between Penn State and Second Mile

An article posted on the University's website on July 1, 1999 announced Sandusky's retirement. In this article, Curley stated that Sandusky is "the founder of Second Mile ... [and] will continue to offer his services on a volunteer basis to the athletic department's Lifeskills and Outreach programs."⁶¹⁶ In the same announcement, Paterno praised Sandusky for his contributions to the University's football program and stated that Sandusky was "... a person of great character and integrity."⁶¹⁷ In a memorandum dated August 23, 1999 from Second Mile Chairman Robert Poole to the Second Mile Board, Poole wrote that beginning in January 2000, Sandusky would become a paid consultant for the organization and earn \$57,000 per year plus travel expenses.⁶¹⁸

In Sandusky's retirement agreement with the University, both parties agreed to "work collaboratively" in community outreach programs such as the Second Mile.⁶¹⁹ The collaboration took several forms. Penn State football staff and players helped Sandusky with annual Second Mile Golf Tournaments held at the Penn State golf course(s) from 2003 to 2011.⁶²⁰ Each year the Second Mile distributed playing cards that displayed both Penn State and Second Mile logos and contained images of Penn State football players, coaches and other student-athletes. A number of the University's football players and other student-athletes routinely volunteered for Second Mile youth programs.

In addition, in February 2009, Schultz contacted a bank on behalf of Sandusky and the Second Mile. Schultz advised the bank "the Second Mile is raising funds to support an expansion of their facilities here in State College.... Would you be agreeable to meet with Jerry Sandusky ... and me? They are really good people and this is a great cause related to kids."⁶²¹ Bank officials agreed to meet with Sandusky.⁶²²

The University's visible support of the Second Mile provided Sandusky with numerous opportunities to bring young boys to campus and to interact with them through various camps and activities.

C. Second Mile Camps on Penn State Campuses

Between 1999 and 2008, the Second Mile operated six one-week long summer youth camps at the University Park campus as well as at other non-University locations.

Sandusky operated numerous summer youth camps at various Commonwealth campuses through Second Mile and his own corporation, Sandusky and Associates.⁶²³

At the University Park campus, camp activities were held at various locations including classrooms, an outdoor swimming pool, athletic fields and football facilities.⁶²⁴ Sandusky frequently visited the boys' camps during the swimming pool activity in the afternoon, and the night sessions, which were usually held in one of the football meeting rooms.⁶²⁵

Second Mile also offered a "Friend Program," a mentorship program that matched a college volunteer with an at-risk elementary student.⁶²⁶ The Friend Program events took place in Blair, Centre, Clinton and Lancaster counties as well as in the Lehigh Valley and other locations in Pennsylvania. The Friend Program events included picnics, holiday parties, swimming and bowling.⁶²⁷ Sandusky sometimes participated in the Friend Program at the Altoona campus. When he did, Sandusky often arrived accompanied by a boy from Second Mile who was not part of the invited group.⁶²⁸ According to a Director of Programs for Second Mile, the last time he saw Sandusky participate in any Second Mile activities was in 2008.⁶²⁹

CHAPTER 8

FEDERAL AND STATE CHILD SEXUAL ABUSE REPORTING REQUIREMENTS

KEY FINDINGS

- The Clery Act requires the University to collect crime statistics relating to designated crimes, including sexual offenses, occurring on University property, make timely warnings of certain crimes that pose an ongoing threat to the community, and prepare an annual safety report and distribute it to the campus community. The Clery Act requires "Campus Security Authorities," including coaches and athletic directors, to report crimes to police. From approximately 1991 until 2007, University officials delegated Clery Act compliance to the University Police Department's Crime Prevention Officer ("CPO"). The delegated CPO was not provided any formal training before taking over the position nor does he recall receiving any Clery Act training until 2007.
- In 2007, the Director of the University Police Department transferred the Clery Act compliance responsibility from the CPO to a departmental sergeant and instituted some Clery Act training programs. The sergeant could only devote minimal time to these duties. Despite the efforts of the University Police Department, awareness and interest in Clery Act compliance throughout the University remained significantly lacking.
- As of November 2011, the University's Clery Act policy was still in draft form and had not been implemented. Many employees interviewed were unaware that they were required to report incidents and had been provided with little, if any, training. Although University administrators identified compliance with laws and regulations as one of the top 10 risks to the University in 2009, Clery Act compliance had never been audited by the University's internal auditors or received attention from any other University department, including the Office of General Counsel.
- The University Police Department instituted an electronic report format in 2007 for easier reporting, but it received only one completed form between 2007 and 2011.
- Paterno, Curley and McQueary were obligated to report the 2001 Sandusky incident to the University Police Department for inclusion in Clery Act statistics and for determining whether a timely warning should be issued to the University community. No record exists of such a report. While Schultz and Spanier were arguably not Campus Security Authorities under the Clery Act, given the leadership positions they held within the University, they should have ensured that the University was compliant with the Clery Act with regard to this incident.

- Spanier advised the Special Investigative Counsel that although the University was “big” on compliance, he was not aware that the Clery Act policy had not been implemented; that anyone had ever advised him that the University was not in compliance with the Clery Act; or whether there had ever been an internal or external audit of the University’s Clery Act compliance.

I. The Federal "Clery Act"

The Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, 20 U.S.C. § 1092(f) ("Clery Act"), is a federal law applicable to any institution ("Institution") of higher learning that participates in federal student financial aid programs. The Pennsylvania State University ("Penn State" or "University") participates in such programs and, therefore, must comply with the requirements of the Clery Act. The Clery Act is enforced by the United States Department of Education ("Department of Education"), which has the authority to issue fines for violations of the Clery Act or, in extreme cases, to end federal funding to the Institution.

The purpose of the Clery Act is to provide an Institution's students, parents and employees with information about campus safety so that members of the campus community can make informed decisions to protect themselves from crime. Among other things, the Clery Act requires Institutions to: (1) collect crime statistics relating to designated crimes ("Clery Crimes") occurring on designated locations associated with the Institution; (2) make timely warnings of certain Clery Crimes that pose an ongoing threat to the community; and, (3) prepare and distribute to the campus community an annual safety report that contains the crime statistics described above, as well as other information about the Institution's safety policies and procedures.[∞] Institutions are required to collect crime data from all "Campus Security Authorities."^{pp}

A. Campus Security Authorities ("CSAs")

The Department of Education establishes the regulations for implementing the Clery Act and broadly defines the term "Campus Security Authority" to include the following entities or individuals:

1. A campus police department or a campus security department of an Institution.
2. Any individual or individuals who have responsibility for campus security but who do not constitute a campus police department or a

[∞]20 U.S.C. § 1092(f)(1), (3), (5). The Clery Act was originally passed in 1990, and Congress amended the law several times over the years.

^{pp}20 U.S.C. § 1092(f)(1)(F); 34 C.F.R. § 668.46(a).

campus security department . . . such as an individual who is responsible for monitoring entrance into Institutional property.

3. Any individual or organization specified in an institution's statement of campus security policy as an individual or organization to which students and employees should report criminal offenses.
4. *An official of an institution who has significant responsibility for student and campus activities* including, but not limited to, student housing, student discipline, and campus judicial proceedings. [emphasis added]^{¶¶}

The Department of Education has defined the last group of CSAs to include, among others, the following individuals:

- A dean of students who oversees student housing, a student center or student extracurricular activities.
- *A director of athletics, a team coach* or a faculty advisor to a student group. [emphasis added]
- A student resident advisor or assistant or a student who monitors access to dormitories.
- A coordinator of [fraternity and sorority affairs].
- A physician in a campus health center, a counselor in a campus counseling center or a victim advocate or sexual assault response team in a campus rape crisis center if they are identified by [an Institution] as someone to whom crimes should be reported or if they have significant responsibility for student and campus activities. . . .^{¶¶}

B. Collecting Crime Statistics

The Clery Act requires Institutions to collect information about all Clery Crimes,^{ss} which include forcible and non-forcible sex offenses,^{tt} so that the information

^{¶¶}34 C.F.R. § 668.46(a).

^{tt}While the above citation is from 2011, the Department of Education has had similar guidance in place setting forth its interpretation of the definition of Campus Security Authorities since at least 1999. United States Department of Education, Handbook for Campus Safety and Security Reporting (hereinafter U.S. Dept. of Education Clery Handbook) (Washington D.C., February 2011), 75. See 64 F.R. 59060, 59063 (November 1, 1999).

^{ss}20 U.S.C. § 1092(f)(1)(F)(i).

can be used for reporting statistics to the public on an annual basis and determining whether to issue timely warnings to the campus community. Institutions are required to report Clery Crimes that are “reported to campus security authorities or local police agencies” on an annual basis.^{uu} Institutions are required to include any Clery Crime in their collected statistics, even if there is no criminal charge filed or arrest made. The Institution must collect and report the crime if the information is reported to a CSA who believes that the allegation was made to him or her “in good faith.”^{vv}

C. Issuance of Timely Warnings

The Clery Act requires an institution to issue “timely warnings” of Clery Crimes if the crime is reported to a CSA and is “considered by the Institution to represent a threat to students and employees.”^{ww} If the Institution, in the exercise of its judgment, determines that the reported crime poses an ongoing threat to students and employees, the Institution must utilize appropriate procedures to notify students and employees of the threat “in a manner that is timely and will aid in the prevention of similar crimes.”^{xx}

D. Preparation of an Annual Safety Report

The Clery Act requires Institutions to prepare and distribute an annual safety report (“ASR”) to the campus community, which includes, among other things, the annual Clery Act crime statistics described above. The Clery Act and accompanying regulations set forth in detail what the ASR must include, including where and how crimes should be reported, crime prevention policies, alcohol and drug information, and emergency response and evacuation information.^{yy}

^uClery Crimes include: murder, manslaughter, forcible and non-forcible sex offenses, robbery, aggravated assault, motor vehicle theft, arson, and certain drug and alcohol violations. 20 U.S.C. § 1092(f)(1)(F)(i).

^{uu}20 U.S.C. § 1092(f)(1)(F)(i).

^{vv}“If a campus security authority receives the crime information and believes it was provided in good faith, he or she should document it as a crime report. In ‘good faith’ means there is a reasonable basis for believing that the information is not simply rumor or hearsay. That is, there is little or no reason to doubt the validity of the information.” U.S. Dept. of Education, Clery Handbook, 73.

^{ww}34 C.F.R. § 668.46(e); see 20 U.S.C. § 1092(f)(3).

^{xx}34 C.F.R. § 668.46(e).

^{yy}20 U.S.C. § 1092(f).

II. The University's Failure To Implement the Clery Act

The Clery Act was passed in 1990 and became effective in 1991. From approximately 1991 until 2007, University officials delegated Clery Act compliance to the University Police Department's Crime Prevention Officer ("CPO").⁶³⁰ The CPO was not provided any formal training before taking over the position nor does he recall receiving any Clery Act training until 2007.⁶³¹ The CPO was supervised by others in the University Police Department, including, ultimately, then Chief Thomas Harmon.⁶³² Before 2007, the CPO was unaware that the Clery Act included the concept of CSAs or that the University had an obligation to collect crime data from student organizations, coaches, and others who have regular contact with students. To the CPO's knowledge, his supervisors were also unaware of these requirements.⁶³³ In fact, according to the CPO, he told one of his supervisors in 2007 that there was a need for additional personnel to assist with the Clery Act and "we could get hurt really bad here."⁶³⁴ The supervisor responded by saying "we really don't have the money."⁶³⁵

In 2007, the Director of the University Police Department, Stephen Shelow, transferred the Clery Act compliance responsibility from the CPO to a departmental sergeant, because he believed that compliance with the Clery Act had not been handled well in the past.⁶³⁶ However, the sergeant in the University Police Department was only able to devote minimal time to Clery Act responsibilities.

Shelow also directed a number of University police department employees to attend a training program on the Clery Act. When the trainers discussed the requirements to identify and train CSAs, the attendees realized that the University did not have a sufficient process for those tasks.⁶³⁷ In fact, Shelow does not believe that anyone at the University understood, before that conference, that the Clery Act requires that information be gathered from outside the University Police Department.⁶³⁸

Realizing that the University had serious deficiencies in the way that it gathered Clery Crime information,⁶³⁹ the University Police Department began to provide training and conduct outreach to the broader group of CSAs to gather crime data. They developed a crime report form to be completed by any CSA to whom a crime was reported and made the form available on the internet.⁶⁴⁰ The sergeant created PowerPoint materials and provided some training and information sessions for groups at University Park and some of the Commonwealth campuses.⁶⁴¹ The University Police

Department also held meetings with faculty and staff members involved in athletics, student activities and the fraternity and sorority system to increase awareness of the Clery Act and to explain the obligations of some of these individuals as CSAs.⁶⁴²

Despite the efforts of the University Police Department, awareness and interest in Clery Act compliance remained lacking throughout the University.⁶⁴³ Since making the report form available electronically in 2007, the University Police Department has received only one completed form through 2011.⁶⁴⁴ No record reflects that any Commonwealth campus used the form until 2009.⁶⁴⁵ The training sessions and outreach efforts were conducted primarily for just one or two years, were “sporadic” and were not well attended.⁶⁴⁶

The Director and the sergeant’s intention to properly follow Clery Act regulations also were stymied by their own lack of time and resources. The sergeant, in addition to her Clery Act responsibilities, also was in charge of all criminal investigations and was only able to devote minimal time to Clery Act compliance.⁶⁴⁷ The Director suggested to the then Senior Vice President Finance and Business that the University appoint a “compliance coordinator” to assist with Clery Act implementation.⁶⁴⁸ The Director was told that while the need for the position existed, the University had other priorities that needed attention first.⁶⁴⁹

In April 2009, the University’s outside legal counsel provided information to the University about Clery Act compliance.⁶⁵⁰ The Director, the sergeant and others created a “draft” Clery Act policy that would have required written notification to all CSAs of their roles and responsibilities.⁶⁵¹

As of November 2011, the University’s Clery Act policy was still in draft form and had not been implemented.⁶⁵² Many University employees interviewed were unaware of their CSA status or responsibilities under the Clery Act. In an interview with the Special Investigative Counsel, Spanier said that he was not aware that the Clery Act policy had not been implemented and remained in draft form.⁶⁵³ Spanier said no one at Penn State had ever informed him that the University was not in compliance with the Clery Act.⁶⁵⁴ Spanier also stated that there had been no internal or external audits for Clery Act compliance.⁶⁵⁵ He also said he had never briefed the Board on Clery Act compliance, nor had the Board asked him questions on this issue.⁶⁵⁶ Spanier emphasized that Penn State “was big on compliance, more than other universities.”⁶⁵⁷

III. Pennsylvania Child Sexual Abuse Reporting Requirements

The Commonwealth of Pennsylvania charged Curley and Schultz in November 2011 with violating Pennsylvania's statute, 23 Pa. C.S. § 6311, relating to the mandatory reporting of child abuse in 2002. That statute requires certain individuals who are "mandatory reporters" to report suspected child abuse to the appropriate state agency. The statute has been amended several times but the relevant provision in effect in 2001 states:

Persons who, in the course of their employment, occupation or practice of their profession, come into contact with children shall report or cause a report to be made in accordance with section 6313 (relating to reporting procedure) when they have reasonable cause to suspect, on the basis of their medical, professional or other training and experience, that a child coming before them in their professional or official capacity is an abused child. . . .

The 2012 version of the statute states:

A person who, in the course of employment, occupation or practice of a profession, comes into contact with children shall report or cause a report to be made in accordance with section 6313 (relating to reporting procedure) when the person has reasonable cause to suspect, on the basis of medical, professional or other training and experience, that a child under the care, supervision, guidance or training of that person or of an agency, institution, organization or other entity with which that person is affiliated is a victim of child abuse, including child abuse by an individual who is not a perpetrator.

Both the 2001 and 2012 versions of the law also state:

In addition to those persons and officials required to report suspected child abuse, any person may make such a report if that person has reasonable cause to suspect that a child is an abused child.^{zz}

^{zz}23 Pa. C.S. § 6312.

IV. Implications of The University's Failure to Report Allegations of Child Sexual Abuse

McQueary testified at the preliminary hearing on December 16, 2011 that he described the 2002⁶⁵⁸ incident involving Sandusky and a child in the Lasch Building to Paterno as "a young boy in the shower and it was way over the lines" and "extremely sexual in nature."⁶⁵⁹ McQueary testified at that same hearing that he later met with Curley and Schultz, and told them that he observed Sandusky in the shower with a young boy and that he "thought that some kind of intercourse was going on."⁶⁶⁰ While Curley and Schultz dispute McQueary's version of what he told them about the incident, Paterno testified to the Grand Jury on January 12, 2011 that McQueary described the incident to him as "fondling" and "a sexual nature."⁶⁶¹ The conduct described by McQueary and Paterno constitutes the Clery Crime of sexual assault.

Based on the facts uncovered by the Special Investigative Counsel, Paterno, Curley and McQueary were obligated as CSAs to report this incident to the University Police Department for inclusion in Clery Act statistics and for determining whether a timely warning should be issued to the University community. The Special Investigative Counsel found no indication that Paterno, Curley and McQueary met their responsibilities as CSAs by reporting, or ensuring that someone reported, this incident to the University Police Department. As a result, no timely warning could have been issued to the University community and the incident was not included in the University's Clery Crime statistics for 2001.⁶⁶²

McQueary, Paterno and Curley did report the incident to Schultz who, as SVP-FB, was ultimately in charge of the University Police Department. However, Schultz was not a law enforcement officer and was not the person designated to receive Clery Crime reports or to collect Clery Crime statistics for the University.^{aaa} Arguably, as the most senior leaders of the University, Schultz and Spanier should have ensured compliance with the Clery Act regarding this incident. There is no record that Spanier or Schultz reported, or designated someone to report, the incident to the University Police Department, which should have caused the incident to be included in the

^{aaa}34 C.F.R. § 668.46(b)(2) requires the University to include in its ASR a statement setting forth to whom individuals should report crimes. The University's ASR for 2001 did not contain any such statement; however, it generally states that the police department investigates crimes.

University's Clery Crime statistics and may have triggered the issuance of a timely warning to the University community.

V. Improvements in Clery Act Compliance Since November 2011

After the criminal charges against Sandusky, Curley and Schultz became known, the University assessed its implementation and compliance with the Clery Act. Notwithstanding an investigation begun on November 9, 2011 by the Department of Education concerning the same issues,^{bbb} the University moved forward by hiring a reputable national consultant to conduct this assessment. The consultant's study identified several shortcomings in the University's Clery Act procedures, including those cited above.⁶⁶³

On January 19, 2012, the Special Investigative Counsel recommended several actions relative to compliance with the Clery Act's training and reporting requirements. As described in Chapter 10 of this report, some of the recommended actions were already in place and the others have now been implemented or are underway,⁶⁶⁴ including the appointment of a full-time Clery Compliance Officer on March 26, 2012.

^{bbb}As of the date of this report, the Department of Education's investigation is ongoing.

CHAPTER 9

THE PROTECTION OF CHILDREN IN UNIVERSITY FACILITIES AND PROGRAMS

KEY FINDINGS

- The University had two main policies, *Background Check Process*, and *Protection of Minors Involved in University Sponsored Programs*, that were designed to protect children using University facilities and participating in University-supported programs. The policies for background checks on employees and volunteers were significantly inadequate.
- University staff involved with youth programs said that some persons serving as volunteer coaches and counselors “fell through the cracks” and were allowed to participate in youth programs or events without appropriate clearances.
- Factors in the inconsistent application of these policies and procedures include confusion among University staff members about what the background process entails and who is subject to the process.
- The University historically has not trained administrators of youth programs on the policies. The University also has not consistently required timely submission of background applications so as to allow sufficient time for background checks.

I. University Policies for the Protection of Non-Student Minors

The Special Investigative Counsel found that The Pennsylvania State University's ("Penn State" or "University") system for implementing the child protection policies was inadequate, but that corrective efforts are underway. While the identified deficiencies historically may not have had a direct impact on Sandusky's crimes, the issues are serious and reflect that the University has not sufficiently focused on the protection of children in the past.

University programs for youth are diverse and are held at nearly every Commonwealth campus. Youth programs range from summer academic and sport camps that can be day or overnight, to year-round activities and events in arts, theatre, science, sports, adventure, nature, and leadership. Penn State Outreach plays a prominent role in the youth programming offered by the University as does the Intercollegiate Athletics Department ("ICA").⁶⁶⁵ At University Park alone, more than 20,000 non-student minors are now attending the 2012 summer sport camps offered by the ICA.⁶⁶⁶

Two University policies – AD 39, *Minors Involved in University-Sponsored Programs or Programs Held at the University and/or Housed in University Facilities* (formerly *Programs Involving Minors Housed in University Facilities*)⁶⁶⁷ and HR 99, *Background Check Process*, are the core policies the University relies on to help protect the many thousands of children who visit its campuses each year.

All 20 Penn State campuses offer an "open-campus" environment, sharing academic and recreational facilities with the local community. The largest campus located at University Park annually invites hundreds of thousands of minors to participate in University sponsored educational, recreational, cultural and sports programs.

A. AD 39, *Minors Involved in University-Sponsored Programs or Programs held at the University and/or Housed in University Facilities*

The Penn State policy on minors involved in University-sponsored programs or youth programs held at the University or housed in University facilities was created in October 1992 and is closely aligned with the nationally accepted American Camping Association Standards.⁶⁶⁸ The policy was revised several times over the years and on

April 11, 2012, the University issued another revision. The purpose of the revision is “[t]o provide for appropriate supervision of minors who are involved in University-sponsored programs, programs held at the University and/or programs housed in University facilities at all geographic locations.”⁶⁶⁹ The policy addresses background clearances; codes of conduct; legal consents; medical information; counselor/staff member training/orientation; adult-to-participant ratios; and child abuse and mandated reporting procedures.⁶⁷⁰ Policy AD 39 also applies to any external organization that utilizes University facilities for youth activities through a Memorandum of Agreement (“MOA”).⁶⁷¹

Recent revisions made to Policy AD 39 are intended to strengthen the University’s internal controls and procedures for the protection of non-student minors on University campuses. The revised policy expands mandatory background checks for all individuals, paid or unpaid, working with minors.⁶⁷² The policy requires self-disclosure of arrests and convictions. The Office of Human Resources (“OHR”) must review and approve all background check verifications. The policy also requires mandatory annual training on child protection and reporting incidents of possible abuse to appropriate authorities.

B. HR-99, *Background Check Process*

Historically, background checks at Penn State have been conducted under two policies, Policies HR-95 and HR-96.⁶⁷³ Policy HR-96 for “other-than-academic appointments,” had been the governing policy for those participating in youth programs. The University also developed an implementation guide, the *Reference and Background Check Process Guideline*.

On July 5, 2012, the University implemented Policy HR-99, *Background Check Process*, which supersedes and consolidates the prior policies HR-95 and HR-96.⁶⁷⁴ HR-99 establishes “a process for ensuring background checks are completed for any individual who is engaged by the University in any work capacity including employees, volunteers, adjunct faculty, students, consultants, contractors or other

similar positions.”⁶⁷⁵ The revised background check process will require an additional 23,650 background checks to be conducted annually.^{ccc}

The new policy requires any individual engaged by the University in any work capacity to have a University background check and/or verification of successful completion of Pennsylvania Act 34 (background check) and Act 151 (child abuse clearance). Covered staff must provide notice to the University of any criminal charges within 72 hours of their arrest.⁶⁷⁶ The new policy also defines key terms such as “minor,” “sex and violent offender registry check,” and “sensitive/critical positions.”⁶⁷⁷

II. Implementation of the University’s Child Protection Policies

Penn State staff involved with youth programs explained to the Special Investigative Counsel that some persons serving as volunteer coaches and counselors were “slipping through the cracks”⁶⁷⁸ and were allowed to participate in youth programs or events without appropriate clearances. An Outreach employee involved in University summer sport camps stated that participation by unscreened individuals occurred “every year and all the time.”⁶⁷⁹ One senior Outreach employee described the background check process as a “sieve.”⁶⁸⁰ A report prepared by an employee in the Outreach Finance Office in May 2010 revealed that 234 of the 735 coaches paid to work at the summer sports camps in 2009 did not have a background check completed before the start of the sport camp for which they worked.⁶⁸¹

When interviewed by the Special Investigative Counsel, the director of the Sport Camps Office denied that there had ever been any issues or incidents with the summer sport camps.⁶⁸² Other interviews conducted and documents reviewed, however, pointed to several instances of unauthorized participation in summer youth camps.⁶⁸³ For example, in 2010, at least five coaches or counselors with criminal records were allowed to work at University Park summer youth programs.⁶⁸⁴ One individual who registered for a coaching position for the University Park Football I camp in 2010 indicated in his self-disclosure statement that he had no criminal history, and camp personnel “cleared” him to participate in the camp. A background check initiated a day later and completed

^{ccc}This number is Penn State’s estimate of the total number of background checks that the University would need to complete annually if it implemented a policy that required a background check for every category of employee and volunteers, attached hereto as Appendix B.

the following day revealed that the man had a criminal record for child endangerment. The man had already stayed overnight in a Penn State residence hall with minors.⁶⁸⁵

Several significant factors contributed to the inconsistent implementation of Policy AD39 and the background check process. For example, some University staff members appeared confused about the background check and child welfare policies.⁶⁸⁶ Even those familiar with the policies had different interpretations of what the background process entailed and who was subject to the process.⁶⁸⁷ One HR employee who was involved in the process said the policies are “clear as mud.”⁶⁸⁸ The University historically has not trained administrators of youth programs on the policies.⁶⁸⁹ The University also has not consistently required timely submission of applications so as to allow sufficient time for background checks.⁶⁹⁰

Application of the background check process is not uniform across the Commonwealth campuses. The process varies from the use of a web-based computer application to conduct background checks⁶⁹¹ and background checks using fingerprints,⁶⁹² to campuses that never required any background check until the Sandusky charges became public, and now use only a free internet search of questionable accuracy.⁶⁹³

In past years, problems with the background check process have been brought to the attention of Penn State administrators and those responsible for overseeing youth programs at Penn State.⁶⁹⁴ One employee who presented reports concerning shortcomings in the process felt “like [she] wasn’t being heard,” but did not pursue the matter because the employee “didn’t feel like it was [her] place to say anything.” She further stated, “I have to be careful, I had my job [to lose].”⁶⁹⁵ Another employee who prepared the May 2010 report on background checks expressed concern for the degree of risk to the University.⁶⁹⁶ When the employee voiced concerns to the director of the Sports Camps Office, the director dismissed the issue and said that other matters were more pressing.⁶⁹⁷

The Special Investigative Counsel found only one instance where a University employee was held accountable for not complying with Policy AD39 and the background check process. After multiple failures to enforce the policies in the summer of 2010, a “Memorandum of Conversation” was placed in the personnel file of a senior Sports Camp employee that states, “any future failure...might result in disciplinary

action up to and including termination.” The memorandum addressed only one of multiple incidents.⁶⁹⁸

Some Penn State staff expressed concerns with the complexity of the revised policies.⁶⁹⁹ According to one employee “[w]e all understand why [a background check process is needed] but the issue now is how are we going to do this?”⁷⁰⁰

III. Use of University Facilities by Third Parties for Youth Programs

Under the University's standard MOAs for use of University facilities by third parties,⁷⁰¹ the party contracting with the University has the duty to ensure that its counselors and staff possess the appropriate background clearances.⁷⁰² The revised Policy AD39 provides that non-University groups using University facilities "must provide to the sponsoring unit satisfactory evidence of compliance with all of the requirements of this Policy at least (30) days prior to the scheduled use of University facilities."

CHAPTER 10

RECOMMENDATIONS FOR UNIVERSITY GOVERNANCE, ADMINISTRATION, AND THE PROTECTION OF CHILDREN IN UNIVERSITY FACILITIES AND PROGRAMS

The failure of President Graham B. Spanier ("Spanier"), Senior Vice President – Finance and Business ("SVP-FB") Gary C. Schultz ("Schultz"), Head Football Coach Joseph V. Paterno ("Paterno") and Athletic Director ("AD") Timothy M. Curley ("Curley") to protect children by allowing Gerald A. Sandusky ("Sandusky") unrestricted and uncontrolled access to Pennsylvania State University ("Penn State" or "University") facilities reveals numerous individual failings, but it also reveals weaknesses of the University's culture, governance, administration, compliance policies and procedures for protecting children. It is critical for institutions and organizations that provide programs and facilities for children to institute and adhere to practices that have been found to be effective in reducing the risk of abuse. Equally important is the need for the leaders of those institutions and organizations to govern in ways that reflect the ethics and values of those entities.

The Special Investigative Counsel provided several recommendations to the Board and the University in January 2012 to address exigent needs to reform policies and procedures, particularly those involving upcoming activities, such as summer camps. Before, but especially since November 2011, the Board and University administrators have reviewed, modified, or added relevant policies, guidelines, practices and procedures relating to the protection of children and University governance. Consistent with the recommendations in this report, members of the Board, University administrators, faculty and staff have:

- Strengthened security measures and policies to safeguard minors, students and others associated with the University and its Outreach programs.
- Improved the organization and procedures of the Board to better identify, report, and address issues of significance to the University and members of its community.

- Increased compliance with The Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, 20 U.S.C. § 1092(f) ("Clery Act") training, information collection and reporting requirements.
- Encouraged prompt reporting of incidents of abuse and sexual misconduct.
- Conducted abuse-awareness training for many University areas, including its top leadership.
- Provided better oversight and governance of the University's educational, research and athletic compliance programs.

One of the most challenging tasks confronting the University community – and possibly the most important step in ensuring that the other recommended reforms are effectively sustained, and that public confidence in the University and its leadership is restored – is an open, honest, and thorough examination of the culture that underlies the failure of Penn State's most powerful leaders to respond appropriately to Sandusky's crimes.

The following recommendations are intended to assist University administrators, faculty, staff and the Board, in improving how they govern and provide protection for children in University facilities and programs. These recommendations relate to the University's administrative structure, policies and procedures and the Office of General Counsel; the responsibilities and operations of the Board; the identification of risk; compliance with federal and state statutes and reporting misconduct; the integration of the Athletic Department into the greater University community; the oversight, policies and procedures of the University's Police Department; and the management of programs for non-student minors and access to University facilities. In addition, recommendations are included that will assist the University in monitoring change and measuring future improvement.^{ddd}

^{ddd}Recommendations accompanied by an asterisk are being implemented or have been completed as of June 2012.

1.0 – Penn State Culture

The University is a major employer, landholder and investor in State College, and its administrators, staff, faculty and many of its Board members have strong ties to the local community. Certain aspects of the community culture are laudable, such as its collegiality, high standards of educational excellence and research, and respect for the environment. However, there is an over-emphasis on “The Penn State Way” as an approach to decision-making, a resistance to seeking outside perspectives, and an excessive focus on athletics that can, if not recognized, negatively impact the University’s reputation as a progressive institution.

University administration and the Board should consider taking the following actions to create a values- and ethics-centered community where everyone is engaged in placing the needs of children above the needs of adults; and to create an environment where everyone who sees or suspects child abuse will feel empowered to report the abuse.

- 1.1 Organize a Penn State-led effort to vigorously examine and understand the Penn State culture in order to: 1) reinforce the commitment of all University members to protect children; 2) create a stronger sense of accountability among the University’s leadership; 3) establish values and ethics-based decision making and adherence to the Penn State Principles as the standard for all University faculty, staff and students; 4) promote an environment of increased transparency into the management of the University; and 5) ensure a sustained integration of the Intercollegiate Athletics program into the broader Penn State community.

This effort should include the participation of representatives from the Special Faculty Committee on University Governance; Penn State’s Coalition on Intercollegiate Athletics; Penn State’s Rock Ethics Institute; students, alumni, faculty and staff; as well as representatives from peer institutions with experience in reviewing and improving institutional culture in academic settings.

1.2	Appoint a University Ethics Officer to provide advice and counsel to the President and the Board of Trustees on ethics issues and adherence to the Penn State Principles; develop and provide, in conjunction with the Rock Ethics Center, leadership and ethics training modules for all areas of the University; and coordinate ethics initiatives with the University's Chief Compliance Officer.* (See also Recommendation 4.0)
1.2.1	Establish an "Ethics Council" to assist the Ethics Officer in providing advice and counsel to the President and the Board on ethical issues and training.
1.2.2	Finalize and approve the proposed modifications to the Institutional Conflict of Interest Policy; identify the senior administrative and faculty positions to which the policy should apply, and implement the policy throughout the University.
1.3	Conduct open and inclusive searches for new employees and provide professional training for employees who undertake new responsibilities.
1.4	Continue to benchmark the University's practices and policies with other similarly situated institutions, focus on continuous improvement and make administrative, operational or personnel changes when warranted.
1.5	Communicate regularly with University students, faculty, staff, alumni and the community regarding significant University policies and issues through a variety of methods and media.
1.6	Emphasize and practice openness and transparency at all levels and within all areas of the University.

2.0 – Administration and General Counsel: Structure, Policies and Procedures

In various ways the University's administrative structure, the absence or poor enforcement of policies relating to the protection of children and employee misconduct,^{eee} and the lack of emphasis on values and ethics-based action created an

^{eee}The University has policies for investigating employee misconduct: HR-78 created in 1974, and HR-70, created in 2005; and a whistleblower policy, AD67 created in 2010.

environment in which Spanier, Schultz, Paterno and Curley were able to make decisions to avoid the consequences of bad publicity. Standard personnel practices were ignored or undermined by the lack of centralized control over the human resources functions of various departments – most particularly, the Athletic Department.

University administrators, faculty, staff and the Board should consider taking the following actions to create an atmosphere of values and ethics-based decision making.

2.1	Review organizational structures and make adjustments for greater efficiency and effectiveness.
	2.1.1 Evaluate the span of control of the University President and make adjustments as necessary to ensure that the President's duties are realistic and capable of the President's oversight and control.
	2.1.2 Evaluate the span of control and responsibility of the Senior Vice President – Finance and Business ("SVP-FB") and make adjustments as necessary to ensure that the SVP-FB's duties are realistic and capable of the SVP-FB's oversight and control.
	2.1.3 Upgrade the position of the Associate Vice President for Human Resources to a Vice President position reporting directly to the University President.
	2.1.4 Evaluate the size, composition and procedures of the President's Council and make adjustments as necessary.
2.2	Review administrative processes and procedures and make adjustments for greater efficiency and effectiveness.
	2.2.1 Separate the University's Office of Human Resources ("OHR") from the University's Finance and Business organization.
	2.2.2 Assign all human resources ("HR") policy making responsibilities to the OHR and limit the ability of individual departments and campuses to disregard the University's human resources policies and rules.

2.2.3	Centralize HR functions, where feasible, such as background checks, hiring, promotions, terminations, on-board orientation and management training, while recognizing the unique requirements of University components and Commonwealth campuses, and their need for measured autonomy.*
2.2.4	Designate the Vice President for Human Resources ("VP-HR") as the hiring authority for HR representatives throughout the University and establish a "dotted-line" reporting relationship between the HR representatives and the VP-HR similar to that used in the Finance and Audit areas.
2.2.5	Develop job descriptions for all new key leadership positions and incumbent positions if none exist.
2.2.6	Evaluate the size of the OHR staff, benchmark its human capital capacity against public universities of similar size and scope of responsibility, and modify as necessary.
2.2.7	Adopt a Human Resource Information/Capital Management System ("HRIS/HCM") with sufficient growth capacity for use at University Park and all Commonwealth campuses.
2.2.8	Engage external HR professionals to assist in the development of the University's next performance management system.
2.2.9	Provide the OHR with complete access to executive compensation information and utilize the OHR, in conjunction with the University Budget Office, to benchmark and advise the administration and the Board of Trustees on matters of executive compensation.
2.2.10	Develop a mechanism to provide and track all employee training mandated by state and federal law and University policies.
2.2.11	Update, standardize, centralize, and monitor background check procedures.*
2.2.12	Require updated background checks for employees, contractors and volunteers at least every five years.*

	2.2.13 Audit periodically the effectiveness of background check procedures and the University's self-reporting system for employees.*
	2.2.14 Update computer-use policies and regularly inform employees of the University's expectations and employee responsibilities with regard to electronic data and materials.
	2.2.15 Develop a procedure to ensure that the University immediately retrieves keys and access cards from unauthorized persons.*
2.3	Complete the development of the University's Office of General Counsel ("OGC").
	2.3.1 Develop a mission statement for the OGC that clearly defines the General Counsel's responsibilities and reporting obligations to the University and the Board of Trustees.
	2.3.2 Select and hire a permanent General Counsel ("GC").*
	2.3.3 Expand the GC's office staff to provide broader coverage of routine legal issues including employment law.
	2.3.4 Appropriate sufficient budget to the OGC to hire specialized outside counsel when needed.
2.4	Advertise all senior executive positions externally and engage educational search experts to broaden the talent pools for senior executive positions.*
2.5	Integrate faculty and staff from different disciplines and areas in University-wide professional development/leadership training to increase their exposure to other University personnel, programs, challenges and solutions.*
2.6	Implement consistent, state-of-the art records management and retention procedures.
2.7	Provide sufficient support and oversight of the Office of Student Affairs to make certain that all students follow the same standards of conduct.*

2.8 Designate an individual, administrative entity or committee to approve and review all new and modified University policies.

2.8.1 Develop guidelines for creating, standardizing, approving, reviewing and updating University policies.

2.8.2 Review periodically all University policies for relevance, utility and necessity, and modify or rescind as appropriate.

3.0 – Board of Trustees: Responsibilities and Operations

Spanier and other University leaders failed to report timely and sufficiently the incidents of child sexual abuse against Sandusky to the Board of Trustees in 1998, 2001 and 2011. Nonetheless, the Board's over-confidence in Spanier's abilities, and its failure to conduct oversight and responsible inquiry of Spanier and senior University officials, hindered the Board's ability to deal properly with the most profound crisis ever confronted by the University.

The Board should consider taking the following actions to increase public confidence and transparency, realign and refocus its responsibilities and operations, improve internal and external communications and strengthen its practices and procedures.

3.1 Review the administrative and governance issues raised in this report, particularly with regard to the structure, composition, eligibility requirements and term limits of the Board, the need to include more members who are not associated with the University, and the role of the Emeriti. In conducting this review, the Board should seek the opinions of members of the Penn State community, as well as governance and higher education experts not affiliated with the University. The Board should make public the results and recommendations generated from the review.

3.2 Review, develop and adopt an ethics/conflict of interest policy for the Board that includes guidelines for conflict management and a commitment to transparency regarding significant issues.

	3.2.1 Include training on ethics and oversight responsibilities in the current regulatory environment in Board member orientation.
	3.2.2 Require full and public disclosure by Board members of financial relationships between themselves and their businesses and the University.
3.3	Implement the Board's proposals for revised committee structures to include a committee on Risk, Compliance, Legal and Audit and subcommittees for Audit and Legal matters; and a subcommittee for Human Resources as part of the Committee on Finance, Business and Capital Planning.* ^{fff}
	3.3.1 Rotate Committee Chairs every five years or sooner.
3.4	Increase and improve the channels of communication between the Board and University administrators.
	3.4.1 Ensure that the University President, General Counsel and relevant members of senior staff thoroughly and forthrightly brief the Board of Trustees at each meeting on significant issues facing the University.*
	3.4.2 Require regular Risk Management, Compliance and Internal Audit reports to the Board on assessment of risks, pending investigations, compliance with federal and state regulations as well as on measures in place to mitigate those risks.
	3.4.3 Require that the SVP-FB, the GC and/or their designee to provide timely briefings to the Board on potential problem areas such as unusual severance or termination payments, Faculty and staff Emeriti appointments, settlement agreements, government inquiries, important litigation and whistleblower complaints.
	3.4.4 Use the Board's Executive Session/Question Period with the President to make relevant and reasonable inquiry into substantive matters and to facilitate sound decision-making.

^{fff} Exhibit 10-A, Pennsylvania State University Board of Trustees, Organizational Chart.

3.4.5	Review annually the University's <i>Return of Organization's Exempt from Income Tax Form (990)</i> , Clery Act reports, and the compensation and performance of senior executives and leaders.*
3.4.6	Conduct an informational seminar for the Board and senior administrators on Clery Act compliance and reporting procedures.
3.4.7	Continue to provide all Board members with regular reports of local, national and academic media coverage of the University.*
3.5	Increase and improve the channels of communication between the Board and the University community.
3.5.1	Establish and enforce rules regarding public and press statements made by Board members and Emeriti regarding confidential University matters.
3.5.2	Increase and publicize the ways in which individuals can convey messages and concerns to Board members.
3.5.2.1	Provide Board members with individual University email addresses and make them known to the public.
3.5.2.2	Use common social media communications tools to communicate with the public on various Board matters.
3.6	Develop a critical incident management plan, including training and exercises, for the Board and University administrators.
3.7	Continue to conduct and publicize periodic internal and external self-assessments of Board performance.*

4.0 – Compliance: Risk and Reporting Misconduct

The University's incomplete implementation of the Clery Act was a contributing factor in the failure to report the 2001 child sexual abuse committed by Sandusky. A strong compliance function, much like exists in the University's financial area, should encourage individuals to report misconduct more readily in the future. A regularized risk identification and management system is as prudent and consistent with best business practices.

University administrators and the Board should consider taking the following actions to ensure compliance with the multiple laws, regulations, rules and mandates that effect its operations, risk management and national reputation.

4.1	Establish and select an individual for a position of "Chief Compliance Officer,"* The Chief Compliance Officer should:
4.1.1	Head an independent office equivalent to the Office of Internal Audit.
4.1.2	Chair a Compliance Council.
4.1.3	Coordinate compliance functions in a manner similar to the Office of Internal Audit.
4.1.4	Have similar access to, and a reporting relationship with the Board, as does the Internal Auditor.
4.1.5	Coordinate the Chief Compliance Officer's responsibilities with the Office of General Counsel, the Director of Risk Management and the Director of Internal Audit.
4.1.6	Direct further review of any incidents or risks reported to the Compliance Officer.
4.2	Assign full-time responsibility for Clery Act compliance to an individual within the University Police Department and provide the individual with sufficient resources and personnel to meet Clery Act regulations.*
	The individual responsible for Clery Act compliance should:

4.2.1	Establish a University policy for the implementation of the Clery Act.
4.2.2	Create a master list of names of those persons with Clery Act reporting responsibilities, notify them annually of the Clery Act responsibilities and publish the list to the University community.
4.2.3	Require, monitor and track training, and periodic retraining for Campus Security Authorities ("CSAs") on Clery Act compliance.
4.2.4	Provide information to the OHR on Clery Act responsibilities, reporting suspicious activity to CSAs and whistleblower protection for inclusion in the general training for all employees.
4.2.5	Coordinate timely notices of incidents and threat warnings with the Vice President for Student Affairs, the Chief Compliance Officer and the General Counsel.
4.2.6	Review annual Clery Act reports with the President's Council, the Board of Trustees and the Compliance Officer.
4.2.7	Coordinate Clery Act training and compliance with responsible officials at the Commonwealth campuses.
4.2.8	Arrange for periodic internal and external audits of Clery Act compliance.
4.3	Update regularly and prioritize the University's list of institutional risks; determine the appropriate implementation and audit schedule for those risks; and present the results to the Board.
4.4	Send a communication to all University students, faculty and staff at the beginning of each academic term: that encourages the reporting of misconduct; describes the channels for direct or anonymous reporting; and the University's whistleblower policy and protection from retaliation.
4.5	Publicize the employee misconduct hotline regularly and prominently throughout the University on a variety of platforms including social media networks and the webpages of individual University components.*

5.0 – Athletic Department: Integration and Compliance

For the past several decades, the University's Athletic Department was permitted to become a closed community. There was little personnel turnover or hiring from outside the University and strong internal loyalty. The football program, in particular, opted out of most of the University's Clery Act, sexual abuse awareness and summer camp procedures training. The Athletic Department was perceived by many in the Penn State community as "an island," where staff members lived by their own rules.

University administrators and the Board of Trustees should consider taking the following actions to more fully involve the Athletic Department within the broader University community; provide relevant training and support to the Athletic Department staff to ensure compliance with external regulations and University policies; and maintain a safe environment for those who use the University's recreational facilities, especially children.

5.1	Revise the organizational structure of the Athletic Department to clearly define lines of authority, responsibilities and reporting relationships.
5.2	Evaluate security and access protocols for athletic, recreational and camp facilities and modify as necessary to provide reasonable protections for those using the facilities.*
5.3	Conduct national searches for candidates for key positions, including head coaches and Associate Athletic Director(s) and above.
5.4	Integrate, where feasible, academic support staff, programs and locations for student-athletes.*
5.5	Provide the University's Athletic Compliance Office with additional staff and adequate resources to meet its many responsibilities.*
5.5.1	Benchmark against peer institutions to determine an appropriate staffing level for the office.
5.5.2	Establish an effective reporting relationship with the University Compliance Officer.

	5.5.3 Realign the compliance-related responsibilities of Athletic Department staff members to ensure that the Athletic Compliance Office has oversight of the entire program.
	5.5.4 Ensure that new hires and incumbent compliance personnel have requisite working knowledge of the NCAA, Big Ten Conference and University rules.
5.6	Ensure that Athletic Department employees comply with University-wide training mandates.
	5.6.1 Provide and track initial and on-going training for athletic staff in matters of leadership, ethics, the Penn State Principles and standards of conduct, abuse awareness, and reporting misconduct pursuant to the Clery Act and University policy.
	5.6.2 Include Athletic Department employees in management training programs provided to other University managers.

6.0 – University Police Department: Oversight, Policies and Procedures

The University Police Department promptly responded to the 1998 complaint about Sandusky’s conduct, but the sensitivity of the investigation and the need to report on its progress to a senior administrator could have compromised the extent of its inquiry. The independence of the University’s law enforcement function is essential to providing unbiased service and protection to the University community. The University Police Department’s recent restructuring and additional training for its employees is an important step in the continuous improvement of the Department.

The University Police Department and/or University administrators should consider taking the following additional actions to improve the functions and oversight of the University’s law enforcement services:

6.1	Arrange for an external examination of the University Police Department's structure, organization, policies and procedures through a professionally recognized accreditation body, ^{§§§} with a particular emphasis on the University Police Department's training for and qualifications of sex abuse investigators.*
6.2	Review the organizational placement of the University Police Department in the University's Finance and Business area in conjunction with the review of the span of control of the SVP-FB. (See Section 2.0)
6.3	Provide the Vice President/Director of Public Safety with sufficient administrative authority and resources to operate effectively and independently.
6.4	Review records management procedures and controls and revise where needed.*
6.4.1	Establish a policy to ensure that all police reports alleging criminal conduct by Penn State students, faculty and staff are reported to the OHR.^{hhh}
6.4.2	Establish or reinforce protocols to assign a timely incident number and proper offense classification to all complaints received.ⁱⁱⁱ*
6.4.3	Include the final disposition of each complaint in the original or follow-up report (e.g., founded, unfounded, exceptionally cleared).
6.5	Establish a policy to request assistance from other law enforcement agencies in sensitive or extraordinary cases or where a conflict of interest may exist.

^{§§§}The University Police Department has engaged the Pennsylvania State Police Chiefs Association to conduct an external review. For a more expansive review, the University should utilize an organization that has extensive experience in reviewing and accrediting college and university police departments, such as the Commission on the Accreditation on Law Enforcement ("CALEA").

^{hhh}Notifications regarding students, faculty and staff who are confirmed suspects of allegations of criminal conduct are made to the OHR as a standard practice, but there is no departmental policy to confirm or guide the practice.

ⁱⁱⁱThe University Police Department has established an automatic system to assign timely incident numbers and eliminated the "Administrative" category of offenses.

6.6	Implement consistent law enforcement standards and practices, through regular training at all Penn State campuses.
6.7	Review and update, with the GC, the current policies pertaining to the investigation of various categories of offenses involving Penn State employees.
6.8	Provide specialized training to investigators in the area of sexual abuse of children.

7.0 – Management of University Programs for Children and Access to University Facilities

Over the years, University policies regarding programs for non-student minors were inconsistently implemented throughout the University. Enforcement of those policies was uneven and uncoordinated and, as a result, Sandusky was allowed to conduct football camps at University Park and three Commonwealth campuses without any direct oversight by University officials. The University's background check process also was arbitrarily applied and on-site supervision at camps was sometimes provided by staff members who had not been fully vetted.

University administrators and the Board of Trustees should consider taking the following actions to create a safer environment for children involved in University programs, activities, and who use its facilities. University administrators must provide better oversight of staff members responsible for youth programs and increase abuse awareness through training of responsible adults.

7.1	Increase the physical security and access procedures in areas frequented by children or used in camps and programs for children.*
7.2	Require and provide abuse awareness and mandatory reporter training to all University leaders, including faculty, coaches and other staff, volunteers and interns. ⁱⁱⁱ

ⁱⁱⁱOn June 6, 2012, the University implemented AD72, *Reporting Suspected Child Abuse*, requiring all University personnel to report incidents or allegations of suspected abuse or be subject to disciplinary action, up to, and including, dismissal.

<p>7.2.1 Consolidate the responsibility for abuse awareness training and mandatory reporting in the OHR and coordinate an abuse awareness training program throughout the University's campuses.*</p>
<p>7.3 Consolidate oversight of the University's policies and procedures for programs involving non-student minors in the OHR and appoint a coordinator to oversee the implementation of those policies. The Coordinator should have sufficient authority to:</p>
<p>7.3.1 Develop and maintain an inventory of all University programs for children.*</p>
<p>7.3.2 Update, revise or create policies for unaccompanied children at University facilities, housing and University programs.*</p>
<p>7.3.3 Enforce all policies relating to non-student minors involved in University programs at all Penn State campuses.</p>
<p>7.3.4 Assist the University's camp and youth program administrators in ensuring that staff and volunteers are appropriately supervised.</p>
<p>7.3.5 Provide information to parents of non-student minors involved in University programs regarding the University's safety protocols and reporting mechanisms for suspicious or improper activity.</p>

8.0 – Monitoring Change and Measuring Improvement

The Pennsylvania State University has taken several significant steps to improve its governance and more adequately protect the hundreds of thousands of children who use its facilities and participate in its programs every year. However, restoring confidence in the University's leadership and the Board will require greater effort over a prolonged period of time. As the institution moves forward, it is incumbent upon its leaders to monitor those changes, make adjustments as necessary and communicate their progress to the Penn State community as well as to the public.

University administrators and the Board of Trustees should consider taking the following actions to ensure that their initiatives to prevent and respond to incidents of sexual abuse of children and to improve University governance are duly enforced, monitored, measured and modified as needed:

8.1	Designate an internal monitor or coordinator to oversee the implementation of recommendations initiated, or adopted, by the Board and/or the University administration. The monitor/coordinator would:
8.1.1	Chair a panel of the individuals responsible for developing and implementing these and other approved recommendations and for establishing realistic milestones.
8.1.2	Select a practical and diverse number of members of the University community and solicit input from the larger University community, to provide insights and recommendations to the monitor. (See Recommendation 1.0)
8.1.3	Report actions and accomplishments regularly to the Board of Trustees and University administration.*
8.2	Provide the monitor, or the Chief Compliance Officer, with the authority and resources to hire appropriate external evaluators/compliance auditors to certify that milestones for implementation of these recommendations are being met.
8.3	Conduct a review of the University's progress 12 months from the acceptance of this report using internal and external examiners and provide the findings to University administrators, the Board and the public.
8.4	Conduct a second review of the University's progress 24 months from the acceptance of this report using internal and external examiners and provide the findings to University administrators, the Board and the public.

ENDNOTES

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- ¹ Presentment of Statewide Grand Jury, November 4, 2011.
- ² <http://034fccc.netsolhost.com/WordPress/>.
- ³ Sally Jenkins, "Joe Paterno's Last Interview," *The Washington Post* (1-14-12).
- ⁴ [-] Interview (7-6-12).
- ⁵ <http://www.budget.psu.edu/FactBook/StudentDynamic/UGGRENrollSummary.aspx?YearCode=2011Enr&FBPlusIndc=N>.
- ⁶ <http://www.budget.psu.edu/factbook/StateAppropriation/TtlOperBudget1112.asp>.
- ⁷ <http://www.psu.edu/Trustees/pdf/march2012agenda/fppappendix2.12.pdf>;
<http://www.controller.psu.edu/Divisions/ControllersOffice/docs/FinStmts/2011FinStmts.pdf>.
- ⁸ Penn State is accredited by The Middle States Commission on Higher Education, which contacted the University about concerns relating to the Sandusky investigation on November 11, 2011. The University responded in its *Informational Report to the Middle States Commission on Higher Education* on December 21, 2011.
- ⁹ <http://www.research.psu.edu/about/documents/strategicplan.pdf>.
- ¹⁰ Standing Orders of the Penn State Board of Trustees, Order IX(1)(b)(1).
- ¹¹ Standing Orders of the Penn State Board of Trustees, Order IX(1)(b)(2).
- ¹² <http://www.psu.edu/ur/about/administration.html>.
- ¹³ <http://president.psu.edu/>.
- ¹⁴ <http://www.psu.edu/provost/provost.htm>.
- ¹⁵ <http://president.psu.edu/biography>.
- ¹⁶ <http://www.psu.edu/provost/provost.htm>.
- ¹⁷ [-] Interview (6-12-12).
- ¹⁸ [-] Interview (6-12-12).
- ¹⁹ [-] Interview (6-12-12).
- ²⁰ Board of Trustees Minutes of Meeting at 7 (1-22-10).
- ²¹ <http://www.psu.edu/ur/about/administration.html>.
- ²² Although not further described here, the Office of Research Programs manages the University's Conflict of Interest policies.
- ²³ See Chapter 8, *Federal and State Child Sexual Abuse Reporting Requirements*.
- ²⁴ <http://www.police.psu.edu/aboutus/>.
- ²⁵ http://www.police.psu.edu/cleryact/documents/116593_PolicySafety_Up.pdf.
- ²⁶ [-] Interview (4-9-12); [-] Interview (2-29-12).
- ²⁷ http://www.psu.edu/ur/archives/intercom_1998/May21/partings.html.
- ²⁸ See Organizational Chart for the Pennsylvania State University Administrative Organization, http://www.psu.edu/provost/assets/President_organizational_chart%2008.pdf.
- ²⁹ [-] Interview (2-29-12); [-] Interview (2-1-12).
- ³⁰ See Organizational Chart for the Pennsylvania State University Administrative Organization, http://www.psu.edu/provost/assets/President_organizational_chart%2008.pdf. [-] Interview (3-1-12).
- ³¹ Office of Human Resources website, <http://ohr.psu.edu/>; [-] Interview (1-4-12).
- ³² See Organizational Chart for the Pennsylvania State University Administrative Organization, http://www.psu.edu/provost/assets/President_organizational_chart%2008.pdf.
- ³³ [-] Interview (12-8-11).
- ³⁴ [-] Interview (12-15-11).
- ³⁵ [-] Interview (4-11-12).

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- ³⁶ <http://www.gopsusports.com/compliance/psu-compliance.html>.
- ³⁷ http://www.gopsusports.com/genrel/curley_tim00.html.
- ³⁸ <http://www.gopsusports.com/genrel/111611aaa.html>.
- ³⁹ www.gopsusports.com/sports/m-footbl/mtt/paterno_joe00.html.
- ⁴⁰ http://www.gopsusports.com/sports/m-footbl/mtt/obrien_bill00.html.
- ⁴¹ [-] Interview (12-19-11).
- ⁴² www.outreach.psu.edu/crai-weidemann.html; [-] Interview (1-5-12).
- ⁴³ [-] Interview (12-19-11); [-] Interview (1-5-12).
- ⁴⁴ <http://guru.psu.edu/policies/>.
- ⁴⁵ <http://www.psu.edu/ur/2001/principles.html>.
- ⁴⁶ [-] Interview (1-4-12); [-] Interview (1-5-12).
- ⁴⁷ [-] Interview (1-10-12).
- ⁴⁸ [-] Interview (1-5-12).
- ⁴⁹ <http://live.psu.edu/story/58968>.
- ⁵⁰ <http://www.controller.psu.edu/divisions/RiskManagement/indexRM.html>.
- ⁵¹ [-] Interview (1-5-12).
- ⁵² [-] Interview (1-4-12).
- ⁵³ <http://www.internalaudit.psu.edu/>.
- ⁵⁴ [-] Interview (1-4-12).
- ⁵⁵ [-] Interview (1-4-12).
- ⁵⁶ [-] Interview (1-4-12).
- ⁵⁷ [-] Interview (1-4-12).
- ⁵⁸ [-] Interview (1-4-12); [-] Interview (1-12-12).
- ⁵⁹ [-] Interview (1-4-12).
- ⁶⁰ Sara Ganim, "Jerry Sandusky Trial: Coaching colleagues describe Sandusky as busy, involved with children," *Patriot-News* (6-18-12).
- ⁶¹ Amended Bill of Particulars, *Commonwealth v. Sandusky*, CP-14-CR-2421-2011; CP-14-CR-2422-2011 (5-18-12); Bill of Particulars, *Commonwealth v. Sandusky*, CP-14-CR-2421-2011; CP-14-CR-2422-2011 (2-21-12).
- ⁶² Jeremy Roebuck, "Alleged Sandusky victim tells NBC: 'He knows what he did,'" *Philadelphia Inquirer*, (6-12-12).
- ⁶³ The Special Investigative Counsel did not interview the boy involved in the Lasch Building incident. The details of the incident are described as found in the Penn State University Police Department report and the Grand Jury report.
- ⁶⁴ Penn State University Police Report 41-98-1609 at 27.
- ⁶⁵ *Id.* at 26.
- ⁶⁶ *Id.* at 2.
- ⁶⁷ *Id.* at 29.
- ⁶⁸ *Id.* at 23.
- ⁶⁹ *Id.*
- ⁷⁰ *Id.* at 30.
- ⁷¹ *Id.*
- ⁷² *Id.*
- ⁷³ *Id.* at 30, 52.
- ⁷⁴ *Id.* at 40.
- ⁷⁵ *Id.* at 31, 44.
- ⁷⁶ *Id.* at 45.

⁷⁷ *Id.* at 45-46.

⁷⁸ *Id.* at 46, 52.

⁷⁹ *Id.* at 22.

⁸⁰ *Id.*

⁸¹ [-] Interview (4-18-12).

⁸² Penn State University Police Report 41-98-1609 at 22.

⁸³ *Id.* at 22.

⁸⁴ *Id.* at 3.

⁸⁵ *Id.* at 3-4.

⁸⁶ Details regarding the investigation come from the University Police Department records and his interview; [-] Interview (1-27-12).

⁸⁷ Penn State University Police Report 41-98-1609 at 3-4.

⁸⁸ *Id.* at 21.

⁸⁹ *Id.* at 22.

⁹⁰ *Id.*

⁹¹ *Id.* at 23.

⁹² *Id.*

⁹³ *Id.*

⁹⁴ *Id.* at 5; <http://www.co.centre.pa.us/511.asp>.

⁹⁵ [-] Interview (4-11-12); Penn State University Police Report 41-98-1609 at 9.

⁹⁶ [-] Interview (4-26-12); [-] Interview (1-27-12).

⁹⁷ [-] Interview (4-26-12).

⁹⁸ Penn State University Police Report 41-98-1609 at 19-20; [-] Interview (4-11-12).

⁹⁹ [-] Interview (4-11-12); *Id.* at 41-98-1609 at 9.

¹⁰⁰ Penn State University Police Report 41-98-1609 at 6.

¹⁰¹ [-] Interview (1-27-12).

¹⁰² Penn State University Police Report 41-98-1609 at 7.

¹⁰³ *Id.* at 41-98-1609 at 7.

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ *Id.* at 10.

¹⁰⁷ *Id.* at 21.

¹⁰⁸ *Id.* at 10.

¹⁰⁹ [-] Interview (4-11-12).

¹¹⁰ [-] Interview (4-11-12).

¹¹¹ Penn State University Police Report 41-98-1609 at 11; [-] Interview (1-27-12).

¹¹² [-] Interview (4-26-12); [-] Interview (4-13-12).

¹¹³ Penn State University Police Report 41-98-1609 at 87-88.

¹¹⁴ *Id.* at 88.

¹¹⁵ *Id.*

¹¹⁶ *Id.* at 90.

¹¹⁷ *Id.* at 12.

¹¹⁸ *Id.*; [-] Interview (1-27-12).

¹¹⁹ Penn State University Police Report 41-98-1609 at 12.

¹²⁰ Email from [-] (5-31-12), included in Controller Records relating to [-] payments [Box.net].

¹²¹ Email from [-] (5-31-12), included in Controller Records relating to [-] payments [Box.net].

¹²² [-] File Memo (3-5-12).
¹²³ Penn State University Police Report 41-98-1609 at 14.
¹²⁴ Penn State University Police Report 41-98-1609 at 14.
¹²⁵ *Id.* at 14.
¹²⁶ *Id.*
¹²⁷ *Id.* at 15.
¹²⁸ *Id.*
¹²⁹ *Id.* at 16.
¹³⁰ *Id.*
¹³¹ *Id.*
¹³² *Id.* at 17.
¹³³ [-] Interview (4-18-12).
¹³⁴ [-] Interview (4-11-12).
¹³⁵ [-] Interview (4-11-12).
¹³⁶ [-] Interview (1-27-12).
¹³⁷ [-] Interview (4-11-12).
¹³⁸ Penn State University Police Report 41-98-1609 at 18.
¹³⁹ *Id.* at 41-98-1609 at 015_0000018.
¹⁴⁰ [-] Interview (4-11-12).
¹⁴¹ [-] Interview (4-11-12).
¹⁴² Penn State University Police Report at 18.
¹⁴³ [-] Interview (1-27-12).
¹⁴⁴ Exhibit 2-H.
¹⁴⁵ The May 5, 1998 notes refer to a meeting that was scheduled to take place at 9:00 a.m. on May 5 with the "local child abuse people." This reference supports the inference that these notes were taken before 9:00 a.m. on May 5.
¹⁴⁶ Exhibit 2-I.
¹⁴⁷ Exhibit 2-I.
¹⁴⁸ [-] Interview (7-6-12).
¹⁴⁹ Control Number 00649354.
¹⁵⁰ Control Number 00649354.
¹⁵¹ [-] Interview (1-27-12).
¹⁵² [-] Interview (1-27-12).
¹⁵³ Penn State University Police Report at 2-18.
¹⁵⁴ [-] Interview (1-27-12).
¹⁵⁵ [-] Interview (1-27-12).
¹⁵⁶ [-] Interview (2-2-12).
¹⁵⁷ [-] Interview (2-2-12).
¹⁵⁸ [-] Interview (2-2-12).
¹⁵⁹ Schultz confidential file notes (5-1-12).
¹⁶⁰ Control Number 3009518.
¹⁶¹ Control Number 00641616.
¹⁶² Control Number 00648360.
¹⁶³ Exhibit 2-C (Control Number 00644098).
¹⁶⁴ Control Number 644098.
¹⁶⁵ Preliminary Hearing Trans. at 120 (12-16-11).

¹⁶⁶ See Exhibits 2-A and 2-B.
¹⁶⁷ [-] Interview (5-1-12); [-] Interview (12-6-11); [-] Interview (4-11-12).
¹⁶⁸ [-] Interview (7-6-12).
¹⁶⁹ [-] Interview (7-6-12).
¹⁷⁰ Michael Raphael, "Penn State Wants Agent Prosecuted," AP News Archive (1-6-98).
¹⁷¹ *Id.*
¹⁷² *Id.*
¹⁷³ Control Number 00644972.
¹⁷⁴ [-] Interview (1-27-12).
¹⁷⁵ Preliminary Hearing Trans. at 219 (12-16-11).
¹⁷⁶ Control Number 06018018.
¹⁷⁷ Preliminary Hearing Trans. at 190 (12-16-11).
¹⁷⁸ Preliminary Hearing Trans. at 177-78 (12-16-11).
¹⁷⁹ Sara Ganim, "Jerry Sandusky book 'Game Over' angers Joe Paterno's family," *Patriot-News* (4-18-12).
¹⁸⁰ [-] Interview (7-6-12).
¹⁸¹ [-]Notes (3-22-11).
¹⁸² [-] Interview (7-9-12).
¹⁸³ [-] Interview (7-9-12).
¹⁸⁴ Control Number 09354508.
¹⁸⁵ Amended Bill of Particulars, *Commonwealth v. Sandusky*, CP-14-CR-2421-2011; CP-14-CR-2422-2011 (May 18, 2012); Bill of Particulars, *Commonwealth v. Sandusky*, CP-14-CR-2421-2011; CP-14-CR-2422-2011 (Feb. 21, 2012).
¹⁸⁶ Control Number 00644655.
¹⁸⁷ Control Number 03008143.
¹⁸⁸ Control Number 03008143.
¹⁸⁹ "30-and-Out Window Closing," SERSNews (Spring 1999), www.portal.state.pa.us/portal/server.pt/document/1079979/1999_q2_pdf; [-] Interview (1-4-12).
¹⁹⁰ "30-and-Out Window Closing," SERSNews (Spring 1999), www.portal.state.pa.us/portal/server.pt/document/1079979/1999_q2_pdf; [-] Interview (1-4-12).
¹⁹¹ Control Number 00643981.
¹⁹² Control Number JVP-000021.
¹⁹³ Control Number JVP-000021.
¹⁹⁴ Control Number 00642802.
¹⁹⁵ [-] Interview (2-2-12).
¹⁹⁶ [-] Interview (2-2-12).
¹⁹⁷ Control Number 03013385.
¹⁹⁸ Control Number 03013385.
¹⁹⁹ Documents provided by Wick Sollers to Special Investigative Counsel.
²⁰⁰ Control Number JVP000025-26.
²⁰¹ Control Number JVP000025-26.
²⁰² Control Number JVP000025-26.
²⁰³ Exhibit 3-F (Control Number JVP000027).
²⁰⁴ Exhibit 3-F (Control Number JVP000027).
²⁰⁵ Exhibit 3-F (Control Number JVP000027).
²⁰⁶ [-] Interview (7-3-12).
²⁰⁷ Exhibit 3-G (Control Number 03014658).

208 Exhibit 3-G (Control Number 03014658).
209 Control Number 00650775.
210 Control Number 00650174.
211 Control Number 00650174.
212 Control Number 00650174.
213 Control Number JVP-000023.
214 Control Number 006_0000014.
215 Control Number 006_0000014.
216 Control Number 006_0000011.
217 Control Number 006_0000005.
218 [-] Interview (1-12-12).
219 [-] Interview (1-12-12).
220 [-] Interview (4-30-12).
221 Control Number 006_0000029.
222 Control Numbers 006_0000035, 014_0000127.
223 Control Number 014_0000133.
224 Penn State Policy HR-25 (Control Number 014_0000034).
225 *Id.*
226 *Id.*
227 *Id.*
228 Control Number 014_0000136.
229 Control Number 014_0000136.
230 [-] Interview (2-22-12).
231 [-] Interview (3-14-12).
232 Control Number RAE_000001.
233 Control Number RAE_000001.
234 Control Number RAE_000001.
235 Control Number RAE_000001.
236 [-] Interview (4-12-12).
237 [-] Interview (7-2-12).
238 [-] Interview (4-15-12).
239 [-] Interview (7-2-12).
240 [-] Interview (7-2-12).
241 [-] Interview (7-2-12).
242 [-] Interview (7-2-12).
243 [-] Interview (7-2-12).
244 [-] Interview (7-2-12).
245 [-] Interview (7-2-12).
246 [-] Interview (7-2-12).
247 [-] Interview (7-2-12).
248 [-] Interview (7-2-12).
249 [-] Interview (7-2-12).
250 [-] Interview (7-2-12).
251 Email from [-] to [-] (3-21-12); Penn State University Press Release, "*Former FBI director Freeh to conduct independent investigation*" (11-21-11) (Judge Freeh noted, "We will cooperate fully with the law enforcement authorities, will defer to them, and will not impede their work in any way").

²⁵² Preliminary Hearing Trans. at 10 (12-16-11).
²⁵³ *Id.* at 9-10.
²⁵⁴ *Id.* at 10, 14.
²⁵⁵ *Id.* at 13.
²⁵⁶ *Id.*
²⁵⁷ *Id.* at 13-14, 16-17.
²⁵⁸ *Id.* at 17.
²⁵⁹ *Id.* at 17, 19.
²⁶⁰ *Id.* at 19.
²⁶¹ *Id.* at 20-21.
²⁶² *Id.* at 22.
²⁶³ *Id.* at 22-23.
²⁶⁴ *Id.*
²⁶⁵ *Id.* at 23.
²⁶⁶ *Id.* at 23-24.
²⁶⁷ [-] Interview (3-1-12).
²⁶⁸ Preliminary Hearing Trans. at 24-25 (12-16-11).
²⁶⁹ *Id.* at 176.
²⁷⁰ *Id.* at 175-76.
²⁷¹ *Id.* at 176.
²⁷² *Id.* at 25-26.
²⁷³ *Id.* at 26.
²⁷⁴ Sally Jenkins, "Joe Paterno's Last Interview," *Washington Post* (1-14-12).
²⁷⁵ Preliminary Hearing Trans. at 177 (12-16-11).
²⁷⁶ *Id.* at 177.
²⁷⁷ *Id.* at 177.
²⁷⁸ *Id.* at 180, 202.
²⁷⁹ *Id.*
²⁸⁰ *Id.* at 181.
²⁸¹ *Id.* at 229.
²⁸² *Id.* at 206.
²⁸³ *Id.* at 211.
²⁸⁴ *Id.*
²⁸⁵ *Id.* at 229.
²⁸⁶ Exhibit 5-A.
²⁸⁷ Control Number 11118161.
²⁸⁸ [-] Interview (1-12-12); [-] Interview (4-12-12).
²⁸⁹ [-] File Memo (5-1-12).
²⁹⁰ Exhibit 5-C.
²⁹¹ Exhibit 2-J.
²⁹² *Id.*
²⁹³ *Id.*
²⁹⁴ *Id.*
²⁹⁵ *Id.*
²⁹⁶ *Id.*
²⁹⁷ *Id.*

298 *Id.*
299 *Id.*
300 [-] Notes (12-28-10).
301 [-] Notes (12-28-10).
302 [-] Notes (12-28-10).
303 Schultz confidential file notes (5-1-12).
304 Schultz confidential file notes (5-1-12).
305 Exhibit 2-J; [-] Interview (7-6-12).
306 Exhibit 5-A.
307 Exhibit 5-C.
308 Exhibit 5-D (Control Number 00675162).
309 Exhibit 5-C.
310 Schultz confidential file notes (5-1-12).
311 Preliminary Hearing Trans. at 30 (12-16-11).
312 *Id.* at 202-03.
313 *Id.* at 32-33.
314 *Id.* at 35.
315 *Id.* at 183.
316 *Id.* at 225.
317 *Id.*
318 Control Number 00681288.
319 Control Number 03030942.
320 Preliminary Hearing Trans. at 30 (12-16-11).
321 Spanier 2001 Calendar.
322 [-] Interview (7-6-12).
323 [-] Interview (7-6-12).
324 [-] Interview (7-6-12).
325 [-] Interview (7-6-12).
326 [-] Interview (7-6-12).
327 [-] Interview (7-6-12).
328 Exhibit 5-F (Control Number 00677433).
329 Exhibit 5-G (Control Number 00679428).
330 Exhibit 5-G (Control Number 00679428); Exhibit 5-H (Control Number 00676529).
331 Exhibit 5-G (Control Number 00679428).
332 Exhibit 5-G (Control Number 00679428).
333 See Control Number 00642973 (6-9-1998) (email subject is "*Jerry*"); Control Number 00645223 (6-1-1998) ("The DPW investigator and our officer met discreetly with *Jerry* this morning"); Control Number 00646346 (6-9-1998) ("They met with *Jerry* on Monday and concluded that there was no criminal behavior and the matter was closed as an investigation"); Control Number 00647284 (5-19-1998) (email subject is "*Jerry*"); Control Number 00648360 (5-14-1998) ("Tim, I understand that a DPW person was here last week; don't know for sure if they talked with *Jerry*").
334 Control Numbers 00650775, 00650174, 00650775, 03014658, 03013385.
335 Control Numbers 09302202, 09350582; [-] Notes of meeting with Graham Spanier (3-22-11).
336 [-] Notes of meeting with Graham Spanier (3-22-11).
337 [-] Notes of meeting with Graham Spanier (3-22-11).
338 [-] Interview (2-1-12); [-] Interview (1-23-12); [-] Interview (12-12-11); [-] Interview (1-3-12).

339 [-] Interview (4-12-12).
340 [-] Interview (2-6-12); [-] Interview (4-17-12).
341 [-] Interview (2-6-12); [-] Interview (4-25-12); [-] Interview (1-24-12); [-] Interview (1-3-12); [-] Interview (2-7-12); [-] Interview (1-23-12); [-] Interview (12-12-11).
342 Exhibit 5-G (Control Number 00679428).
343 See Exhibit 2-J.
344 See Exhibit 2-J.
345 Exhibit 5-H (Control Number 00676529).
346 Preliminary Hearing Trans. at 185-86 (12-16-11).
347 Preliminary Hearing Trans. at 185-86 (12-16-11).
348 Preliminary Hearing Trans. at 182 (12-16-11).
349 [-] File Memo (2-28-12).
350 [-] File Memo (2-28-12).
351 [-] File Memo (2-28-12).
352 [-] File Memo (2-28-12).
353 [-] File Memo (2-28-12).
354 [-] File Memo (2-28-12).
355 Schultz confidential file notes (5-1-12).
356 Control Number 00680519.
357 Preliminary Hearing Trans. at 215 (12-16-11).
358 [-] Notes of meeting with Graham Spanier (3-22-11).
359 Exhibit 2-J.
360 [-] Interview (7-6-12).
361 Sally Jenkins, "Joe Paterno's Last Interview," *Washington Post* (1-14-12).
362 [-] File Memo (4-9-12).
363 [-] File Memo (3-22-12).
364 [-] File Memo (3-22-12).
365 [-] File Memo (3-22-12).
366 [-] File Memo (3-22-12).
367 [-] File Memo (3-22-12).
368 [-] File Memo (3-22-12).
369 [-] File Memo (3-22-12).
370 [-] File Memo (3-22-12).
371 Control Number 03036051.
372 Control Number 03036051.
373 Control Number 00684991.
374 Control Number 00684991.
375 Preliminary Hearing Trans. at 191-92 (12-16-11).
376 [-] Interview (7-6-12).
377 Subpoena from Statewide Investigating Grand Jury, Supreme Court of Pennsylvania, 190 M.D. Misc. Dkt. 2001, Dauphin County Common Pleas, No. 1430, M.D. 2008, Notice 29, Subpoena 671 (1-7-10).
378 [-] Interview (3-6-12); [-] Interview (2-21-12).
379 [-] Interview (3-6-12).
380 [-] Interview (3-6-12); Control Number 09327800 ("The specifics of the investigation were not disclosed to us"); Control Number 09369385 (the prosecutor "kept the core of the issue very close to her vest").
381 Notes of [-] (2-8-10); [-] Interview (3-6-12).

382 Notes of [-] (3-1-10); [-] Interview (3-6-12).
383 Control Number 09327800.
384 Control Number 09327800.
385 [-] Notes (12-28-10).
386 [-] Interview (11-23-11).
387 [-] Interview (11-23-11); [-] Notes (12-28-10).
388 [-] Notes (12-28-10).
389 [-] Notes (12-28-10).
390 [-] Notes (12-28-10).
391 [-] Notes (12-28-10).
392 [-] Notes (12-28-10).
393 Control Number 11117847.
394 Control Number 11117847.
395 [-] Notes (1-3-11).
396 [-] Notes (1-3-11).
397 [-] Notes (1-3-11).
398 [-] Interview (2-29-12).
399 Control Number 09354508.
400 Control Number 09354508.
401 Control Number 09354508.
402 Control Number 09354508.
403 Control Number 09361218.
404 [-] Interview (11-23-11).
405 Control Number 09382271.
406 Control Number 04065904.
407 Control Number 04065904.
408 Control Number 166851.
409 [-] Interview (2-29-12).
410 [-] Interview (2-29-12).
411 [-] Interview (2-29-12).
412 [-] Interview (2-29-12).
413 Control Number 06633947; [-] Notes of [-] Interviews (1-15-11).
414 Control Number 00045093.
415 Control Number 09405967.
416 Spanier was questioned about a 2002 incident that was later determined to have occurred in 2001.
417 [-] Notes of meeting with Graham Spanier (3-22-11); Control Number 09302202.
418 Subpoena 92. Spanier suggested in recent court filings that he appeared before the Grand Jury
"voluntarily and without subpoena." *Spanier v. Pennsylvania State University*, Verified Complaint in
Equity (5-25-12).
419 Control Number 00035001.
420 Control Number 00043675.
421 [-] Interview (1-25-12); Control Number 04046135.
422 Control Number 4046135.
423 Sara Ganim, "Jerry Sandusky, former Penn State football staffer, subject of Grand Jury investigation,"
Patriot-News (3-31-11).
424 *Id.*

⁴²⁵ *Id.*

⁴²⁶ *Id.*

⁴²⁷ Control Number 1096008.

⁴²⁸ Control Number 1096008.

⁴²⁹ Control Number 9341973.

⁴³⁰ Control Number 9365024.

⁴³¹ Control Number 9365024.

⁴³² Control Number 9365024.

⁴³³ Control Number 9365024.

⁴³⁴ [-] Interview (7-6-12).

⁴³⁵ [-] Notes (4-13-11).

⁴³⁶ Control Number 9365024.

⁴³⁷ [-] Interview (2-29-12).

⁴³⁸ [-] Interview (2-20-12).

⁴³⁹ [-] Interview (2-20-12).

⁴⁴⁰ [-] Interview (2-29-12).

⁴⁴¹ [-] Interview (7-6-12).

⁴⁴² [-] Interview (7-6-12).

⁴⁴³ [-] Interview (7-6-12); [-] Interview (7-6-12).

⁴⁴⁴ [-] Interview (4-20-12); [-] Interview (3-13-12).

⁴⁴⁵ Exhibit 6-A (Baldwin affidavit).

⁴⁴⁶ Exhibit 6-A (Baldwin affidavit).

⁴⁴⁷ Exhibit 6-A (Baldwin affidavit).

⁴⁴⁸ [-] Interview (2-29-12).

⁴⁴⁹ [-] Interview (2-29-12).

⁴⁵⁰ *See, e.g.*, [-] Interview (3-22-12); [-] Interview (4-16-12); [-] Interview (4-12-12); [-] Interview (5-3-12); [-] Interview (4-16-12); [-] Interview (3-13-12); [-] Interview (3-15-12); [-] Interview (4-5-12); [-] Interview (4-16-12).

⁴⁵¹ *See, e.g.*, [-] Interview (3-15-12); [-] Interview (3-22-12); [-] Interview (3-15-12); [-] Interview (4-12-12); [-] Interview (4-16-12); [-] Interview (5-3-12); [-] Interview (4-16-12); [-] Interview (3-13-12); [-] Interview (3-15-12); [-] Interview (3-15-12).

⁴⁵² *See, e.g.*, [-] Interview (3-22-12); [-] Interview (4-16-12); [-] Interview (4-12-12); [-] Interview (4-16-12); [-] Interview (5-3-12); [-] Interview (3-15-12); [-] Interview (3-15-12).

⁴⁵³ [-] Interview (3-13-12); [-] Interview (3-13-12); [-] Interview (4-16-12).

⁴⁵⁴ *See, e.g.*, [-] Interview (3-8-12); [-] Interview (3-13-12); [-] Interview (4-11-12); [-] Interview (3-15-12); [-] Interview (3-22-12); [-] Interview (4-16-12); [-] Interview (3-15-12); [-] Interview (4-12-12); [-] Interview (4-16-12); [-] Interview (4-16-11); [-] Interview (5-3-12); [-] Interview (4-20-12); [-] Interview (4-16-12); [-] Interview (3-13-12); [-] Interview (3-15-12); [-] Interview (3-15-12); [-] Interview (4-5-12); [-] Interview (3-13-12).

⁴⁵⁵ Control Number 12005881; [-] Interview (4-6-12); [-] Interview (3-15-12); [-] Interview (3-14-12); [-] Interview (3-15-12); [-] Interview (5-3-12); [-] Interview (4-11-12); [-] Interview (3-15-12).

⁴⁵⁶ Control Numbers 06633947, 00045093, 09405967, 10615894, 06630379; [-] Notes of [-] Interviews (1-15-11); [-] Notes of [-] Interviews of [-] and [-] (1-17-11).

⁴⁵⁷ Grand Jury Subpoena 109 (3-24-11).

⁴⁵⁸ Grand Jury Subpoena 191 (5-11-11).

⁴⁵⁹ Grand Jury Subpoena 183 (5-9-11); Grand Jury Subpoena 185 (5-10-11).

460 [-] Interview (4-20-12); [-] Interview (3-15-12).
461 [-] Interview (4-20-12); [-] Interview (3-13-12).
462 [-] Interview (3-8-12).
463 [-] Interview (4-12-12).
464 [-] Interview (3-14-12).
465 [-] Interview (3-22-12); [-] Interview (3-15-12); [-] Interview (3-13-12); [-] Interview (3-8-12); [-] Interview (4-16-12); [-] Interview (3-14-12).
466 [-] Interview (4-16-12).
467 *See, e.g.,* [-] Interview (3-8-12); [-] Interview (3-15-12); [-] Interview (3-15-12); [-] Interview (5-3-12).
468 [-] Interview (4-16-12).
469 [-] Interview (11-25-11).
470 [-] Interview (11-25-11).
471 Control Number 00039079.
472 [-] Interview (7-6-12).
473 Spanier Calendar 2011; Control Number 01000672.
474 [-] Interview (1-25-12).
475 Control Number 01001160.
476 Control Numbers 01001782, 09377177, 09382920, 09388808, 09398766.
477 [-] Interview (1-25-12).
478 [-] Interview (1-25-12).
479 [-] Interview (7-6-12).
480 [-] Interview (7-6-12).
481 Spanier Calendar 2011.
482 [-] Interview (2-29-12).
483 [-] Interview (2-20-12).
484 [-] Interview (2-20-12).
485 [-] Interview (2-20-12).
486 [-] Interview (2-20-12).
487 [-] Interview (7-6-12).
488 [-] Interview (7-6-12).
489 [-] Interview (7-6-12).
490 [-] Interview (7-6-12).
491 Control Number 00510882.
492 Control Numbers 09361376, 09368381, 09361329.
493 Control Numbers 10245114.
494 Control Number 1001210.
495 Control Number 1001203.
496 Control Number 09347465.
497 Control Number 09347465.
498 Control Number 1001210.
499 [-] Notes (11-5-11).
500 [-] Notes (11-5-11).
501 [-] Notes (11-5-11).
502 [-] Notes (11-5-11).
503 [-] Notes (11-5-11).
504 Control Number 1001228.

505 Control Number 1001228.
506 [-] Interview (3-8-12); [-] Interview (3-13-12); [-] Interview (3-12-12).
507 [-] Interview (3-8-12).
508 [-] Notes (11-6-11).
509 [-] Notes (11-6-11).
510 [-] Notes (11-6-11).
511 [-] Notes (11-6-11).
512 Control Number 01035996.
513 Control Number 01035996.
514 [-] Notes (11-6-11).
515 [-] Interview (4-16-12); [-] Interview (3-8-12).
516 [-] Interview (4-13-12); [-] Interview (3-12-12); [-] Interview (4-16-12); [-] Interview (4-16-12); [-] Interview (3-13-12); [-] Interview (4-16-12); [-] Interview (3-8-12).
517 [-] Interview (4-16-12); [-] Interview (3-13-12); [-] Interview (4-16-12); [-] Interview (3-8-12); [-] Interview (3-12-12); [-] Interview (4-13-12)
518 [-] Interview (7-6-12).
519 [-] Interview (3-13-12).
520 [-] Interview (3-13-12).
521 Control Number 1001535.
522 [-] Notes (11-8-11).
523 [-] Notes (11-8-11).
524 [-] Notes (11-8-11).
525 [-] Notes (11-8-11).
526 [-] Notes (11-8-11).
527 <http://live.psu.edu/story/56285>.
528 <http://live.psu.edu/story/56285>.
529 <http://live.psu.edu/story/56285>.
530 [-] Notes (11-9-11).
531 [-] Notes (11-9-11).
532 [-] Notes (11-9-11).
533 [-] Interview (5-16-12).
534 [-] Interview (4-23-12).
535 [-] Interview (4-16-12); [-] Interview (4-16-12); [-] Interview (3-13-12).
536 [-] Interview (4-16-12); [-] Interview (3-12-12).
537 [-] Interview (4-16-12); [-] Interview (3-15-12); [-] Interview (4-16-12); [-] Interview (3-13-12).
538 [-] Interview (3-15-12); [-] Interview (5-16-12).
539 [-] Interview (4-16-12).
540 [-] Interview (4-16-12).
541 [-] Interview (4-16-12).
542 [-] Interview (4-16-12).
543 [-] Interview (4-23-12); [-] Interview (4-18-12).
544 [-] Interview (4-23-12).
545 [-] Interview (4-23-12).
546 [-] Interview (4-23-12).
547 [-] Notes (11-9-11).
548 [-] Notes (11-9-11).

⁵⁴⁹ Jessica VanderKolk, "King says PSU Gave Little Warning," *Center Daily Times* (11-16-11).
⁵⁵⁰ [-] Interview (5-9-12); [-] Interview (4-16-12); [-] Interview (4-6-12); [-] Interview (4-11-12); [-] Interview (4-18-12).
⁵⁵¹ [-] Interview (4-6-12); [-] Interview (4-16-12).
⁵⁵² Standing Orders of the Penn State Board of Trustees, Order IX(1)(a).
⁵⁵³ <http://www.psu.edu/trustees/selelection.html>.
⁵⁵⁴ See Board of Trustees Minutes of Meeting at 208-12 (5-16-03).
⁵⁵⁵ Standing Orders of the Penn State Board of Trustees, Order XI.
⁵⁵⁶ <http://www.psu.edu/trustees/membership.html>.
⁵⁵⁷ See Standing Orders of the Penn State Board of Trustees, Order IX. This statement on the general policies of the Board of Trustees was initially set forth and approved by the Board on June 11, 1970 and amended from time, the most recent being January 19, 1996. www.psu.edu/Trustees/governance.html.
⁵⁵⁸ Board of Trustees Corporate By-Laws, Art. 4, Sections 7-9 (2010).
⁵⁵⁹ Board of Trustees Minutes of Meeting, March 19, 2004 and September 19, 2008, <http://www.psu.edu/trustees/archives.html#2008>.
⁵⁶⁰ Standing Orders of the Penn State Board of Trustees, Order III. During the period 1998-2002, the Board met six times per year.
⁵⁶¹ See 15 Pa. Cons. Stat. § 5712; *In re Caremark International, Inc. Derivative Litigation*, 698 A.2d 959, 970-71 (Del. Ch. 1996).
⁵⁶² Standing Orders of the Penn State Board of Trustees, Order IX(1)(b)(2).
⁵⁶³ See *Stone v. Ritter*, 911 A.2d 362, 370 (Del. Ch. 2006).
⁵⁶⁴ See *Caremark*, 698 A.2d at 970-971.
⁵⁶⁵ [-] Interview (3-22-12); [-] Interview (3-15-12); [-] Interview (3-13-12); [-] Interview (3-8-12); [-] Interview (4-16-12); [-] Interview (3-14-12).
⁵⁶⁶ [-] Interview (4-16-12); [-] Interview (3-8-12).
⁵⁶⁷ [-] Interview (4-16-12).
⁵⁶⁸ Control Number 12005881; [-] Interview (4-6-12); [-] Interview (3-15-12); [-] Interview (3-14-12); [-] Interview (3-15-12); [-] Interview (5-3-12); [-] Interview (4-11-12); [-] Interview (3-15-12); [-] Interview (3-22-12); [-] Interview (3-15-12); [-] Interview (4-12-12); [-] Interview (4-16-12); [-] Interview (4-16-12); [-] Interview (3-13-12); [-] Interview (3-15-12).
⁵⁶⁹ Control Number 9365024.
⁵⁷⁰ Standing Orders of the Penn State Board of Trustees, Order IX(1)(b)(2).
⁵⁷¹ Standing Orders of the Penn State Board of Trustees, Order IX(1)(b)(2).
⁵⁷² Control Number 9365024.
⁵⁷³ Control Number 1001203.
⁵⁷⁴ Control Number 1001203.
⁵⁷⁵ [-] Notes (11-5-11).
⁵⁷⁶ Control Number 006_0000043.
⁵⁷⁷ Penn State Policy HR-25 (Control Number 014_0000034).
⁵⁷⁸ [-] Interview (2-15-12); [-] Interview (12-7-11); [-] Interview (12-5-11); [-] Interview (12-12-11); [-] Interview (12-16-11).
⁵⁷⁹ [-] Interview (12-15-11); [-] Interview (1-25-12).
⁵⁸⁰ [-] Interview (1-25-12); keylist.xls.
⁵⁸¹ Penn State Policy HR-25 (Control Number 014_0000034); Control Number 006_0000043.
⁵⁸² [-] Interview (12-07-11).

583 The Special Investigative Counsel and investigators with the Attorney General's Office found Sandusky's documents in April 2012.

584 *Id.*

585 [-] Interview (4-19-12).

586 [-] Interview (1-5-12); [-] Interview (1-10-12); [-] Interview (2-8-12).

587 Nittany Lion Club Records (7-8-11); [-] Interview (1-5-12); [-] Interview (2-8-12).

588 [-] Interview (1-5-12); [-] Interview (2-8-12).

589 Nittany Lion Club Records, November 2011; [-] Interview (1-5-12); [-] Interview (2-8-12).

590 Letterman Club Records, Nittany Lion Club Records.

591 Nittany Lion Club Records, September-October 2011.

592 [-] Interview (2-8-12).

593 [-] Interview (3-14-12); [-] Interview (12-19-11).

594 Sandusky was scheduled to conduct a camp in 2009, but his wife called the campus and cancelled the camp.

595 Penn State Policy AD39.

596 *See* [-] Interview (4-24-12); [-] Interview (4-24-12).

597 [-] Interview (4-24-12).

598 *See, e.g.,* [-] Interview (4-24-12); [-] Interview (4-24-12).

599 XL spreadsheet of PSU payments to Sandusky provided by the Controller's Office.

600 XL spreadsheet of PSU payments to Sandusky provided by the Controller's Office.

601 Control Number 014_0000054.

602 XL spreadsheet of PSU payments to Sandusky provided by the Controller's Office.

603 XL spreadsheet of PSU payments to Sandusky provided by the Controller's Office.

604 XL spreadsheet of PSU payments to Sandusky provided by the Controller's Office.

605 *See e.g.,* [-] Interview (2-1-12).

606 [-] Interview (12-5-11); (12-5-11); [-] Interview (12-6-11).

607 Control Number 00033853; [-] Interview (2-29-12).

608 [-] Interview (2-22-12).

609 [-] Interview (2-29-12).

610 [-] Interview (2-15-12); [-] Interview (2-14-12).

611 [-] Interview (2-29-12).

612 [-] Interview (12-16-11); [-] Interview (1-18-12).

613 [-] Interview (12-16-11); [-] Interview (1-18-12).

614 Armen Keteyian, "Sandusky's Second Mile charity probed for clues," *CBS Evening News* (11-11-11).

615 [-] Interview (4-11-12).

616 <http://www.psu.edu/dept/psusportsinfo/football/profiles/sanduskyretires.html>.

617 *Id.*

618 Memorandum from [-] to The Board of Directors (8-23-1999).

619 Control Number 006_0000044.

620 Second Mile Golf Tournament documents provided by Controller's Office (2-9-12).

621 Control Number 00555509.

622 Control Number 04122803.

623 [-] Interview (4-24-12); [-] Interview (4-24-12); Exhibit 3-F.

624 <http://www.foxnews.com/us/2011/11/19/penn-state-paid-by-sanduskys-charity-for-use-facilities-as-recently-as-2009/>.

625 [-] Interview (4-19-12).

626 [-] Interview (4-19-12).
627 [-] Interview (4-19-12).
628 [-] Interview (3-6-12); [-] Interview (4-11-12); [-] Interview (4-11-12).
629 [-] Interview (4-11-12).
630 [-] Interview (1-13-12).
631 [-] Interview (1-13-12).
632 [-] Interview (1-13-12).
633 [-] Interview (1-13-12).
634 [-] Interview (1-13-12).
635 [-] Interview (1-13-12).
636 In its 2002 ASR, for example, the University mistakenly reported that there were no sexual assaults in its Clery Act statistics. A watchdog organization noticed the discrepancy; the University discovered that it had made a mistake in its calculation and reissued the statistics. The incident resulted in negative publicity in the local newspaper. See Email of 1-12-2004 at 3:47:09 p.m.
637 [-] Interview (2-1-12); [-] Interview (1-5-12).
638 [-] Interview (2-1-12).
639 [-] Interview (1-5-12).
640 [-] Interview (1-5-12).
641 [-] Interview (1-5-12).
642 [-] Interview (1-5-12); [-] Interview (2-1-12); e.g., Control Number 09503459.
643 [-] Interview (1-5-12); [-] Interview (2-1-12).
644 [-] Interview (1-5-12).
645 Control Number 09528529.
646 [-] Interview (2-1-12); [-] Interview (1-5-12).
647 [-] Interview (1-5-12).
648 Control Number 08036801.
649 [-] Interview (2-1-12).
650 Control Number 09618422.
651 [-] Interview (2-1-12).
652 [-] Interview (2-1-12).
653 [-] Interview (7-6-12).
654 [-] Interview (7-6-12).
655 [-] Interview (7-6-12).
656 [-] Interview (7-6-12).
657 [-] Interview (7-6-12).
658 The Special Investigative Counsel determined that this incident occurred in 2001.
659 Preliminary Hearing Trans. at 24-25 (12-16-11).
660 Preliminary Hearing Trans. at 34 (12-16-11).
661 Preliminary Hearing Trans. at 175-76 (12-16-11).
662 The University Police Department recently surveyed everyone who worked there in February 2001. None of those employees had ever been informed of this incident. The incident was not included in Penn State's Clery statistics and no timely warning was made about it. [-] Interview (6-1-12).
663 Report prepared by [-] for Penn State, November 27, 2011.
664 See Chapter 9, *The Protection of Children in University Facilities and Programs*.
665 Outreach consists of five major units: Continuing Education, Cooperative Extension, Economic and Workforce Development, Public Broadcasting and Online Education.

⁶⁶⁶ Email from [-] to [-] (8-6-10).

⁶⁶⁷ See Appendix (2), Penn State Policy AD39.

⁶⁶⁸ Control Number 09341611.

⁶⁶⁹ See Appendix (2), Penn State Policy AD39.

⁶⁷⁰ See *id.*

⁶⁷¹ Additional clarifications, added June 7, 2012, include updated requirements for high school students visiting on pre-enrollment visits with Penn State students, clarification of reporting process and exclusion of client representation clinics in Dickinson School of Law from policy.

⁶⁷² Although Policy AD39 first took effect in 1992, it was not until April 28, 2010 that the Policy addressed background checks. Under the revised Policy AD39, the background check consists of a University background check or evidence of completion of Pennsylvania Act 34 (background check), Pennsylvania Act 151 (child abuse clearance) and FBI background history report clearance before being hired and/or interacting with minors.

⁶⁷³ See Appendix (2), Penn State Policies HR-95 and HR-96.

⁶⁷⁴ See Appendix (2), Penn State Policy HR-99, *Background Check Process*.

⁶⁷⁵ See Appendix (2), Penn State Policy HR-99, *Background Check Process*.

⁶⁷⁶ See Appendix (2), Penn State Policy HR-99, *Background Check Process*.

⁶⁷⁷ See Appendix (2), Penn State Policy HR-99, *Background Check Process*.

⁶⁷⁸ [-] Interview (3-8-12).

⁶⁷⁹ [-] Interview (3-12-12).

⁶⁸⁰ [-] Interview (2-23-12).

⁶⁸¹ [-] Interview (2-23-12).

⁶⁸² [-] Interview (12-19-11).

⁶⁸³ See, e.g., [-] Interview (3-6-12) (stating that, "it has happened here [at Altoona]" on a number of occasions over the years and coaches have always just been told not to do it again); [-] Interview (3-8-12) (stating that the use of individuals that were not registered or subjected to background checks happened once or twice each year. When those in her office would discover such individuals their response was, "guess what happened again?").

⁶⁸⁴ [-] Interview (3-8-12).

⁶⁸⁵ [-] Interview (2-23-12).

⁶⁸⁶ See, e.g., [-] Interview (2-23-12); [-] Interview (3-24-12) (stating that such unauthorized participation occurred every year, "all the time"); [-] Interview (3-6-12) (stating that "it has happened here [at Altoona] and on a number of occasions over the years and coaches have always just been told not to do it again); [-] Interview (3-8-12) (stating that the use of individuals that were not registered or subjected to background checks happened once or twice each year).

⁶⁸⁷ Email from [-] to [-] (8-6-10).

⁶⁸⁸ [-] Interview (3-1-12).

⁶⁸⁹ See e.g., [-] Interview (3-1-12); [-] Interview (3-5-12); [-] Interview (4-25-12); [-] Interview (3-6-12); [-] Interview (4-24-12).

⁶⁹⁰ [-] Interview (3-1-12); [-] Interview (3-8-12).

⁶⁹¹ [-] Interview (4-16-12).

⁶⁹² [-] Interview (4-25-12).

⁶⁹³ [-] Interview (4-24-12); [-] Interview (3-6-12); [-] Interview (3-21-12). Using E-PATCH, a coach or counselor can apply for a criminal background check online and, most of the time, a "no record" result is returned immediately. [-] Interview (3-5-12); see also, www.portal.state.pa.us. The coach or counselor requesting the background check bears the cost of this search. If a result of "no record" is returned, the

coach or counselor is allowed to work with youth with the limitation that the coach or counselor is not allowed to stay overnight with youth in a residence hall until the University background check is completed. [-] Interview (3-6-12).

⁶⁹⁴ [-] Interview (4-16-12). Senior administrator interviewers were unaware that fingerprinting was being utilized at this campus.

⁶⁹⁵ [-] Interview (3-24-12).

⁶⁹⁶ [-] Interview (3-8-12).

⁶⁹⁷ [-] Interview (3-12-12).

⁶⁹⁸ [-] Interview (3-23-12).

⁶⁹⁹ [-] Interview (3-23-12).

⁷⁰⁰ [-] Interview (3-23-12); [-] Interview (12-19-11).

⁷⁰¹ [-] Interview (3-23-12); [-] Interview (12-19-11).

⁷⁰² [-] Interview (3-23-12); [-] Interview (12-19-11).

EXHIBIT C

**BINDING CONSENT DECREE IMPOSED BY THE NATIONAL COLLEGIATE
ATHLETIC ASSOCIATION AND ACCEPTED BY THE PENNSYLVANIA
STATE UNIVERSITY**

I. BASIS FOR CONSENT DECREE

On November 5, 2011, the National Collegiate Athletic Association ("NCAA" or the "Association") learned of allegations of child sexual abuse occurring in the athletic facilities of The Pennsylvania State University ("University" or "Penn State"), perpetrated by former assistant football coach Gerald A. Sandusky ("Sandusky"). The University commissioned Freeh Sporkin & Sullivan, LLP ("FSS"), led by former FBI Director Louis Freeh, to investigate the alleged failure of University personnel to respond to and report Sandusky's misconduct, and "[t]he circumstances under which such abuse could occur in University facilities or under the auspices of University programs for youth."¹ On June 22, 2012, a Criminal Jury convicted Sandusky on 45 criminal counts related to 10 victims, including a 2001 incident that occurred in the University athletic showers and was witnessed by a then-graduate assistant. On July 12, 2012, FSS released its investigative report (the "Freeh Report"). The Freeh Report's findings depict an environment shaped by the actions and inactions of members of the leadership and board of Penn State that allowed Sandusky's serial child sexual abuse.

The NCAA recognizes that the circumstances involved in the Penn State matter are, in many respects, unlike any matter encountered by the NCAA in the past; it is doubtful, hopefully, that a similar circumstance would arise on any other campus in the future. In particular, the egregiousness of the predicate conduct is unprecedented, amounting to a failure of institutional and individual integrity far exceeding a lack of institutional control or individual unethical conduct. The University has undertaken a commendable process by commissioning the independent FSS investigation. FSS has established an exhaustive factual record compiled from, *inter alia*, more than 430 interviews and analysis of more than 3.5 million pieces of electronic data and documents.²

In light of this record and the University's willingness, for purposes of this resolution, to accept the Freeh Report, which the University itself commissioned, traditional investigative and administrative proceedings would be duplicative and unnecessary. Rather, the existing record permits fashioning an appropriate remedy for the violations on an expedited timetable, which benefits current and future University students, faculty and staff.

¹ Freeh Sporkin & Sullivan, LLP, 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, July 12, 2012, page 8, *available at* http://www.thefreehreportonpsu.com/REPORT_FINAL_071212.pdf.

² *Id.* at 9.

II. FINDINGS AND CONCLUSIONS

In a November 17, 2011 letter from NCAA President Mark Emmert to University President Rodney Erickson, Dr. Emmert noted that the membership of the Association has made clear in its Constitution and Bylaws what is expected of member institutions, administrators and coaches. Penn State was asked to describe how the University and relevant personnel have met their obligations to the Association. Penn State has communicated to the NCAA that it accepts the findings of the Freeh Report for purposes of this resolution and acknowledges that those facts constitute violations of the Constitutional and Bylaw principles described in the letter. Penn State expressly agrees not to challenge the consent decree and waives any claim to further process, including, without limitation, any right to a determination of violations by the NCAA Committee on Infractions, any appeal under NCAA rules, and any judicial process related to the subject matter of this Consent Decree.

Therefore, without further investigation or response, the findings of the Criminal Jury and the Freeh Report establish a factual basis from which the NCAA concludes that Penn State breached the standards expected by and articulated in the NCAA Constitution and Bylaws.

1. A failure to value and uphold institutional integrity demonstrated by inadequate, and in some instances non-existent, controls and oversight surrounding the athletics program of the University, such as those controls prescribed by Articles 2.1, 6.01.1, and 6.4 of the NCAA Constitution.
2. A failure to maintain minimal standards of appropriate and responsible conduct. The NCAA seeks to foster an environment and culture of honesty, as exemplified by NCAA Bylaws 10.01.1 and 11.1.1, and by Bylaw 10.1 on ethical conduct. Indeed, NCAA Bylaw 10.1 enumerates a non-exhaustive list of examples of inappropriate conduct. In addition, Article 2.4 of the NCAA Constitution requires athletic programs to adhere to fundamental values of respect, fairness, civility, honesty and responsibility.
3. A lack of adherence to fundamental notions of individual integrity. An institution's head coach should promote an atmosphere for compliance and monitor the activities of all assistant coaches and other administrators involved with the program who report directly or indirectly to the coach. Further, NCAA Bylaw 19.01.2, consistent with Article 2.4 of the NCAA Constitution, demands the employees associated with intercollegiate athletics to serve as positive moral models for students in order "for intercollegiate athletics to promote the character development of participants, to enhance the integrity of higher education and to promote civility in society."

The entirety of the factual findings in the Freeh Report supports these conclusions. A detailed recitation of the Freeh Report is not necessary, but these conclusions rely on the following key factual findings with respect to the University's oversight of its football program:

- [University] President Graham B. Spanier, Senior Vice President-Finance and Business Gary C. Shultz, Athletic Director Timothy M. Curley and Head Football Coach Joseph V. Paterno [] failed to protect against a child sexual predator harming children for over a decade. These men concealed Sandusky's activities from the Board of Trustees, the University community and authorities. . . .
- These individuals, unchecked by the Board of Trustees that did not perform its oversight duties, empowered Sandusky to attract potential victims to the campus and football events by allowing him to have continued, unrestricted and unsupervised access to the University's facilities and affiliation with the University's prominent football program. Indeed, that continued access provided Sandusky with the very currency that enabled him to attract his victims. Some coaches, administrators and football program staff members ignored the red flags of Sandusky's behaviors and no one warned the public about him.
- By not promptly and fully advising the Board of Trustees about the 1998 and 2001 child sexual abuse allegations against Sandusky and the subsequent Grand Jury investigation of him, Spanier failed in his duties as President. The Board also failed in its duties to oversee the President and senior University officials in 1998 and 2001 by not inquiring about important University matters and by not creating an environment where senior University officials felt accountable.³

FSS recognized that Spanier, Schultz, Paterno and Curley provided various explanations for their deficient conduct, but FSS found that it was

- more reasonable to conclude that, in order to avoid the consequences of bad publicity, the most powerful leaders at the University – Spanier, Schultz, Paterno and Curley – repeatedly concealed critical facts relating to Sandusky's child abuse from the authorities, the University's Board of Trustees, the Penn State community and the public at large.⁴

Although FSS concluded that avoiding the consequences of bad publicity was the most significant cause for the University's failure to protect child victims and report to authorities, FSS further concluded it was not the only cause. FSS also noted, among other causes, that

³ *Id.* at 14-15.

⁴ *Id.* at 15-16.

- the President “discouraged discussion and dissent”;
- Spanier, Schultz, Paterno, and Curley allowed Sandusky to retire as a valued member of the University’s football legacy, with “ways ‘to continue to work with young people through Penn State,’ essentially granting him license to bring boys to campus facilities for ‘grooming’ as targets for his assaults”;
- the football program “did not fully participate in, or opted out, of some University programs, including Clery Act compliance. . . .”; and
- the University maintained a “culture of reverence for the football program that is ingrained at all levels of the campus community.”⁵

III. SANCTIONS

The NCAA concludes that this evidence presents an unprecedented failure of institutional integrity leading to a culture in which a football program was held in higher esteem than the values of the institution, the values of the NCAA, the values of higher education, and most disturbingly the values of human decency. The sexual abuse of children on a university campus by a former university official – and even the active concealment of that abuse – while despicable, ordinarily would not be actionable by the NCAA. Yet, in this instance, it was the fear of or deference to the omnipotent football program that enabled a sexual predator to attract and abuse his victims. Indeed, the reverence for Penn State football permeated every level of the University community. That imbalance of power and its result are antithetical to the model of intercollegiate athletics embedded in higher education. Indeed, the culture exhibited at Penn State is an extraordinary affront to the values all members of the Association have pledged to uphold and calls for extraordinary action.

As a result, the NCAA has determined that the University’s sanctions be designed to not only penalize the University for contravention of the NCAA Constitution and Bylaws, but also to change the culture that allowed this activity to occur and realign it in a sustainable fashion with the expected norms and values of intercollegiate athletics. Moreover, the NCAA recognizes that in this instance no student-athlete is responsible for these events and, therefore, the NCAA has fashioned its sanctions in consideration of the potential impact on all student-athletes. To wit, after serious consideration and significant discussion, the NCAA has determined not to impose the so-called “death penalty.” While these circumstances certainly are severe, the suspension of competition is most warranted when the institution is a repeat violator and has failed to cooperate or take corrective action. The University has never before had NCAA major violations, accepted these penalties and corrective actions, has removed all of the individual offenders identified by FSS from their past senior leadership roles, has itself commissioned the FSS investigation and provided unprecedented access and openness, in some instances, even agreed to waive attorney-client privilege, and already has implemented many corrective actions. Acknowledging these and other factors, the NCAA does not deem the so-called “death penalty” to be appropriate.

⁵ *Id.* at 16-17.

In light of the foregoing, the NCAA imposes the following sanctions on the University:

A. Punitive Component

- **\$60 million fine.** The NCAA imposes a \$60 million fine, equivalent to the approximate average of one year's gross revenue from the Penn State football program, to be paid over a five-year period beginning in 2012 into an endowment for programs preventing child sexual abuse and/or assisting the victims of child sexual abuse. The minimum annual payment will be \$12 million until the \$60 million is paid. The proceeds of this fine may not be used to fund programs at the University. No current sponsored athletic team may be reduced or eliminated in order to fund this fine.
- **Four-year postseason ban.** The NCAA imposes a four-year ban on participation in postseason play in the sport of football, beginning with the 2012-2013 academic year and expiring at the conclusion of the 2015-2016 academic year. Therefore, the University's football team shall end its 2012 season and each season through 2015 with the playing of its last regularly scheduled, in-season contest and shall not be eligible to participate in any postseason competition, including a conference championship, any bowl game, or any post-season playoff competition.
- **Four-year reduction of grants-in-aid.** For a period of four years commencing with the 2013-2014 academic year and expiring at the conclusion of the 2016-2017 academic year, the NCAA imposes a limit of 15 initial grants-in-aid (from a maximum of twenty-five allowed) and for a period of four years commencing with the 2014-2015 academic year and expiring at the conclusion of the 2017-2018 academic year a limit of 65 total grants-in-aid (from a maximum of 85 allowed) for football during each of those specified years. In the event the number of total grants-in-aid drops below 65, the University may award grants-in-aid to non-scholarship student-athletes who have been members of the football program as allowed under Bylaw 15.5.6.3.6.
- **Five years of probation.** The NCAA imposes this period of probation, which will include the appointment of an on-campus, independent Integrity Monitor and periodic reporting as detailed in the Corrective Component of this Consent Decree. Failure to comply with the Consent Decree during this probationary period may result in additional, more severe sanctions.
- **Vacation of wins since 1998.** The NCAA vacates all wins of the Penn State football team from 1998 to 2011. The career record of Coach "Joe" Paterno will reflect the vacated records.

- **Waiver of transfer rules and grant-in-aid retention.** Any entering or returning football student-athlete will be allowed to immediately transfer and will be eligible to immediately compete at the transfer institution, provided he is otherwise eligible. Any football student-athlete who wants to remain at the University may retain his athletic grant-in-aid, as long as he meets and maintains applicable academic requirements, regardless of whether he competes on the football team.
- **Individual penalties to be determined.** The NCAA reserves the right to initiate a formal investigatory and disciplinary process and impose sanctions on individuals after the conclusion of any criminal proceedings related to any individual involved.

B. Corrective Component

- **Adoption of all recommendations presented in Chapter 10 of the Freeh Report.** The NCAA requires the University to adopt all recommendations for reform delineated in Chapter 10 of the Freeh Report. The University shall take all reasonable steps to implement the recommendations in spirit and substance by December 31, 2013.
- **Implementation of Athletics Integrity Agreement.** The Freeh Report includes a number of recommendations related to the University's Athletic Department. Specifically, in Chapter 10, Section 5.0, the Report addresses the integration of the Athletic Department into the greater University community. Within 10 days of this Consent Decree, the University will be required to enter into an "Athletics Integrity Agreement" ("AIA") with the NCAA and the Big Ten Conference, which obligates the University to adopt all of the recommendations in Section 5.0 of the Freeh Report as described in the above paragraph and, at a minimum, the following additional actions:
 - **Compliance Officer for Athletics.** Establish and select an individual for a position of a compliance officer or equivalent who is, at a minimum, responsible for the ethical and compliance obligations of the Athletic Department.
 - **Compliance Council.** Create a Compliance Council (or Council Subcommittee) composed of faculty, senior University administrators, and the compliance officer for athletics, which shall be responsible for review and oversight of matters related to ethical, legal and compliance obligations of the Athletic Department.

- Disclosure Program. Create a reporting mechanism, including a hotline, for named or anonymous individuals to disclose, report, or request advice on any identified issues or questions regarding compliance with (i) the AIA; (ii) the Athletic Department's policies, conduct, practices, or procedures, or (iii) the NCAA Constitution, Bylaws, or the principals regarding institutional control, responsibility, ethical conduct, and integrity reflected in the Constitution and Bylaws.
- Internal Accountability and Certifications. Appoint a named coach, manager, or administrator for each of the University's NCAA-sanctioned intercollegiate athletic teams who shall be assigned to monitor and oversee activities within his or her team and shall annually certify to the Compliance Council that his or her team is compliant with all relevant ethical, legal, compliance and University standards and obligations.
- External Compliance Review/Certification Process. The Athletic Director shall annually certify to the Compliance Council, the Board of Trustees, and the NCAA that the Athletic Department is in compliance with all ethical, compliance, legal and University obligations. If the Department fails to earn a certification, the Board of Trustees (or subcommittee thereof) or an appropriate University administrator shall take appropriate action against the Athletic Department, including the possibility of reduction in athletic funding.
- Athletics Code of Conduct. Create or update any code of conduct of the Athletic Department to codify the values of honesty, integrity and civility.
- Training and Education. In addition to Chapter 10, Section 5.5 of the Freeh Report, require all student-athletes and University employees associated with the Athletic Department, including faculty and staff to complete a yearly training course that addresses issues of ethics, integrity, civility, standards of conduct and reporting of violations. Each person who is required to complete training shall certify, in writing, that he or she has received such training. All training shall be overseen by the Compliance Council. The Board of Trustees also should receive training and education on these issues, including its relationship, role and responsibilities regarding the athletics program.
- If the NCAA determines, in its sole discretion, that the University materially breached any provision of the AIA, such action shall be considered grounds for extending the term of the AIA or imposing additional sanctions, up to and including, a temporary ban on participation in certain intercollegiate athletic competition and additional fines. The NCAA shall be permitted to accept as true and take into consideration all factual findings of the Freeh Report in imposing additional sanctions related to breach of the AIA and may initiate further NCAA investigative and administrative proceedings. The NCAA will provide the University notice of the allegation of a material breach and an opportunity to

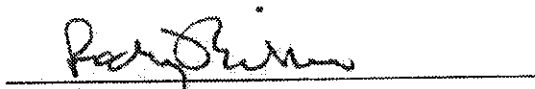
respond, but the final determination rests with the NCAA.

- **Appointment of an independent Athletics Integrity Monitor for a five-year period.** The NCAA requires that the University appoint an independent Athletics Integrity Monitor (the "Monitor") for a five-year period, at the University's expense. The Monitor will prepare a quarterly report to the University's Board of Trustees, the Big Ten Conference, and the NCAA regarding the University's execution and maintenance of the provisions of the AIA. The Monitor will make recommendations to the University to take any steps he or she reasonably believes are necessary to comply with the terms of the AIA and to enhance compliance with NCAA rules and regulations. The Monitor will operate under the following conditions:
 - He or she will be selected by the NCAA, in consultation with the University and the Big Ten Conference.
 - He or she will have access to any University facilities, personnel and non-privileged documents and records as are reasonably necessary to assist in the execution of his or her duties. The University shall preserve all such records as directed by the Monitor.
 - He or she will have the authority to employ legal counsel, consultants, investigators, experts and other personnel reasonably necessary to assist in the proper discharge of his or her duties. His or her expenses will be paid by the University, and the University shall indemnify and hold harmless the Monitor and his or her professional advisors from any claim by any third party except for conduct: a) outside the scope of the Monitor's duties; b) undertaken in bad faith; or c) constituting gross negligence or willful misconduct.

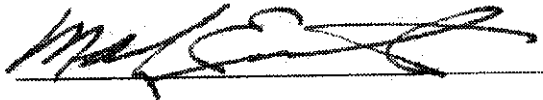
This Consent Decree may be modified or clarified by mutual written consent of the parties.

By signature of its President below, the University represents (i) that it has taken all actions necessary, to execute and perform this Consent Decree and the AIA and will take all actions necessary to perform all actions specified under this Consent Decree and the AIA in accordance with the terms hereof and thereof; (ii) its entry into this Consent Decree and the AIA is consistent with, and allowed by, the laws of Pennsylvania and any other applicable law.

IN WITNESS WHEREOF, this Consent Decree has been signed by or on behalf of each of the parties as of July 23, 2012.

A handwritten signature in black ink, appearing to read "Rodney A. Erickson", written over a horizontal line.

Rodney A. Erickson, President
The Pennsylvania State University

A handwritten signature in black ink, appearing to read "Mark A. Emmert", written over a horizontal line.

Mark A. Emmert, President
National Collegiate Athletic Association

EXHIBIT D

FOR IMMEDIATE RELEASE

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

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

Mr. Freeh and his law firm, Freeh Sporkin & Sullivan, LLP, were retained in November 2011 on behalf of the Special Investigations Task Force of the Board of Trustees of The Pennsylvania State University to conduct the independent investigation.

The full text of the remarks follows:

I. Introduction

Good Morning.

We are here today because a terrible tragedy was allowed to occur over many years at Penn State University, one in which many children were repeatedly victimized and gravely harmed. Our hearts and prayers are with the many children – now young men – who were the victims of a now convicted serial pedophile.

I want to remind everyone here, and those watching this press conference, of the need to report child sexual abuse to the authorities. In Pennsylvania you can report child sexual abuse to the Department of Public Welfare's ChildLine. That number – which is on the screen before you – is **(800) 932-0313**. It is our hope that this report and subsequent actions by Penn State will help to bring every victim some relief and support.

Penn State University is an outstanding educational institution, which is rightly proud of its students, alumni, faculty and staff, who, in turn, hold the institution in very high esteem. We understand and respect their support and loyalty, and the spirit of community surrounding the University, which we witnessed first-hand during our seven and one half months of work on the Penn State campus. We also fully appreciate the strong emotions which surround these tragic matters and our work.

All of us here today understand that it is the duty of adults to protect children and to immediately report any suspected child sexual abuse to law enforcement authorities. Our team was reminded of this on a daily basis because Henderson South, our base at Penn State, was the former Child Care Center at State College, with some of the children's art work still in the space.

On November 21, 2011, the Special Investigations Task Force established by the Board of Trustees of The Pennsylvania State University retained my firm, Freeh Sporkin & Sullivan, to conduct a full, fair and completely independent investigation into the facts and circumstances raised by the Grand Jury report and the criminal charges against former Assistant Coach Gerald Sandusky.

I commend Ken Frazier, Chairman of the Task Force, and Ron Tomalis, Vice Chairman of the Task Force, and their colleagues for the steps they took to ensure the independence and thoroughness of our investigation. We would also like to acknowledge, in particular, the three Task Force members who are not members of the Board of Trustees – a faculty member, a student and a distinguished alumnus.

To conduct this independent investigation, we assembled an outstanding team of former law enforcement, lawyers (one of whom is a former Navy SEAL) and officials, including former prosecutors, FBI Agents and Pennsylvania and Delaware State Police Officers, with many decades of experience conducting sensitive investigations. I am pleased to be joined this morning by some members of our team.

Working exceptionally hard in a very short amount of time for an investigation of this magnitude, my team conducted over 430 interviews of various individuals that included current and former University employees from various departments across the University, as well as current and past Trustees, former coaches, athletes and others in the community. We also analyzed over 3.5 million emails and other documents. The evidence found by our investigators included critical, contemporaneous correspondence from the times of these events. Our investigative team made independent discovery of critical 1998 and 2001 emails – the most important evidence in this investigation. We also confirmed, through our separate forensic review, that the correct year of the Sandusky sexual assault witnessed by Michael McQueary was 2001, and not 2002 as set forth in the original Grand Jury presentment.

In performing this work, we adhered faithfully to our original mandate: to investigate this matter fully, fairly, and completely, without fear or favor. We have shown no favoritism toward any of the parties, including the Board of Trustees itself, our client. I can tell you that at all times we felt that our demand for total independence – the primary condition of our engagement – was respected.

We took the unusual step of not providing any draft of the report to the Board of Trustees or to the Task Force prior to its posting this morning. They are seeing it at the same time and in the same manner as everyone else, namely by accessing the independent website we established for this purpose, www.TheFreehReportonPSU.com. To be absolutely clear, this public release is the first time anyone outside of our investigative team has seen this report.

In our investigation, we sought to clarify what occurred, including who knew what and when events happened, and to examine the University's policies, procedures, compliance and internal controls relating to identifying and reporting sexual abuse of children. Specifically, we worked to identify any failures or gaps in the University's

control environment, compliance programs and culture which may have enabled these crimes against children to occur on the Penn State campus, and go undetected and unreported for at least these past 14 years. As you will read in our report, Penn State failed to implement the provisions of the Clery Act, a 1990 federal law that requires the collecting and reporting of the crimes such as Sandusky committed on campus in 2001. Indeed, on the day Sandusky was arrested, Penn State's Clery Act implementation plan was still in draft form. Mr. Spanier said that he and the Board never even had a discussion about the Clery Act until November 2011.

While independent, our work was done in parallel with several other active investigations by agencies and governmental authorities, including the Pennsylvania Attorney General, Pennsylvania State Police, United States Attorney, Federal Bureau of Investigation, and U.S. Department of Education. We continuously interfaced and cooperated with those agencies and authorities. We also received assistance from the National Center for Missing & Exploited Children (NCMEC). As promised, we immediately turned over any relevant evidence we found to these authorities, such as the critical February 27, 2001 emails between Messrs. Spanier, Schultz and Curley. The complete emails are now available on our website.

Unfortunately, portions of these emails have been leaked to the media. We strongly condemn and deplore those leaks. Let me assure you that none of these leaks came from the Special Investigative Counsel team. As you will see by reading our report this morning, not one conclusion, phrase, or any content of our report has been published or quoted prior to today.

Last month Sandusky was found guilty after trial on 45 of 48 counts. He awaits sentencing. We were exceedingly careful not to do anything that would have impeded that investigation and trial. Criminal proceedings are still pending against Mr. Schultz and Mr. Curley. We respect the criminal justice process and their rights to a fair trial.

Some individuals declined to be interviewed. For example, on the advice of counsel, both Mr. Curley and Mr. Schultz declined to be interviewed. Also, the Pennsylvania Attorney General requested that we not interview certain potential witnesses. We honored those requests. Mr. Paterno passed away before we had the opportunity to speak with him, although we did speak with some of his representatives. We believe that he was willing to speak with us and would have done so, but for his serious, deteriorating health. We were able to review and evaluate his grand jury testimony, his public statements, and notes and papers from his files that were provided to us by his attorney.

II. Findings

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

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

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

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

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

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

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

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

The evidence shows that these four men also knew about a 1998 criminal investigation of Sandusky relating to suspected sexual misconduct with a young boy in a Penn State football locker room shower. Again, they showed no concern about that victim. The evidence shows that Mr. Paterno was made aware of the 1998 investigation of Sandusky, followed it closely, but failed to take any action, even though Sandusky had been a key member of his coaching staff for almost 30 years, and had an office just steps away from Mr. Paterno's. At the very least, Mr. Paterno could have alerted the entire football staff, in order to prevent Sandusky from bringing another child into the Lasch Building. Messrs. Spanier, Schultz, Paterno and Curley also failed to alert the Board of Trustees about the 1998 investigation or take any further action against Mr. Sandusky. None of them even spoke to Sandusky about his conduct. In short, nothing was done and Sandusky was allowed to continue with impunity.

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

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

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

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

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

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

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

We also found that:

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

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

III. Recommendations

The other important part of our charge was to make recommendations to prevent such catastrophic failures to report from ever again occurring at Penn State. The Board of Trustees had requested recommendations as soon as possible, in order to improve policies and procedures regarding the protection of children on its campuses. Just this summer alone, over 20,000 non-student minors are participating in sports camps on the University Park campus. To ensure that these children would be better protected, we

gave the Board of Trustees 14 of our preliminary recommendations in January, almost all of which have now been implemented.

Further, we suggested some longer term changes, including the creation of a comprehensive and stringent Compliance Program, including Board oversight through a Compliance Committee. That committee would have oversight responsibility for all regulatory obligations, including the Clery Act, and the Chief Compliance Officer would have a direct reporting line to the committee. The University has commenced a national search for a highly qualified Chief Compliance Officer and adopted two new policies for the protection of children: one provides for annual training on child abuse and mandatory reporting for all employees; the other revises and strengthens the University's background check process.

In addition to our interim recommendations, we have added 119 recommendations set forth in today's report. One of the most important of our recommendations is for Penn State itself to study, evaluate and make any needed additional changes. The goal should be to create a more open and compliant culture, which protects children and not adults who abuse them.

IV. Conclusion

With the presentation of this Report to the Special Investigations Task Force and the Board of Trustees, our work is largely completed. We will make ourselves available to the Task Force and Board to answer any questions they may have, but we will not have an ongoing role with the University. We will also make ourselves available to the students, faculty and staff of the University at the appropriate time at State College. We hope such an interaction might assist the Penn State community in moving forward.

The release of our report today marks the beginning of a process for Penn State, and not the end. It is critical that Old Main, the Board and the Penn State community never forget these failures and commit themselves to strengthening an open, compliant and victim sensitive environment – where everyone has the duty to “blow the whistle” on anyone who breaks this trust, no matter how powerful or prominent they may appear to be.

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Contacts:

Thomas Davies/Jeremy Fielding/Stef Goodsell

Kekst and Company

212-521-4800

TheFreehReportonPSU@kekst.com

EXHIBIT E



DEC 09 2011

12.13- to SAG + Best + Roc-Lach

President Mark Emmert
The National Collegiate Athletic Association
700 W. Washington Street
P.O. Box 6222
Indianapolis, Indiana 46206-6222

FILED IN FBI FILE NO. _____
 FILED IN BUREAU FILE NO. _____
 SPECIAL AGENT IN CHARGE _____
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At the direction of the Council of Presidents and Chancellors ("COP/C") of the Big Ten Conference, the Conference is gathering and reviewing facts relating to the institutional control, ethical conduct and other compliance issues arising out of the allegations set forth in the Grand Jury Report of sexual abuse of minors by former assistant head football coach Jerry Sandusky on the Penn State campus.

We acknowledge that the NCAA has commenced a review of these matters as well and has requested that Penn State provide written responses to a series of questions set forth in your November 17, 2011 letter to President Erickson. We also understand that the Penn State's Board of Trustees has appointed a Special Committee of the Board to investigate, among other things, the circumstances relating to the Grand Jury Report and that the Freeh Group has been retained by the Special Committee to assist in that investigation. We have requested that Penn State allow Jon Barrett of Mayer Brown LLP, who is Big Ten legal counsel, to participate in this investigation relating to matters of institutional control, ethical conduct and other compliance related issues. We also request of the NCAA that Jon Barrett be allowed to participate in the NCAA's investigation of these matters. It is our intent to avoid as much duplicative effort as possible given the Special Committee's investigation and the NCAA's review and we will try to collaborate to the extent possible with these other investigations. I understand that Jon Barrett has been communicating with both the Freeh Group and the NCAA regarding an agreeable process of collaboration on gathering and sharing information.

We have requested that Penn State provide us and our legal counsel with a copy of their written response to the NCAA as requested in your November 17 letter and any other written communications or data that they provide to the NCAA relating to your review. We will also follow the federal and state investigations and will take notice of the relevant information that we learn from these concurrent processes.

Sincerely,

James E. Selway

James E. Delany
Commissioner

cc: Council of Presidents and Chancellors

EXHIBIT F

Appointment

From: Omar Y. McNeill [McNeill@freehgroup.com]

Sent: 12/24/2011 1:16:52 PM

To: Remy, Donald [dremy@ncaa.org]; 'Barrett, Jonathan A.' [JBarrett@mayerbrown.com]

Subject: PSU Weekly Update

Location: Conference Call (Dial-In Info Below)

Start: 12/23/2011 2:00:00 PM

End: 12/23/2011 3:00:00 PM

Show Time As: Busy

Recurrence: Weekly

Occurs every Friday from 9:00 AM to 10:00 AM effective 12/23/2011 until 5/4/2012. There are 13 more occurrences.
Eastern Time (US & Canada)

Please use the new passcode listed below for calls going forward.

866-212-0875

Passcode – 937115#

Appointment

From: Omar Y. McNeill [McNeill@freehgroup.com]
To: 'Barrett, Jonathan A.' [JBarrett@mayerbrown.com]; Remy, Donald [dremy@ncaa.org]; Omar Y. McNeill [McNeill@freehgroup.com]
Subject: PSU Weekly Update
Location: Conference Call (Dial-In Info Below)
Start: 1/16/2012 2:00:00 PM
End: 1/16/2012 3:00:00 PM
Show Time As: Busy

Please use the new passcode listed below for calls going forward.

866-212-0875

Passcode - 937115#

Appointment

Subject: PSU Weekly Update 866-212-0875. Passcode – 937115#

Location: Conference Call (Dial-In Info Below)

Start: 1/20/2012 2:00:00 PM

End: 1/20/2012 3:00:00 PM

Show Time As: Busy

Please use the new passcode listed below for calls going forward.

866-212-0875

Passcode - 937115#

Appointment

From: Omar Y. McNeill [McNeill@freehgroup.com]
Sent: 1/25/2012 5:17:38 PM
To: 'Omar Y. McNeill' [McNeill@freehgroup.com]; Remy, Donald [remy, donald]; 'Barrett, Jonathan A.' [barrett, jonathan a.]; Remy, Donald [dremy@ncaa.org]; 'Barrett, Jonathan A.' [JBarrett@mayerbrown.com]
Subject: PSU Weekly Update
Location: Conference Call (Dial-In Info Below)
Start: 4/6/2012 6:00:00 PM
End: 4/6/2012 7:00:00 PM
Show Time As: Tentative

Please use the new passcode listed below for calls going forward.

866-212-0875

Passcode - 937115#

Appointment

From: Omar Y. McNeill [McNeill@freehgroup.com]
Sent: 2/1/2012 2:29:38 PM
To: 'Omar Y. McNeill' [McNeill@freehgroup.com]; Remy, Donald [remy, donald]; 'Barrett, Jonathan A.' [barrett, jonathan a.]; Remy, Donald [dremy@ncaa.org]; 'Barrett, Jonathan A.' [JBarrett@mayerbrown.com]
Subject: PSU Weekly Update
Location: Conference Call (Dial-In Info Below)
Start: 2/20/2012 2:00:00 PM
End: 2/20/2012 3:00:00 PM
Show Time As: Tentative

Please use the new passcode listed below for calls going forward.

866-212-0875

Passcode - 937115#

Appointment

Subject: PSU Weekly Update 866-212-0875 Passcode – 937115#

Location: Conference Call (Dial-In Info Below)

Start: 2/3/2012 2:00:00 PM

End: 2/3/2012 3:00:00 PM

Show Time As: Busy

Please use the new passcode listed below for calls going forward.

866-212-0875

Passcode - 937115#

Appointment

From: Omar Y. McNeill [McNeill@freehgroup.com]
Sent: 12/24/2011 1:16:52 PM
To: Remy, Donald [dremy@ncaa.org]; 'Barrett, Jonathan A.' [JBarrett@mayerbrown.com]
Subject: Copy: PSU Weekly Update 866-212-0875 Passcode – 937115#
Location: Conference Call (Dial-In Info Below)
Start: 2/6/2012 2:30:00 PM
End: 2/6/2012 3:30:00 PM
Show Time As: Busy

Please use the new passcode listed below for calls going forward.

866-212-0875
Passcode – 937115#

EXHIBIT G

1

THE FREEH REPORT

2

PRESS CONFERENCE

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INDEPENDENT INVESTIGATION OF

6

PENN STATE UNIVERSITY

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July 12, 2012

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1 PRESS CONFERENCE Q&A PORTION

2 LOUIS FREEH: We'll take some questions now at
3 this point.

4 ARNOLD TAM: Judge Freeh, Arnold Tam, CBS News.
5 Can you elaborate on that critical conversation between
6 Tim Curley and Joe Paterno that led to the decision by
7 Penn State not to alert the police?

8 LOUIS FREEH: I can't. As you know, we didn't
9 have the opportunity to interview either of them. We
10 are basing this reasonable conclusion on the e-mails,
11 the circumstantial evidence. But we do know what the
12 -- we do not know what the content of that conversation
13 was. Yes, sir?

14 CHRIS GORDON: Chris Gordon, NBC Washington,
15 News 4. Following up on that conversation, could it be
16 construed as obstruction of justice, conspiracy, aiding
17 or abetting, or a cover-up?

18 LOUIS FREEH: Those are all legal conclusions,
19 which I'm not prepared to make. The evidence clearly
20 shows in our view an active agreement to conceal, and I
21 think it would be up to a grand jury and a law
22 enforcement officer to make decisions whether it meets

1 the elements of criminal offenses.

2 MS. CANDIOTTI: Judge Freeh?

3 LOUIS FREEH: Yes, ma'am.

4 MS. CANDIOTTI: Judge Freeh, Susan Candiotti
5 from CNN. Did you say that you could find no linkage
6 at all between Mr. Sandusky's retirement in 1999 after
7 the 1998 incident?

8 LOUIS FREEH: Yes. We reviewed very, very
9 carefully the circumstances and contents of Mr.
10 Sandusky's retirement in 1999. He was paid a very
11 large, unprecedented sum of money, \$168,000. He was
12 given not just emeritus status, but extraordinary
13 access to the key and most sensitive parts of the
14 university's football building and program.

15 However, there is no evidence that we found
16 that would indicate that that retirement and all the
17 elements that went into it were related in any way to
18 removing him from the university, silencing him, making
19 him happy, whatever you want to describe.

20 MS. CANDIOTTI: [Inaudible.]

21 LOUIS FREEH: I have no evidence to believe
22 that.

1 JIM AVILA: Judge Freeh, Jim Avila from ABC
2 News. Just recently, the family of Joe Paterno
3 released a statement in which he said before he died
4 that this was not a football problem, that this should
5 not be linked to the football program. Do you agree
6 with that statement? Was this a football problem?

7 LOUIS FREEH: The rapes of these boys occurred
8 in the Lasch Building. Mr. Paterno had his office in
9 the Lasch Building steps away from Mr. Sandusky. Mr.
10 Sandusky was one of his chief defense coaches.

11 Again, we don't have the benefit of having
12 spoken to Mr. Paterno, as I believe he intended to do.
13 However, we have a statement that he made with respect
14 to the conversation when McQuade first -- I'm sorry,
15 McQuade first advised him of what he had seen in the
16 shower the night of February 9, Friday night. And Mr.
17 Paterno's quote was, "You did what you had to do. Now
18 it's up to me to decide what we want to do."

19 I think that's a very telling and a very
20 important and critical statement made, again, not on a
21 hearsay basis by Mr. Paterno himself. Yes, sir?

22 BRUCE GORDON: Bruce Gordon of Fox 29 in

1 Philadelphia. Can you address just a little bit the
2 degree to which Penn State's handling or mishandling of
3 this -- of all these incidents led to further abuse and
4 put other kids at risk?

5 LOUIS FREEH: Well, I think you'll see from our
6 report and even my remarks this morning, the board
7 failed in its oversight of these senior officers of the
8 university. They did not create an atmosphere where
9 the president and his senior officers felt they were
10 accountable to the board.

11 In any corporate structure, private or public,
12 the function of a board is to create an atmosphere of
13 accountability where the officers who managed the day-
14 to-day operation of the enterprise feel obligated to
15 advise the board as to serious matters on a timely and
16 fulsome basis.

17 That clearly did not happen here beginning in
18 1998. It graphically did not happen after the March
19 31st, 2011 article in the Patriot News. It continued
20 up to the point where Mr. Sandusky was arrested.

21 Most incredibly, most of the board members did
22 not about the arrest until they read it in the

1 newspapers. So that would be, in my view, a failure of
2 governance, a failure of oversight. And that has got
3 to be a contributing force to the continuing activities
4 that have been so tragically reported here.

5 DAVE MARCHESKIE: Judge Freeh, Dave Marcheskie
6 with ABC 27 News out of Harrisburg. Have you in your
7 investigation, have you seen any incidents from 2009
8 when this investigation started to 2011 when Sandusky
9 himself was arrested? There have been reports that he
10 was on the Penn State campus with youngsters up until
11 the point he was arrested.

12 LOUIS FREEH: He's frequently observed in the
13 Lasch Building working out. He's at the bowl games
14 with youth. Many of the colleagues observe him
15 showering with boys in the Lasch Building, don't report
16 that, don't think there's anything untoward about that.

17 He's showing up at these camps, camps, by the
18 way, which Penn State supported and contributed to in
19 terms of their operations. He's showing up with young
20 boys, staying in dormitories with them overnight.
21 There's more red flags here than you could count over a
22 long period of time.

1 DAVE MARCHESKIE: During those two years,
2 though, from 2009 to 2011, did you guys see anything?

3 LOUIS FREEH: Between 2009 and 2011, some of
4 the same things I just alluded to. Yes, sir.

5 PETE MUNTEAN: Pete Muntean, WGAL in
6 Harrisburg. Joe Paterno, by my count, is mentioned
7 more than 100 times, and it's only in the first third
8 of the document. Can you by any chance classify who
9 was most at fault, and, if so, was it Joe Paterno for
10 not reporting those incidents?

11 LOUIS FREEH: The reasonable conclusion that we
12 make is that all four individuals that I've mentioned,
13 including Mr. Paterno, made a decision to actively
14 conceal the knowledge and the events of February 2011.
15 I can't parce between them degrees of responsibility.

16 What's significant and shocking is that the four of
17 them, the most powerful people in Penn State
18 University, made a decision to conceal this
19 information.

20 ROSEMARY CONNORS: Judge Freeh, Rosemary
21 Connors with NBC 10 News in Philadelphia. In your
22 report, you make reference to a personal note that

1 Schultz wrote regarding the 1998 investigation in which
2 he said, "Is this the opening of Pandora's box? Are
3 other children involved?" Do you believe at that point
4 that Schultz and other authorities knew that they had a
5 child molestation case on their hands?

6 LOUIS FREEH: Well, you know, I can't get into
7 Mr. Schultz thought process. The document you cite is
8 an extremely relevant document. He asks two questions:
9 is this a Pandora's Box; are there other children.

10 We also know that at that period, you know,
11 there's a consultation with people outside the
12 university about the implications of this. So they're
13 clearly focused on this. And to ask the question, does
14 this open a Pandora's Box, question mark, other
15 children, question mark, is a very strong inference
16 that they were focused not just on what the report was,
17 but the implication as to other victims.

18 MARTIN SCOFFEY: Judge Freeh, Martin Scoffey of
19 NBC News. What is your best explanation as to why four
20 senior officials at Penn State chose to act to conceal
21 this information and disregard their obligations to the
22 children?

1 LOUIS FREEH: Well, as we put in our report,
2 the motivation to avoid the consequences of bad
3 publicity, not just bad publicity. What are the
4 consequences of bad publicity? The consequences of bad
5 publicity are growing investigations, right? Donors
6 being upset, the university community being very upset,
7 as we saw in November of 2011, raising questions about
8 what they themselves did in 1998.

9 What's striking about 1998 is nobody even spoke
10 to Sandusky, not one of those four persons, including
11 the coach, who was a few steps away from his office.
12 There's no indication anybody spoke to him.

13 There's no indication that Coach Paterno called
14 all of his assistant coaches in and said, hey, look,
15 make sure this guy, Sandusky, doesn't bring any more
16 kids into the shower. In other words, there's lots of
17 consequences that go with bad publicity in 2001.

18 MARTIN SCOFFEY: -- protect the football
19 program?

20 LOUIS FREEH: I think that's an inference that
21 you can draw, but I think bad publicity affects a
22 panorama of different events, including the brand of

1 Penn State, including the university, including the
2 reputation of coaches, including the ability to do
3 fundraising. It's got huge implications, and I think
4 you could probably name more of them than I can.

5 JOHN MARTIN: Judge Freeh, John Martin from the
6 Philadelphia Enquirer. Following up on that, were
7 there other incidents or other occasions that you
8 discovered that you would suggest shows a pattern of
9 trying to avoid bad publicity?

10 LOUIS FREEH: Well, we know when Mr. Curley
11 speaks to the Second Mile, he uses the same word, that
12 they were worried about Sandusky showering with a boy
13 because of bad publicity. So this notion of bad
14 publicity, which is really disclosure, opening, and
15 reporting, is a pervasive concern and fear by the
16 people running the university.

17 SPEAKER: -- ABC Philadelphia. Paterno
18 testified at a grand jury that he didn't recall
19 anything with 1998, the 1998 incident. Can you
20 elaborate on what you found he knew about that? And in
21 your opinion, do you believe Joe Paterno perjured
22 himself?

1 LOUIS FREEH: Well, I'm not going to comment on
2 whether he perjured himself or not. What I will say
3 is, as you'll see in our report, there's several e-
4 mails -- contemporaneous e-mails in 1998, which we
5 found, by the way, which show that he's clearly
6 following the case. He's clearly following the 1998
7 investigation. The coach wants to be advised what's
8 going on.

9 So the notion that, you know, there was no
10 attention paid at the time is completely contradicted
11 by the evidence.

12 SARAH DAMLIN: Judge Freeh, you talked about --
13 Sarah Damlin, ABC News. You talked about a culture a
14 little bit. And I'm wondering, you know, you're from
15 outside this area. Do you believe that the AG's Office
16 might have been blinded by that culture, Paterno/Penn
17 State, only because your findings are very different
18 from really blaming Joe Paterno. Were there -- several
19 months ago, they said he did the right thing.

20 LOUIS FREEH: Well, you know, the Attorney
21 General has a different standard with respect to
22 deciding whether to charge or whether or not to charge.

1 We don't have a reasonable doubt standard. Our
2 conclusion, as I stated it, was a reasonable conclusion
3 based on the facts and circumstances. I can't comment
4 on what the Attorney General analyzed or concluded in
5 that regard. I just don't know.

6 BEN SIMMONEAU: Ben Simmoneau from CBS 3 here
7 in Philadelphia. Given that the vast majority of the
8 trustees who were on the board last year and in years
9 prior who did not provide proper oversight, as you
10 point out, are still on the board today, should they
11 resign?

12 LOUIS FREEH: Well, I can't comment about what
13 my client should do, but I think that's a question you
14 should direct to the board.

15 STU BYKOFISKY: Judge Freeh? Judge, over here.

16 LOUIS FREEH: I'm sorry. Yeah.

17 STU BYKOFISKY: Stu Bykofsky, Philadelphia Daily
18 News. We've been talking about culture here. In your
19 report, a number of individuals were named. Do you
20 have the sense that the football culture at Penn State
21 was an unnamed conspirator?

22 LOUIS FREEH: Well, I don't know what an

1 unnamed conspirator is. What I will say, and what I
2 found to be extremely telling and critical in deciding
3 not just what I thought recommendations should be, is
4 the janitors. I mean, just think a moment for the
5 janitors. The janitors, that's the tone on the bottom,
6 okay? These are the employees of Penn State who clean
7 and maintain the locker rooms in Lasch Building where
8 young boys are being raped.

9 They witness, what I think in the report is
10 probably the most horrific rape that's described. And
11 what do they do? They panic.

12 The janitor who observes it said it's the worst
13 thing he ever saw. He's a Korean War veteran. He said
14 I've never seen anything like that. It makes me sick.

15 He spoke to the other janitors. They were alarmed and
16 shocked by it, but what did they do? They said we
17 can't report this because we'll get fired.

18 They knew who Sandusky was. One of the
19 janitors, you know, watched him growing up as a famous
20 defense coordinator coach. They were afraid to take on
21 the football program. They said the university would
22 circle around it. It was like going against the

1 President of the United States.

2 If that's the culture on the bottom, you know,
3 God help the culture at the top, which is what we
4 commented about.

5 SPEAKER: Judge Freeh. Where that's concerned,
6 do you -- [inaudible], Philadelphia. Have you been in
7 touch or do you expect to be in touch with either the
8 NCAA or the Big 10 regarding the culture of Penn State
9 football and if there needs to be action in this going
10 forward?

11 LOUIS FREEH: We've been in regular contact
12 with both organizations since the investigation began.
13 We haven't obviously given them or supplied them any
14 of the evidence or contents that we have found. But we
15 have been in regular discussions with them at their
16 initiation.

17 They are conducting, as they've said publicly,
18 inquiries into this matter. What they find is going to
19 be based on, you know, their criteria and their
20 conclusions.

21 SPEAKER: Judge Freeh?

22 LOUIS FREEH: Yes, sir?

1 SPEAKER: Sandusky comes to the university in
2 '68, and I don't notice in your report anything. Did
3 your investigation go back into the 80s and 70s to look
4 and see how long this process had gone in the last 14
5 years you looked into, sir?

6 LOUIS FREEH: Yes, it did.

7 SPEAKER: What did you find?

8 SPEAKER: How many children were molested after
9 the '98 incident, half?

10 LOUIS FREEH: You know, I can't make an
11 estimate on that. We asked the state police if they
12 could do it. It's very uncertain. I can't make an
13 estimate on that, I'm sorry.

14 BARBARA BARR: Barbara Barr, WGAL. You said
15 that the board mishandled Joe Paterno's firing. But
16 was it justified?

17 LOUIS FREEH: Yes.

18 JON MEYER: Judge Freeh, Jon Meyer, WNEP in
19 Scranton. There's already Penn State fans online that
20 are saying that you're just going after a dead man who
21 can't defend him in Joe Paterno. What's your response
22 to them saying that?

1 LOUIS FREEH: Well, we have a great deal of
2 respect for Mr. Paterno, and condolences for his family
3 on the loss. It's a person with a terrific legacy, a
4 great legacy, who brought huge value to not the
5 university, but the program.

6 He, as someone once said, you know, made
7 perhaps the worst mistake of his life. But we're not
8 singling him out. We're putting him in a category of
9 four other people who we would say are the major
10 leaders of Penn State. But he also was a major leader
11 of Penn State.

12 The facts are the facts. The e-mails, the
13 notes that Schultz took from meetings in February of
14 2001. There's a whole bunch of evidence here. And
15 we're saying the reasonable conclusion from that
16 evidence is he was an integral part of this active
17 decision to conceal.

18 I regret that based on the damage it does
19 obviously to his legacy because he is no longer. I
20 wish we had had the opportunity to speak to him. I
21 wish we had had the ability to show him those e-mails.
22 We found those e-mails, as you know, after he was

1 deceased.

2 But what my report says is what the evidence
3 and what the facts show, and we've laid that out as
4 fairly and clearly as we can.

5 ROSEMARY CONNORS: Judge Freeh, Rosemary
6 Connors again with NBC --

7 LOUIS FREEH: I'm sorry, you just asked me a
8 question. Yes?

9 MIKE SISAK: Judge Freeh, Mike Sisak from the
10 Scranton Times Tribune. The evidence is overwhelming,
11 but there are people close to Paterno who say they were
12 interviewed. They felt there was an agenda. They felt
13 that there may have been some leading questions or some
14 attempts to get them to say things that weren't true.
15 What's your response to that?

16 LOUIS FREEH: It's not correct.

17 SPEAKER: Judge Freeh? Judge?

18 LOUIS FREEH: Yes, sir.

19 SPEAKER: The confidential notes that Schultz
20 had, the staff confidential notes that were removed by
21 his assistant from his office, the grand jury didn't
22 have those. How did you come by those? How difficult

1 were those to obtain that were so significant to your
2 findings?

3 LOUIS FREEH: Well, it was a question of skill
4 and luck. I don't discount either. He actively sought
5 to conceal those records. We found them in conjunction
6 with the attorney general. They're very critical
7 notes, very critical records. They go to the
8 conclusion that this gentleman just asked me about.

9 You know, it was an active case of trying to
10 conceal evidence, you know. You don't do that. It's a
11 dumb thing to do, but the result is we did get them and
12 it's very significant evidence.

13 JACK MULLINS: Judge Freeh, Jack Mullins of the
14 Associated Press. I'm wondering what Chief Arnold,
15 Karen Arnold, and Mike McQueary may have been able to
16 add had you been able to speak with them. And who are
17 the other folks you were asked not to interview?

18 LOUIS FREEH: Well, I mean, there were a number
19 of individuals. Those two, of course -- we were asked
20 not to interview the janitors until the trial was over.
21 We immediately interviewed them once the trial was
22 over. And, as I said, I think the evidence they

1 provided was some of the most significant evidence in
2 the case in terms of understanding the culture, you
3 know, what went on there.

4 There were a number of other individuals -- I
5 don't care to list them -- that the attorney general
6 asked us not to speak to. We tried to speak to
7 Sandusky. He did not want to speak to us. There were
8 a number of people we would like to speak to. The
9 assistant district attorney, who declined the
10 prosecution in 1998, she didn't want to speak to us.
11 So there's a lot of folks in that category.

12 DANIEL KELLY: Judge Freeh, Daniel Kelly from
13 the Daily. Could you elaborate on what your
14 investigation found with regard to Mr. Sandusky in the
15 70s and the 80s, in the period of time preceding 1998?

16 LOUIS FREEH: We didn't find any significant
17 evidence in the 70s and 80s. Yes, sir.

18 ANDY WALSH: Judge Freeh, Andy Walsh,
19 Broadcasting, WTEB in Pennsylvania. Was Joe Paterno
20 powerful enough to stop this culture of concealment?
21 Could he have stopped it if he tried, or would he have
22 been squashed by Schultz, and Curley, and the rest that

1 gang?

2 LOUIS FREEH: Many, many witnesses we spoke to
3 described Mr. Paterno as one of the most powerful
4 leaders on the campus. He ran his football building.
5 He clearly ran the Lasch Building. I think it's a very
6 strong and reasonable inference that he could've done
7 so if he wished.

8 ROSEMARY CONNORS: Judge Freeh.

9 LOUIS FREEH: Okay, you get your second
10 question.

11 ROSEMARY CONNORS: All right. Rosemary Connors
12 again with NBC 10 in Philadelphia. In your report, you
13 talked about Penn State's general counsel becoming
14 aware and getting involved in 2010, 2011. But outside
15 counsel had been consulted in 2001 and earlier.

16 In the report, you say that general counsel was
17 told by outside counsel that children in need of
18 services have been contacted. Can you elaborate more
19 on it as it was suggested that even internal conspiracy
20 and cover-up with two different counsels?

21 LOUIS FREEH: I think my answer to that would
22 be if you look at the evidence in our report, the

1 general counsel for the university and outside counsel
2 were seriously deficient in providing good, and
3 important, and accurate counsel to their clients.

4 SPEAKER: Judge Freeh?

5 LOUIS FREEH: I'm going to ask, did you ask one
6 before?

7 SPEAKER: No.

8 LOUIS FREEH: Okay. You're on.

9 SPEAKER: I just wanted to ask you, outside of
10 the four senior managers that you cite in this report,
11 are there other people within Old Main or the board
12 that you specifically believe played a significant part
13 in helping to conceal these incidents?

14 LOUIS FREEH: No. Yes, sir?

15 SPEAKER: Judge, you mentioned publicity.
16 There are parents out there right now who are looking
17 at Penn State, maybe considering it for their youngster
18 in terms of attending the school. When you've looked
19 at all of this that's happened there over the last
20 decade plus, what is your sense of the job that Penn
21 State has done safeguarding the welfare of kids in
22 general? Based on what you found in this particular

1 incident, what should parents think about sending their
2 children to Penn State and whether those kids will be
3 properly safeguarded?

4 LOUIS FREEH: You know, look, I'm a parent of
5 six boys. I think parents should feel comfortable and
6 assured at this point that sending their children
7 there, they'll be as safe as they will be at any other
8 good university.

9 I mean, the board and Old Main, to its credit,
10 had made immense and significant changes since November
11 of 2011. In fact, I haven't read it, but apparently
12 they issued a new guideline even yesterday with respect
13 to children being allowed in certain facilities
14 unsupervised.

15 You know, they have good personnel files and
16 policies, AD-39, HR-99, a couple of revisions that
17 they've recently made. They've taken the Cleary Act
18 seriously for the first time. It's being implemented.
19 They've hired the right people. They're doing
20 training. They're doing awareness. They're spending
21 millions of dollars to make sure that this doesn't
22 happen again. So as a parent talking to other parents,

1 I think they can be very comfortable.

2 WENDY SILVERWOOD: Judge Freeh, Wendy
3 Silverwood, Penn Staters for Responsible Stewardship.
4 I'm an alumnus and a parent alumnus, and I am still
5 outraged about the negligence on the Second Mile. When
6 are we going to find out about Lynne Abraham's
7 findings? I am beside myself about what they knew,
8 when did they know, and why didn't they act? This is a
9 children's charity.

10 LOUIS FREEH: Okay. Well, I think you got to
11 direct your question there. We did as much as we could
12 in that regard relevant to our mandate. Many of the
13 people there would not speak to us. We didn't get
14 access to their records. We don't have subcommittee
15 power, as you know. But you raise a good question.

16 Thank you very much.

17 JEREMY FIELDING: Thank you, ladies and
18 gentlemen. Thank you for coming, ladies and gentlemen.
19 We need to clear this space for another event
20 afterward, so please make your way quickly and safely
21 to the hallway outside.

22 [Whereupon, the Press Conference concluded.]

EXHIBIT H

July 23, 2012



An interview with:

**PRESIDENT SALLY MASON
COMMISSIONER JAMES E. DELANY**

SCOTT CHIPMAN: I'd like to thank all the media for joining us for today's teleconference which will feature University of Iowa president Sally Mason and Big Ten Commissioner Jim Delany.

At this point we'll take opening statements from each of our participants, beginning with Commissioner Delany.

COMMISSIONER DELANY: Good morning, ladies and gentlemen. I appreciate your availability today. Sally Mason, who is president of the University of Iowa and chairperson of the Big Ten Council of Presidents and Chancellors, and has led the discussion on the Penn State matter over the last four or five days, is here to make a statement on behalf of our Board of Directors. We will both be available for questions and answers.

With that, Sally, let me throw it to you.

PRESIDENT MASON: Let me begin by acknowledging this is a difficult day for the Big Ten Conference. First and foremost I'd like to convey on behalf of the presidents and chancellors of Big Ten universities our great sorrow for the young lives that have been affected by the tragic circumstances at Penn State and that have brought us to the situation that we're here to discuss today.

Those victims and their plight remain at the center of our thoughts and no words expressed today can fully restore that which was taken from them.

As Mark Emmert and Ed Ray cited earlier today, this is a historically unprecedented situation and it is one that goes against the value system not only of NCAA institutions but also of the Big Ten Conference. We cannot disregard integrity and ethical conduct as the foundation for all that we do or we risk undermining our primary mission as educational institutions.

At the same time the Big Ten Conference stands behind Penn State as one of our fellow members and supports its students, faculty, staff, alumni and fans as they collectively try to move forward from this devastating situation.

We support President Rod Erickson and the substantive steps that he and the Penn State board have taken and continue to take to change the culture at the university in positive ways.

Penn State remains an outstanding educational institution. It's a world class research center contributing to society in countless and positive ways each and every day. And we can't lose sight of the thousands of people in that community who had nothing to do with this tragedy and that work tirelessly every day to educate tomorrow's leaders and improve lives on a grand scale. That is the hallmark of Big Ten institutions.

Our Council of Presidents and Chancellors has closely monitored the NCAA's inquiry into Penn State since the allegations first arose and we began substantive discussion on matters of institutional control at our December meeting.

Additionally the conference had legal counsel embedded with the Freeh Committee that investigated Penn State. We well understand the findings presented by that group's report.

To that end the Big Ten Council of Presidents and Chancellors have agreed to the following actions to underscore how seriously we view the allegations of misconduct among former leaders at Penn State.

First, the Big Ten is formally censuring Penn State for institutional leadership behaviors that it deems unacceptable and unbecoming of a Big Ten member school. The accepted findings support the conclusion that our colleagues at Penn State, individuals that we have known and with whom we've worked for many years, have egregiously failed on many levels: morally, ethically and potentially criminally. They have failed their great university, their faculty, their staff, students and alumni.

Second, the Big Ten, as you heard from President Emmert, intends to be party to the

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Athletic Integrity Agreement referenced by the NCAA and we intend to work closely with the NCAA and Penn State to ensure complete compliance with its provisions over the five-year term of the agreement and beyond.

Third, the Big Ten will follow the lead of the NCAA in implementing its own post-season ban on Penn State which will preclude it from participating in the conference championship game for the next four years.

Then finally, because Penn State will be ineligible for bowl games for the next four years, it will therefore be ineligible to receive its share of Big Ten Conference bowl revenues over those same four years. That money, which we estimate to be approximately \$13 million, will be donated to established charitable organizations in Big Ten communities and states that are dedicated to the protection of children.

Again, these punitive and corrective actions can never fully repair the damage done to so many lives, but they should at least stand as an indication of the culture that the Big Ten expects of its member institutions.

It's our responsibility to the nation, as well as to alumni and fans of Big Ten institutions, to ensure that we do everything within our power to uphold the highest standards of behavior and leadership, and again at the same time we stand ready to support Penn State and its community as they move beyond this horrific chapter in its history and toward a new future.

Thank you. At this point we'd be happy to take your questions.

SCOTT CHIPMAN: Let's go ahead and open it up to media questions.

Q. Dr. Mason, can you discuss formally or informally whether there were discussions about expelling Penn State from the league?

PRESIDENT MASON: We have had discussions that ranged the full range of opportunities in terms of what we as a conference might or should do with regards to Penn State. Everything was on the table. Everything was discussed.

Q. Was there any movement forward with that or a move to go that direction?

PRESIDENT MASON: No, there was not.

Q. This is a procedural question. Penn State players have been allowed to transfer immediately. Will the Big Ten informally frown

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upon any team that accepts a transfer player from Penn State?

COMMISSIONER DELANY: We had a discussion of that issue yesterday among the presidents. I think their first thought on it is that students first, athletes second, that the conference has some limitations in terms of internal transfers, but that the students and their interests need to be prioritized.

As a result, we'll take a very close look at the NCAA declaration here about freedom to transfer. I think our first inclination is to allow those students to have the most amount of freedom and flexibility if they choose to transfer.

So I think on first blush, our orientation would be to support as much freedom as possible for those students.

PRESIDENT MASON: Jim is absolutely correct. The presidents yesterday felt that was an exceptional situation that required some exceptional thinking in terms of how we would deal with this particular aspect of transfer and eligibility of student-athletes.

Q. Jim, given the potential competitive problems that Penn State may face, would this lead to any consideration of realignment of divisions in the future?

COMMISSIONER DELANY: We have not discussed that. I don't think that it would. Obviously they'll be ineligible for post-season play. There are a number of other competitive sanctions that will affect them.

You never say never. But my inclination is that with the leadership in place, President Erickson, Dave Joyner, Coach O'Brien, I think they're looking to the future. I think they all understood that serious sanctions were possible.

I don't think that we have any plans to realign teams and institutions. Our structure is set for decades and not years. It's based on decades of data and decades of competitiveness. Institution's competitiveness ebbs and flows. Obviously the sanctions will undermine competitiveness in the short-term and perhaps the mid-term, but I don't think that will lead to a serious discussion of realignment of the divisions.

Q. Is there concern about competitive balance for this coming season with two teams in the same division ineligible for the conference championship game?

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COMMISSIONER DELANY: I think that clearly will have a competitive impact. I think to say that it wouldn't would not be what I think.

At the same time we have divisions. We have schedules. We have reality. We will deal with it. It will have an impact, there's no doubt about it, when two teams in the same division are ineligible. You only have four teams competing for that divisional title.

I don't see us making any structural changes as we look forward to the 2012 season.

Q. What about collateral damage financially, the money that Penn State receives from the Big Ten, collateral damage it would have on other programs?

COMMISSIONER DELANY: I'm not sure what you mean.

Q. Could Penn State be forced to cut back on non revenue-producing sports, for example?

COMMISSIONER DELANY: The way I heard Mark Emmert and President Ray's comments today was that there will be a \$60 million penalty. It will be received over a five-year period. The conditions associated with it will be that, number one, opportunities and programs at Penn State, intercollegiate athletics, will not be reduced as a result of that. Scholarship monies available to students would not be negatively impacted by that. That's what I heard them say.

Sally, I don't know if you have any other comments beyond that.

PRESIDENT MASON: I heard the same thing, Jim. I would also emphasize that our financial penalty in this case also impacts the football program directly because it has to do with the bowl shared revenue that Penn State would normally receive from the Big Ten Conference, that those are the dollars that would be contributed towards agencies that deal with the protection of children.

Q. I would like to ask both of you for your reaction. With two of your 12 teams now in a post-season ban situation, is the feeling embarrassment? How would you term what you feel in your gut as far as what kind of message this sends about the Big Ten or the black eye this puts on the Big Ten? Jim, was there any thought given at all about games from other schools against Ohio State and

Penn State not counting necessarily in the conference standings this year?

PRESIDENT MASON: I'll start with this is not a proud moment for the Big Ten Conference, without a doubt. All of us are taking this very seriously. We all realize that the situations that institutions face can happen to any Division I or other Big Ten school. These are things that are heavy on our minds these days as we go forward.

I'll leave the rest to Jim to address.

COMMISSIONER DELANY: I'd agree with Sally. There's pain and frustration and concern. We're hoping that out of this that we will get better, that everybody will take the lesson.

I think that we have had programs in the past, and I think part of the problem in this situation was both with the program and with leadership that spoke to the issue of concentration of power. What is concentration of power? I guess it's a combination of strong personality, lots of success, some celebrity, that comes together in a way that challenges the control of the sports program or programs, undermines the controls that are in place to make sure that institutional values are dominant and not subordinate to intercollegiate athletics.

Oftentimes lines aren't clear enough. Oftentimes administrators or executives are not in favored positions relative to sports personalities or sports success.

I'm hoping out of this that all administrators, executives and coaches take away a lesson that allows us in the future to become much better.

There's no doubt that what happened at Penn State has been bad for Penn State and it's reflected on all of our members, and that's why you see the collective action taken today by our board.

With respect to the second question about the impact of wins and losses, the NCAA has declared that the Penn State wins accumulated since 1998 in the sport of football are voided. We accept that. We'll adjust our records accordingly. That's all we'll do in that regard.

Q. What I was asking, though, is whether or not y'all talked about possibly the other school's games against this team this year not counting in the conference standings.

COMMISSIONER DELANY: No.

Q. I haven't seen much talk about in

terms of television. Was there any thought given to limiting Penn State's football television exposure over the next four years, as well?

COMMISSIONER DELANY: We were waiting to see what the NCAA would do. The fact of it is we had a general idea that the sanctions would be broad, deep and lengthy. We looked at what wasn't done and we understood television was not impacted, and we looked at our own championship, we looked at their relationship to us, the \$60 million fine, the \$13 million fine.

We thought, all things taken together, that what had been done was sufficient and that television and playing of the actual games, along with other privileges of membership, should not be impacted.

Q. Commissioner, in your opinion what's the net effect of the sanctions on the football program, not just in the four years, but beyond?

COMMISSIONER DELANY: You know, that's really hard to tell. Each case is unique. I would agree that the sanctions in this case are lengthy, broad, they're significant. I think they will definitely have an effect.

But only time will tell. I think it has to do with how committed the players are who are there, how willing players are to be part of a new future and a new day, to be part of Penn State. Penn State remains a great American university. It's got one of the great athletic departments in the country. It's got a fan base that is really second to none.

So I think that, depending upon the leadership, I know that Dave Joyner is committed to the right type of leadership, President Erickson is, Coach O'Brien is, if you take their statements at face value. I think they're into it for the long run.

If you can persuade players to commit to the new values and make that kind of commitment, that you can be competitive, how competitive is sort of to be determined. I don't really have a strong sense of what that means, but I do have a strong sense that many of the ingredients for success are still at Penn State and will be there in future years.

Q. In regards to the vacated wins, how would you adjust the conference standings for those years?

COMMISSIONER DELANY: That's a good question. I don't know that we will adjust the

conference standings. The NCAA probably hasn't directed us in that respect. We would probably have a discussion among our administrators. That's a level of detail we have not addressed, but I think we will probably take a look at that.

I don't know in the past when the NCAA has vacated wins as a result of NCAA violations exactly what we've done. It's probably very likely that whatever we've done in prior cases we would do in this case.

Q. Could you maybe clarify and embellish your comments on what this means to the other sports at Penn State, the minor Olympic sports that depend heavily on football revenue? How do you think it will impact those other sports?

COMMISSIONER DELANY: Well, if I take Mark Emmert's comments at face value, the fine is significant. It's \$60 million, which I think was an approximation of one year's gross revenue from the sport of football, prorated over a five-year payment plan, if I understood what he was saying.

So what that essentially means is that those dollars will come from the institution, from intercollegiate athletics, but in a way that doesn't undermine the funding for Olympic sports programs or scholarships in those programs.

I don't expect it to have any substantial effect on those teams, programs and those athletes.

Q. Jim, I was wondering with such a brand program like Penn State in football being crippled by these types of sanctions for the next several years, does this change the league's thoughts about expansion?

COMMISSIONER DELANY: This has no impact on expansion.

Q. What is the current state to what the Big Ten's stance is on expanding in the future?

COMMISSIONER DELANY: It hasn't changed at all. We're not active.

Q. President Ray said if Penn State had been as transparent with this a year ago, we wouldn't be here. Do you both agree with that in hindsight? Also, Graham Spanier and Tim Curley were colleagues that you worked with for years and years. What are your emotions towards them? Is there some anger, betrayal?



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What is your sense to both of those gentlemen at the moment?

PRESIDENT MASON: I've been in my position for about five years, had the opportunity to get to know President Spanier and came to respect him as someone who had a long and, at the time, respected tenure at Penn State. It continues to be a great shock to me personally as this continues to unravel.

There's no doubt here in Iowa, we certainly are trying to be as open and transparent as we possibly can be. The media asks hard questions. They ask I think the important questions frequently. We try and provide as much information as we possibly can to answer those kinds of questions.

To your first question, I do believe a culture issue that involves less transparency, less willingness to be accountable or address situations as they arise can, in fact, lead to the situation that Penn State is now facing. They can learn from that.

Some of us have been perhaps more exposed to an open and transparent culture and more willing to work within that kind of a culture than Penn State has.

At least to the issue of the senior administrators at Penn State, what is now becoming apparent with regard to their behaviors, it is disappointing, it is a shock. I wouldn't describe 'anger' as one of my emotions, but certainly it's stunning in so many ways to see the failures of the administration.

COMMISSIONER DELANY: The first question, I'm not sure that I was really tracking or maybe we heard different things.

When President Ray said that if Penn State administrators had been more transparent, I guess I thought he was referring to actions or activities that went back years, not went back one year. Maybe I misheard him. If you could clarify that question first.

Q. Maybe I'll go back and listen. My impression at the time was that if Penn State would have acted on this a year ago at this time.

COMMISSIONER DELANY: That's not what I heard. I may have misheard or you may have misheard, I don't know. I thought he was referring back to the period 1998 to 2001.

Q. Let me ask you then, you worked with those Penn State folks for a lot of years, since they came in the conference I guess.

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What was your feeling as this was announced? I know the president didn't use the word 'anger,' how about you?

COMMISSIONER DELANY: It's a great question. It's a difficult question. I'll try to be as honest as I can.

Graham Spanier has been a friend for 15 years. Tim has been a friend longer. I didn't know Gary Schultz as well, but I knew him and had regard for him. And Coach Paterno I've had tremendous respect for over many decades. So on a personal level it's sadness.

I think the information, what I have to do, is take my respect and friendship, put it on the table. But I also have to take the Freeh report, the findings of the Freeh report that have been adopted by the institution on the basis for the NCAA action Penn State's place in how they view this and the Big Ten's place on how they view this.

I accept those findings, and therefore as I look at my friendship and my relationship over many years, it's impacted. 'Anger' is probably not the right word. Sadness, pain, hurt. But I also have to put that in the context of the tremendous damage and harm that was done on the young people as a result of the omissions and the acts of the people that were involved and also the tremendous harm that was done to Penn State and ultimately to the other members of the Big Ten, and even to a greater extent to intercollegiate athletics and programs around the country because there's been great damage done.

Hopefully we can all learn something from this, that the lines about control and the public support for administrators and executives who are trying to protect institutional values, and that the cult of success in sport, again, doesn't overwhelm an institution's need to make sure that intercollegiate athletics is subordinate to the mandate and the mission of higher education at each one of our campuses.

For that opportunity, I'm hopeful. But for what's happened in the past, I'm very sad.

Q. You've touched on this in various ways. But a direct question: How much has the Big Ten been damaged by this and what will you try to do to come back from it?

COMMISSIONER DELANY: I think the damage is not irreparable because I think that we're resilient. As people, as leaders, our institutions have been operating for 150 plus years.

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We're part of the culture. We contribute to society.

We've been damaged, but not mortally damaged. I think we have an opportunity to redeem. I'm hopeful that we can learn lessons from this and become better as a result of this.

So I would say it's as damaging as any set of actions or activities that I've been involved with in my 33 years as a commissioner. I accept that as fact. But I also believe that there's an opportunity, a hope, for redemption, improvement and resilience.

So I take both the note of how much damage has been caused, but I also believe that the dark ends and the morning comes.

PRESIDENT MASON: I would just add to Jim's comments the presidents continue to work very, very hard to not only understand the situation, how the situation has arisen, but to learn from it, to take this as an opportunity to reemphasize, refocus our institutions on what we do best, which is educating students, making hopefully the world a better place.

We have a lot of room for improvement, a lot of room for growth. And, as Jim said, I think this is an opportunity for us to rise up, be resilient and redeem ourselves in the eyes of our fans and future fans.

SCOTT CHIPMAN: That completes today's teleconference. I'd like to thank President Mason and Commissioner Delany for joining us today. Thank you.

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EXHIBIT I

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October 2, 2014

VIA EMAIL AND FIRST CLASS MAIL

Thomas E. Zemaitis
Pepper Hamilton LLP
3000 Two Logan Square
Eighteenth and Arch Streets
Philadelphia, PA 19103-2799

*Re: Subpoena in re The Estate of Joseph Paterno v. The NCAA, Case No. 2013-2082
(Centre County, Common Pleas)*

Dear Mr. Zemaitis:

This responds to your letter of October 1. We have considered and responded promptly to your requests for extensions, and did not refuse to allow you more time than provided for under the Pennsylvania Rules of Civil Procedure to produce documents or to file a motion of some sort. We agreed that you could take a week beyond the 20 days allowed under the Pennsylvania Rules to file a motion, which gave you 27 days after receipt of the subpoena. We also agreed you could take until the end of October to produce responsive documents, more than three weeks beyond the response date. This does not even account for the fact that, given the relationship with Penn State University, Pepper Hamilton certainly did not first become aware of the subpoena when Mr. Friedman received it on September 16.

Your statement that here is “no exigency” in the case overlooks the fact that this case has been pending for more than 16 months, and we still face the potential for additional preliminary objections. Accordingly, we have sought to move forward with the discovery process, including providing notice of our intent to issue the subpoena seven months ago, in February 2014. Your suggestion that professional courtesy requires that we agree to the exact period of time you sought also ignores the fact that the court has already considered and rejected extensive objections to the subpoena asserted by Penn State, including objections that might have been asserted by Pepper Hamilton but which the court nevertheless considered and rejected.

Thomas E. Zemaitis
October 2, 2014
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Finally, since you have now indicated you may file a motion for a protective order, I am enclosing a copy of the Stipulated Confidentiality Agreement and Protective Order that has been entered in this case, which may eliminate the need for another motion. You can agree to its terms by signing the Acknowledgement and Agreement to Be Bound.

Sincerely,

A handwritten signature in black ink, appearing to read "Patricia Maher", with a stylized flourish at the end.

Patricia L. Maher

Enclosure

cc: Daniel I. Booker
Jack Cobetto
Donna M. Doblick
Everett Johnson
Brian Kowalski
Thomas Weber

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, PETER KHOURY, 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

DEBRA C. IMEL
PROTHONOTARY
CENTRE COUNTY, PA

2014 SEP 11 PM 2:12

RECORDED

STIPULATED CONFIDENTIALITY AGREEMENT AND PROTECTIVE ORDER

WHEREAS, the Parties may seek discovery of documents, information, or other materials that qualify for protection from public disclosure or are otherwise required to be maintained as confidential;

WHEREAS, Rule 4012 of the Pennsylvania Rules of Civil Procedure provides for the issuance of protective orders limiting the disclosure and use of certain discovered information;

NOW, THEREFORE, the Parties to this Stipulated Confidentiality Agreement and Protective Order (the "Order") stipulate and agree to the terms of this Order as set forth herein:

1. Scope. All documents, the information contained therein, and all other information produced or disclosed in the course of discovery, including responses to discovery requests, deposition testimony and exhibits, and information derived directly therefrom (collectively "documents"), shall be subject to this Order and may be designated as "Confidential Information" or "Highly Confidential - Attorneys' Eyes Only - Information" pursuant to the provision set forth herein. This Order is subject to the Pennsylvania Rules of Civil Procedure on matters of discovery procedure and calculation of time periods.

2. Confidential Information.

(a) As used in this Order, "Confidential Information" means information or tangible things that the designating Party reasonably believes constitutes, contains or discloses non-public information that (i) is required by law or agreement or the National Collegiate Athletic Association Constitution, Operating Bylaws, or Administrative Bylaws to be maintained as confidential, or (ii) is proprietary, personal, financial, or other information which qualifies for protection from public disclosure consistent with Pennsylvania Rule of Civil Procedure 4012.

(b) As used in this Order, "Highly Confidential - Attorneys' Eyes Only - Information" means non-public information the disclosure of which would create a substantial risk of serious irreparable injury to the designating Party or another that cannot be avoided by less restrictive means, including but not limited to non-public personally identifiable information (i.e., social security number, place of birth, or home address), confidential medical records or medical information, or other sensitive personal information. Information or documents that are otherwise available to the public may not be designated as Highly Confidential - Attorneys' Eyes Only - Information.

3. Designation.

(a) A Party may designate a document as (i) Confidential Information for protection under this Order by placing or affixing the words "CONFIDENTIAL SUBJECT TO PROTECTIVE ORDER" on the document and on all copies; or as (ii) Highly Confidential Information for protection under this Order by placing or affixing the words "HIGHLY CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER -- ATTORNEYS' EYES ONLY" on the document and on all copies. As used in this Order, "copies" includes electronic images, duplicates, extracts, summaries or descriptions that contain the Confidential Information or Highly Confidential - Attorneys' Eyes Only - Information.

(b) A non-party to the litigation that has agreed to be bound by the terms of the Agreement and Protective Order by executing Attachment A hereto may designate documents containing Confidential Information or Highly Confidential - Attorneys' Eyes Only - Information for protection under this Order so that such information is subject to the terms of this Order and that producing non-party shall then be a producing Party under this Order.

(c) Parties may designate documents containing Confidential Information or Highly Confidential - Attorneys' Eyes Only - Information produced by other Parties or non-parties.

(d) For Confidential Information or Highly Confidential - Attorneys' Eyes Only - Information produced by a non-party or a Party other than the designating Party, a Party seeking a designation of Confidential Information or Highly Confidential - Attorneys' Eyes Only - Information pursuant to the terms of this Order may do so by serving on all Parties a log containing the Bates numbers or other description of the documents or information that it seeks to designate Confidential Information or Highly Confidential - Attorneys' Eyes Only - Information Confidential within thirty (30) days of receiving copies of the documents or information. Should any Party object to this designation, such Party shall proceed in accordance with paragraph 10 of this Order.

4. Designation of and procedure for any deposition testimony. The following procedures shall be followed if Confidential or Highly Confidential - Attorneys' Eyes Only - Information is discussed or disclosed in any deposition permitted in this proceeding.

(i) The designating Party shall have the right to exclude from attendance at the deposition, during such time the designating Party reasonably believes Confidential or Highly Confidential Information will be discussed or disclosed, any person other than the deponent, the court reporter, and persons entitled to access to the Confidential or Highly Confidential - Attorneys' Eyes Only - Information.

(ii) At any time on the record during a deposition a Party may designate any portion of the deposition and transcript thereof to contain Confidential Information or Highly Confidential - Attorneys' Eyes Only Information. If such a request is made on the recording during the

deposition, the reporter shall later indicate on the cover page of the transcript that the transcript contains Confidential Information or Highly Confidential - Attorneys' Eyes Only - Information by affixing the words "CONFIDENTIAL SUBJECT TO PROTECTIVE ORDER" or "HIGHLY CONFIDENTIAL -- SUBJECT TO PROTECTIVE ORDER -- ATTORNEYS' EYES ONLY" and list the pages and line numbers of the transcript in which Confidential or Highly Confidential - Attorneys' Eyes Only - Information is contained.

(iii) Alternatively, a designation of deposition confidentiality may be made in writing within thirty (30) days after counsel receives a copy of the transcript of the deposition. The designation shall contain a list of the numbers of the pages and lines of the transcript that are being designated as containing Confidential Information. Such designation shall be provided in writing to all counsel of record. All counsel of record shall treat all deposition transcripts as if Confidential for the first thirty (30) days after receipt of such deposition transcripts.

5. Protection of Documents and Information.

(a) **General Protections.** All pre-trial discovery materials in this litigation (including materials that are not designated as constituting Confidential Information or Highly Confidential - Attorneys' Eyes Only - Information) shall be used solely for the purpose of preparing and prosecuting the Parties' respective cases, and shall not be used or disclosed for any other purpose. Nothing in this Order, however, limits: (i) the Parties' use of materials not designated as Confidential Information or Highly Confidential - Attorneys' Eyes Only - Information that the Parties, in good faith, have made part of the judicial record in this case; or (ii) the use of information a Party legitimately obtained through public sources.

(b) **Limited Third Party Disclosures.** The Parties and counsel for the Parties shall not disclose or permit the disclosure of any documents or information designated as Confidential Information under this Order to any third person or entity except as set forth in subparagraphs (i)-(ix). Subject to these requirements, documents or information designated as Confidential Information under this Order may be disclosed to the following categories of persons:

- (i) **Counsel.** Internal or external counsel for the Parties and employees of counsel who have responsibility for the preparation and trial of the action;
- (ii) **Parties.** Individual Parties and employees of a Party but only to the extent counsel determines in good faith that the employee's assistance is reasonably necessary to the conduct of the litigation in which the information is disclosed;
- (iii) **The Court and its personnel;**
- (iv) **Court Reporters and Videographers.** Court reporters and videographers engaged for depositions but only after such persons have completed the certification contained in Attachment A, Acknowledgment of Understanding and Agreement to Be Bound;
- (v) **Contractors.** Those persons specifically engaged for the limited purpose of making copies of documents, or organizing, processing, or hosting documents but only after such persons have completed the certification contained in Attachment A, Acknowledgment of Understanding and Agreement to Be Bound;
- (vi) **Consultants and Experts.** Consultants, investigators, or experts employed by the parties or counsel for the parties to assist in the preparation and trial of this action but only after such persons have completed the certification

contained in Attachment A, Acknowledgment of Understanding and Agreement to Be Bound;

(vii) **Witnesses at depositions.** During their depositions, witnesses in this action to whom disclosure is reasonably necessary, but only after such persons have completed the certification contained in Attachment A, Acknowledgment of Understanding and Agreement to Be Bound. If a non-party witness refuses to execute the certificate in Attachment A, the parties agree to urge the non-party witness to execute Attachment A such that examination of the witness with respect to Confidential Information may proceed. Witnesses shall not retain a copy of documents containing Confidential Information, except witnesses may receive a copy of all exhibits marked at their depositions in connection with review of the transcripts. Pages of transcribed deposition testimony or exhibits to depositions that are designated as Confidential Information pursuant to the process set out in this Order must be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this Order;

(viii) **Authors and Recipients.** Any person who is shown through testimony or documentary evidence to have prepared, received or reviewed the document or information; and

(ix) **Others by Consent or Order.** Other persons only by written consent of the producing Party or upon order of the Court and on such conditions as may be agreed or ordered.

(c) **Control of Documents.** Counsel for the Parties shall make reasonable efforts to prevent unauthorized or inadvertent disclosure of Confidential Information. Counsel shall

maintain the originals of the forms signed by persons acknowledging their obligations under this Order for a period of three years after the termination of the case.

6. Protection of Highly Confidential - Attorneys' Eyes Only - Information.

(a) Access to documents and information designated as Highly Confidential - Attorneys' Eyes Only - Information under this Order shall be limited to the persons identified in Paragraphs 5(b)(i) and 5(b)(iii)-(ix).

(b) **Control of Documents.** Counsel for the Parties shall make reasonable efforts to prevent unauthorized or inadvertent disclosure of Highly Confidential - Attorneys' Eyes Only - Information. Counsel shall maintain the originals of the forms signed by persons acknowledging their obligations under this Order for a period of three years after the termination of the case.

7. Preliminary Designation of Documents Being Inspected. If a Party elects to produce documents and things for inspection, it need not label the documents and things in advance of the initial inspection. For purposes of the initial inspection, all documents within the produced files will be considered as having been designated as Highly Confidential - Attorneys' Eyes Only - Information. Thereafter, on selection of specified documents for copying by the inspecting Party, the producing Party shall mark the original documents and/or the copies of such documents with the appropriate confidentiality marking at the time the copies are produced to the inspecting Party.

8. Inadvertent Failure to Designate. Inadvertent failure to designate Confidential Information or Highly Confidential - Attorneys' Eyes Only - Information as such may be corrected by supplemental written notice given as soon as practicable. An inadvertent failure to designate documents or information shall not constitute a waiver of a Party's right to so designate such documents or information. As soon as the receiving Party becomes aware of the

inadvertent production, the documents or information must be treated as though they had been timely designated as Confidential Information or Highly Confidential - Attorneys' Eyes Only - Information, whichever claimed, under this Order, and the receiving Party must endeavor in good faith to obtain all copies of the documents that it distributed or disclosed to persons who are not authorized by paragraph 5(b) or 6(a). If the receiving Party is unable to obtain the return of all such documents or information, it shall inform the designating Party of those to whom the Confidential Information or Highly Confidential - Attorneys' Eyes Only - Information has been disclosed, and the designating Party may undertake to obtain the return of the Confidential Information or Highly Confidential - Attorneys' Eyes Only - Information.

9. **Filing of Confidential Information and Highly Confidential Information.** A party wishing to use any Confidential Information or Highly Confidential - Attorneys' Eyes Only - Information, or any papers containing or making reference to such information, in any pleading or document filed with the Court in this action, such pleading or document shall be redacted to conceal the Confidential Information or Highly Confidential - Attorneys' Eyes Only - Information or shall be filed under seal. The Court may under any circumstances be provided with an unredacted copy of any pleading or documents that is filed.

10. **Challenges by a Party.** The designation of any information as Confidential Information or Highly Confidential - Attorneys' Eyes Only - Information is subject to challenge by any Party. The following procedure shall apply to any such challenge.

(a) **Meet and Confer.** A Party challenging the designation of Confidential Information or Highly Confidential - Attorneys' Eyes Only - Information must do so in good faith and must begin the process by conferring directly with counsel for the designating Party. In conferring, the challenging party must explain the basis for its belief that the confidentiality

designation was not proper and must give the designating Party an opportunity to review the designated material, to reconsider the designation, and, if no change in designation is offered, the designating party must explain the basis for the designation.

(b) **Judicial Intervention.** A Party that elects to challenge a confidentiality designation may file and serve a motion that identifies the challenged material and sets forth in detail the basis for the challenge. Each such motion must be accompanied by a competent declaration that affirms that the movant has complied with the meet and confer requirements of this procedure. The burden of persuasion of justifying that there is good cause for the confidentiality designation will remain on the designating Party. Until the Court rules on the challenge, all Parties shall continue to treat the materials as they were designated under the terms of this Order. A party will not be obligated to challenge the propriety of a Confidential or Highly Confidential designation at the time made, and failure to do so will not preclude later challenges.

11. Use of Confidential Documents or Information at Hearings, Pretrial Conferences, or Other Public Court Appearances. Nothing in this Order shall be construed to affect the admissibility of any document, material, or information at any hearing, pretrial conference, or other public court appearance. Nor shall anything in this Order be construed to prejudice a party's right to use at trial or in a hearing before the Court any Confidential Information or Highly Confidential - Attorneys' Eyes Only - Information. A Party that intends to present, or which anticipates that another Party may present, Confidential Information or Highly Confidential - Attorneys' Eyes Only - Information at a hearing, pretrial conference, or other public court appearance shall first seek to reach an agreement with the other Parties regarding the treatment of such materials. If an agreement is not possible, the Party shall bring

that issue to the Court's attention by motion or in a pretrial memorandum without publicly disclosing the Confidential Information or Highly Confidential - Attorneys' Eyes Only - Information. The Court may thereafter make such orders as are necessary to govern the use of such documents or information at a hearing, pretrial conference, or other public court appearance.

12. Confidential Information or Highly Confidential Information Subpoenaed, Ordered Produced or Requested in Other Proceedings.

(a) If a receiving Party is served with a subpoena, an order issued in other civil, criminal or administrative proceedings, or any other form of compulsory process that would compel disclosure of any material or document designated in this action as Confidential Information or Highly Confidential - Attorneys' Eyes Only - Information, the receiving Party must so notify the designating Party in writing, immediately and in no event more than seven (7) court days after receiving the subpoena, order, process or request. Such notification must include a copy of the subpoena or court order.

(b) The receiving Party also must immediately inform in writing the person or entity that caused the subpoena, order, process or request to issue that some or all of the material covered by the subpoena or order is the subject of this Order. In addition, the receiving Party must deliver a copy of this Order promptly to the person or entity that caused the subpoena, order, process or request to issue.

(c) The purpose of imposing these duties is to alert the interested persons to the existence of this Order and to afford the designating Party in this case an opportunity to seek protection of its Confidential Information or Highly Confidential - Attorneys' Eyes Only - Information in the court or tribunal from which the subpoena or order issued. The designating

Party shall bear the burden and the expense of seeking protection in that court of its Confidential Information or Highly Confidential - Attorneys' Eyes Only - Information, and nothing in these provisions should be construed as authorizing or encouraging a receiving Party in this action to disobey a lawful directive from another court. The obligations set forth in this paragraph remain in effect while the Party has in its possession, custody or control Confidential Information or Highly Confidential - Attorneys' Eyes Only - Information by the other Party to this case.

13. Obligations on Conclusion of Litigation.

(a) Unless otherwise agreed or ordered, this Order shall remain in force after dismissal or entry of final judgment not subject to further appeal.

(b) Unless otherwise ordered or agreed to in writing, within sixty (60) days after the final termination of this litigation by settlement or exhaustion of all appeals, all persons in receipt of Confidential Information or Highly Confidential - Attorneys' Eyes Only - Information shall use reasonable efforts to either return such materials and copies thereof to the producing Party or destroy such Confidential Information or Highly Confidential - Attorneys' Eyes Only - Information and certify that fact. Such reasonable efforts shall not require the return or destruction of Confidential Information or Highly Confidential - Attorneys' Eyes Only - Information from (i) disaster recovery or business continuity backups, (ii) data stored in system-generated temporary folders or near-line storage, (iii) unstructured departed employee data, and/or (iv) material that is subject to legal hold obligations or commingled with other such material. Backup storage media will not be restored for purposes of returning or certifying destruction of Confidential Information or Highly Confidential - Attorneys' Eyes Only - Information, but such retained information shall continue to be treated in accordance with the Order. Counsel for the Parties shall be entitled to retain copies of court papers (and exhibits

thereto), correspondence, pleadings, deposition and trial transcripts (and exhibits thereto), legal memoranda, expert reports and attorney work product that contain or refer to Confidential Information or Highly Confidential - Attorneys' Eyes Only - Information, provided that such counsel and employees of such counsel shall not disclose such Confidential Information or Highly Confidential - Attorneys' Eyes Only - Information to any person, except pursuant to court order. Nothing shall be interpreted in a manner that would violate any applicable canons of ethics or codes of professional responsibility.

14. Inadvertent production of privileged material. If a Party inadvertently produces or provides information subject to the attorney-client privilege, attorney work product doctrine, or other applicable privilege or immunity, the disclosure of the inadvertently disclosed information is not and will not be construed or deemed to be a general or specific waiver or forfeiture of any such privilege, immunity or work product protection that the producing Party would otherwise be entitled to assert with respect to the inadvertently disclosed information and its subject matter. Where the producing Party informs the receiving Party that privileged or other protected information has been disclosed, the receiving Party or Parties (i) must, within ten (10) business days, return or destroy the specified information and any copies thereof, (ii) must not use or disclose the information until the claim of privilege or other protection is resolved, (iii) must take reasonable steps to retrieve any such information that was disclosed or distributed before the receiving Party was notified of the claim of privilege or other protection and prevent any further dissemination of the information. Notwithstanding the above, in lieu of promptly returning or destroying the specified document or information, the receiving Party may, within five (5) business days, seek leave of Court to file the specified document or information under seal and request a determination of the claim of privilege or other protection while still

complying otherwise with paragraphs (ii) and (iii). However, the receiving Party cannot assert as a basis for the relief it seeks the fact or circumstance that such privileged documents were produced. The producing Party also must preserve the information until the claim is resolved.

15. Persons Bound. This Order shall take effect when entered and shall be binding upon all counsel of record and their law firms, the parties, and persons made subject to this Order by its terms.

16. No Admissions or Waiver of Objections. Producing, designating or receiving Confidential or Highly Confidential - Attorneys' Eyes Only - Information, or otherwise complying with the terms of this Order, shall not: (a) be construed to affect in any way the admissibility of any document, testimony, or other evidence at any hearing in or trial of the action; (b) prejudice the rights of a Party to object to the production of information or material that the Party does not consider to be within the proper scope of discovery or protected from discovery by virtue of the attorney-client privilege, the work product doctrine, or any other privilege or immunity from discovery; (c) prejudice the rights of a Party to apply to the Court for further protective orders and for additional protection for that Party's Confidential or Highly Confidential - Attorneys' Eyes Only - Information; or (d) prevent the Parties from agreeing in writing to alter or waive the provisions or protections provided for herein with respect to any particular information or material.

17. Order Subject to Modification. This Order shall be subject to modification or amendment by agreement of the Parties or by order of the Court.

18. Enforcement. A breach of the terms of this Order is subject to the full powers and jurisdiction of the Court, including but not limited to the powers of contempt and injunctive relief, and shall entitle the non-breaching Party to appropriate sanctions, including but not

limited to all attorneys' fees and other costs incurred in the enforcement of this Order.

19. Trial. Nothing herein shall govern the procedures to be used at trial, which will be set by the Court prior to the commencement of trial.

SO ORDERED.

Dated: 9/10/14



John B. Leete, Senior Judge
Specially Presiding

ATTACHMENT A

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, PETER KHOURY, 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;)	Civil Division
)	
WILLIAM KENNEY and JOSEPH V. ("JAY") PATERNO,)	
former football coaches at Pennsylvania State University; and)	Docket No. 2013-
)	2082
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.)	

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

The undersigned hereby acknowledges that he/she has read the Protective Order (the "Order") dated _____ in the above-captioned action and attached hereto, understands the terms thereof, and agrees to be bound by its terms. The undersigned submits to the jurisdiction of the Court of Common Pleas of Centre County, Pennsylvania in matters relating to the Order and understands that the terms of the Order obligate him/her to use materials designated as "CONFIDENTIAL SUBJECT TO PROTECTIVE ORDER" or "HIGHLY CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER – ATTORNEYS' EYES ONLY" in accordance with the Order solely for the purposes of the above-captioned action, and not to disclose any such Confidential Information or Highly Confidential - Attorneys' Eyes Only - Information to any other person, firm or concern.

The undersigned acknowledges that violation of the Order may result in penalties for contempt of court.

Name: _____

Job Title: _____

Employer: _____

Business Address: _____

Date: _____

Signature