

# **Penn Staters for Responsible Stewardship Identification of Key Failures of the Freeh Report**

**September 13, 2012**

## **KEY FAILURES OF THE FREEH REPORT**

PS4RS has conducted a review of the Freeh Report despite limited resources and limited access to documents and witnesses. However, even in light of those limitations, through a review of the Report, available documents and transcripts, and available witness interviews, PS4RS has identified the following substantial deficiencies in the Report:

- Failure to disclose the fact that FSS' client was the Board of Trustees, not the University, and, as such, FSS had a duty to act in the best interests of the Board of Trustees relative to the investigation and preparation of the Report;
- Failure to disclose that FSS sub-contracted a substantial portion of the investigation to the law firm of Pepper Hamilton, LLP, and to disclose the relationship between Pepper Hamilton and individual members of the Board of Trustees and their employers, including but not limited to Merck & Co., employer of Penn State Trustee Kenneth Frazier, Chairman of the Special Investigations Task Force;
- Failure to report the relationship between FSS and Pepper Hamilton, including August 2012 announcement that FSS had been acquired by Pepper Hamilton;
- Failure to consider inherent conflict of interest involving members of the Board of Trustees and Special Investigations Task Force in light of the Pennsylvania Department of Public Welfare's investigation of the 1998 Incident;
- Failure to report on written threat by the brother of an influential member of University Board of Trustees to publicly disgrace Mr. Paterno as evidence of bias;
- Failure to follow basic investigative and reporting procedures for an internal investigation;
- Failure to interview nearly every critical witness to the 1998 and 2001 Incidents before rendering the Report;
- Failure to properly address the facts and circumstances associated with the investigation of the 1998 Incident by the Pennsylvania Department of Public Welfare, the Centre County Children and Youth Services, the State College Borough Police Department, and the Centre County District Attorney;
- Misstatement of facts and complete lack of evidence in support of conclusion that Dr. Graham Spanier and Messrs. Tim Curley, Joe Paterno, and Gary Schultz concealed 1998 and 2001 Incidents;

- Failure to acknowledge that the University’s investigation of the 1998 Incident with multiple child welfare and law enforcement authorities, while Sandusky was still employed by the University, weighed heavily against a conclusion that these individuals intentionally concealed the 2001 Incident from authorities, when Sandusky was not employed by the University;
- Improper reliance of unauthenticated, incomplete, and out of context emails from 1998 and 2001;
- Misstatements of facts and unsupported conclusions regarding the knowledge of Mr. Paterno relative to the 1998 Incident;
- Failure to acknowledge that, within days of the 2001 Incident, at least 13 individuals, many of whom were outside the University, had knowledge, in whole or in part, of the incident that Mike McQueary reported;
- Failure to acknowledge that there was not a single witness interviewed who stated that there was an intent to conceal the 2001 Incident by anyone at the University;
- Failure to acknowledge that there was not a single document that indicated an intent to conceal the 2001 Incident by anyone at the University
- Failure to acknowledge that the decision by Mr. Curley to report the 2001 Incident to The Second Mile was wholly inconsistent with the idea of an intentional concealment, as alleged in the Report;
- Failure to consider the role of The Second Mile and failure of The Second Mile to act upon report of 2001 Incident;
- Failure to address information, including testimony of Dr. Dranov, which casts serious doubt on the credibility of Mike McQueary in connection with the 2001 Incident;
- Failure to consider that Mike McQueary’s statements to his father and Dr. Dranov, immediately after the incident, were likely to have greater reliability than statements made over 10 years later;
- Failure to acknowledge the fact that all email records of the University prior to 2004 were unavailable as the result of a computer system change;
- Failure to consult a psychologist or other medical professional for assistance in seeking to interpret the acts of various individuals in response to allegations of improper actions by Sandusky;
- Failure to acknowledge that FSS made personal findings and credibility determinations of witnesses who FSS did not even interview; and
- Failure to identify who waived the attorney-client privilege and authorized Mr. Freeh to conduct a nationwide press conference announcing the “findings” of the Report before presenting those findings to the University.