

# **Penn Staters for Responsible Stewardship Summary of Review of the Freeh Report**

**September 13, 2012**

## FOREWORD

The members of Penn Staters for Responsible Stewardship (“PS4RS”) watched in horror as the allegations against, and trial of, Jerry Sandusky unfolded. We, like all others following these tragic events, were and are repulsed by the actions of Jerry Sandusky. Prior to those events, Jerry Sandusky was viewed as a hero by many across the nation and revered for his work with under-privileged youth. To learn the atrocities of his actions was simply revolting.

In this tragedy, which has now reached and impacted thousands of people, the victims of Jerry Sandusky should be first to be considered. Those young men were the victims of a monster. The criminal justice system has punished Sandusky, but no level of punishment against him will restore what was lost by those children, and for that, we all grieve.

Members of PS4RS, like all Penn Staters and people across the nation, most certainly have a heightened understanding of child abuse as a result of these horrific crimes. While there can be no positives from this tragedy, it is our sincere hope that the publicity of these events will lead our members, and the public at large, to be more vigilant than ever in taking steps to recognize, report, and prevent child abuse.

Unfortunately, the resultant actions of the Board of Trustees of the Pennsylvania State University (the “University” or “Penn State”), its agents and representatives, and now the National Collegiate Athletic Association (“NCAA”), have resulted in a compounding of this tragedy. Instead of moving forward to prevent abuse of this nature from ever occurring again, the University and the NCAA have foisted responsibility for the acts of Sandusky upon thousands and thousands of innocent people -- young and old, student and alumni, parent and child.

The University has cast blame upon four individuals (Tim Curley, Joe Paterno, Gary Schultz, and Dr. Graham Spanier), three of whom were unable to defend themselves. However, rather than pointing the proverbial finger at individuals with limited or no training in the recognition and prevention of child abuse, the University’s investigation should have focused on why and how **trained professionals** at the following entities failed to stop Sandusky, despite being placed on notice of his alleged actions in 1998 and/or 2001:

- (1) Pennsylvania Department of Public Welfare;**
- (2) Centre County Children and Youth Services;**
- (3) State College Borough Police Department;**
- (4) Centre County District Attorney's Office; and**
- (5) The Second Mile.**

Each of these law enforcement or child welfare agencies were placed on official notice, along with the University Police Department, of the events of 1998 and/or 2001. It is beyond comprehension how the public has been led to believe that there was a "cover-up" or "concealment" by representatives of the University. That assertion is wholly unsupported by evidence and, in fact, the evidence is completely to the contrary.

This critical point is worth noting again: in 1998, the Pennsylvania Department of Public Welfare, Centre County Children and Youth Services, the State College Borough Police Department, and the Centre County District Attorney were involved in an investigation of Sandusky's alleged activities in showering with a minor. The University fully cooperated with that investigation, including reporting the incident to the District Attorney. Yet, somehow, the fact that trained professionals were alerted to this possible inappropriate activity in 1998 and conducted a full investigation has been completely ignored and blame has been diverted to the University's football program on an alleged conspiracy of silence.

However, by diverting the attention and creating a frenzy directed at the Penn State football program -- which had no connection to the events of 1998 and 2001 -- the Board of Trustees, through the report issued by the law firm of Freeh, Sporkin & Sullivan ("FSS") (the "Freeh Report" or "Report"), has prevented a full and complete review of what actually went wrong and why trained professionals failed to recognize, intervene, and prosecute Sandusky years earlier. It is our sincere hope that, by drawing attention to the gross inaccuracies of the Freeh Report, the public at large will step forward and demand that the true facts be discovered, and that the true entities and individuals who failed in their law enforcement or child welfare positions will be identified and asked to answer for their inaction.<sup>1</sup>

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<sup>1</sup> It should be noted that PS4RS is not taking any position regarding the assignment of blame or responsibility. Such determination can only be made after a full investigation of why the various law enforcement and child welfare agencies failed to act in 1998. With the benefit of hindsight, of course it was an error. However, until the full facts and circumstances of 1998 are known, such conclusions are simply impossible to make.

## **I. INTRODUCTION**

The purpose of this review and analysis is not to provide definitive answers into the actions of any person or entity from 1998 through 2011. Such a task would, of course, be impossible. Moreover, the purpose is not to evaluate or challenge the issues related to the Clery Act (Chapter 8 of the Freeh Report), internal University policies for protection of children (Chapter 9), or recommendations for University governance (Chapter 10) offered in the Freeh Report; those determinations are left for Penn State's leadership, after a full evaluation of the current policies and procedures, and the propriety of the recommendations.<sup>2</sup> Finally, the purpose of the PS4RS Review is not to "clear" the name of Tim Curley, Joe Paterno, Gary Schultz, or Graham Spanier.

Rather, the purpose of is to examine the Freeh Report critically -- to differentiate between facts supported by documented evidence, facts without evidentiary support, opinions of the author, and wholly unsupported conclusions reached by the author. The purpose of the PS4RS Review is to identify the shortcomings, inaccuracies, and perhaps more important, the gross incompleteness of the Freeh Report. In the view of PS4RS, this critical review should have been conducted by the University before the Freeh Report was released publicly.

Such a review would have allowed the University to recognize that FSS had either misunderstood the nature of an internal investigation, or chosen a path to achieve a desired -- albeit wholly unsupported -- result. Further, such a review would have enabled the University to direct that FSS should not substitute its personal speculation for fact, or report as "facts" certain items that were not so established.

We are compelled at this point, however, to raise a significant issue relative to the Report itself. At all times, it was been the assumption of the public, and of course

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<sup>2</sup> We do, however, have grave concerns regarding the NCAA's requirement -- and the University's apparent agreement -- that the University accept and implement **all** of the Freeh Report's recommendations as part of the Consent Decree executed by the NCAA and the University. As noted by a statement of past Chairs of the University's Faculty Senate,

[W]hat were suggested by the Freeh Group as possible corrective actions now are required by the NCAA. In our view, many of these seem to make good sense, but others misjudge the nature of academic institutions and may well be counterproductive. In any event, policy changes such as these should be made with careful deliberation and not by precipitous and heavy-handed fiat.

[Statement of Past Chairs of Faculty Senate, August 28, 2012].

has been reported by the media, that FSS was engaged by the University to conduct an independent investigation. According to Louis Freeh himself, that assumption was false.

During his press conference on July 12, 2012, Mr. Freeh made a stunning admission regarding the identity of his client: “[w]e have shown no favoritism toward any of the parties, *including the Board of Trustees, our client.*” [July 12, 2012, Freeh Opening Remarks at 2 (emphasis added)]. Thus, according to FSS, its client was the Board of Trustees, and not the University. This is not a difference without distinction, nor is it a matter of semantics.

If FSS was hired as counsel to the University, it owed its fiduciary duty to the University (and not to the Board of Trustees). If, however, FSS was hired as counsel to the Board of Trustees (albeit at the expense of the University), it owed its duty to the Board of Trustees (and not the University). This is a critical distinction, as the Report has been used by various third-parties as an indictment on the University. However, if as Mr. Freeh stated, his firm’s client was the Board of Trustees (and not the University), the entire context and goal of FSS in conducting the review and producing the Report would be altered.<sup>3</sup>

The PS4RS Review will outline, specifically, those areas of the Report that are not supported by fact or evidence. In particular, PS4RS will discuss the 1998 and 2001 Incidents, along with the purported findings by FSS. Next, the PS4RS Review will examine the ramifications of Penn State’s acceptance of the Freeh Report, including the imposition of draconian sanctions on the University by the NCAA, based, in substantial part, on the University’s purported acceptance of the findings of the Freeh Report. Finally, the PS4RS Review will conclude with a summary and a recommendation.<sup>4</sup>

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<sup>3</sup> As one example, counsel for the Board of Trustees might have an affirmative duty to its client, even to the detriment of the University. This would, of course, explain some of the incredible statements in the Report directed to the University itself. At a minimum, FSS and the Board of Trustees should produce all of the documents related to the engagement of FSS.

<sup>4</sup> Presently, the Freeh Report is available for purchase online at Amazon: [http://www.amazon.com/Penn-State-Report-Investigative-ebook/dp/B008R0DLNS#reader\\_B008R0DLNS](http://www.amazon.com/Penn-State-Report-Investigative-ebook/dp/B008R0DLNS#reader_B008R0DLNS) (last visited September 13, 2012). The fact that this report is being sold for profit is itself indicative of the problems associated with the entire investigation by FSS. PS4RS **condemns** any attempts by FSS, or others, to profit from this tragedy through the sales of this alleged investigative report.

## **II. 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.

### III. SUMMARY OF PS4RS REVIEW OF FREEH REPORT

As set forth in detail below, PS4RS has concluded that the Freeh Report is replete with errors and has little to no credibility or reliability in its present form, for any purposes, as it relates to the background of the incidents in 1998 and 2001. A mere seven days after issuance of the Freeh Report, a court outright **nullified** the findings of another investigative report by Mr. Freeh's firm regarding the FIFA presidential nominee on the basis that the Mr. Freeh's report was "not complete or comprehensive enough to fill in the gaps in the record."<sup>5</sup> Likewise, the instant investigation was neither complete nor comprehensive, and most certainly failed to fill in the gaps in the record.

As aptly stated by the Honorable Timothy K. Lewis, who previously served as a Judge for the United States District Court and the United States Court of Appeals, regarding his view of the Freeh Report:

I know the difference between a balanced, fair and judicious assessment of evidence, on the one hand, and a flat-out distortion of facts so infused with bias and innuendo that it is, quite simply, unworthy of the confidence that has been placed in it, let alone the reported \$6.5 million the University paid for it. . . . There is nothing "full or complete" about the Freeh Report. Nor am I aware of any court in the land that would accept such unsupported and outrageous conclusions as "independent", or any judge who would put his or her name behind them. It is now apparent that Judge Freeh was not an "independent investigator", but a self-anointed accuser, who in his zeal to protect victims of wrongdoing from a monster, recklessly and without justification created victims of his own.

[August 22, 2012, Remarks of The Honorable Timothy K. Lewis at 2]. The comments of Judge Lewis are wholly consistent with the findings of PS4RS.

First, the manner in which the investigation was undertaken was altogether inconsistent with standard practice for conducting an internal investigation of this nature. Rather, it appears that the "investigative team" commenced and conducted

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<sup>5</sup> [*Bin Hammam Wins Appeal of Lifetime Ban in FIFA Bribery Case*, July 19, 2012, <http://www.usatoday.com/sports/soccer/story/2012-07-19/Mohamed-Bin-Hammam-wins-appeal-in-FIFA-bribery-case/56347494/1>].

this investigation in the manner of a criminal investigation.<sup>6</sup> Such a decision was simply erroneous and, as a result, the entire process presented a grossly flawed report.

In addition, where an investigator is faced with multiple potential outcomes based on disputed facts, the investigator should always advise its client of all possibilities and, if making a factual or credibility determination, advise the client of such, while fully exploring the basis for that determination and providing any alternate conclusions. There is no question that such a process was not undertaken in the Report and there is no explanation for this refusal to implement this most basic tenet of an internal investigation of this nature.

Second, there is no question whatsoever that the Report is incomplete. Only a few of the critical witnesses were even interviewed by the investigative team. Moreover, the investigative team made findings of credibility and intent without even interviewing witnesses who would have been necessary to any such findings. Instead of reaching such conclusions without any support, the Report should have advised the University that the unavailability of the vast majority of the necessary witnesses made that portion of the Report impossible to complete. By representing the investigative team's opinions as "fact," the Report has the effect of misleading the University, the public, and, as set forth below, the NCAA.

Third, the report is filled with errors of facts, misstatements of documents, unsupported conclusions, and rank speculation. As noted above, much of this is

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<sup>6</sup> According to the Report, none of the members of the investigative team "had any past or present professional relationship with the University." [Freeh Report at 11]. But less than six weeks after FSS released the Freeh Report, the Philadelphia-based law firm of Pepper Hamilton, LLP announced its acquisition of FSS. Pepper Hamilton lawyers serve or served as counsel to Merck & Co., whose CEO is Kenneth C. Frazier. In addition to being a member of the University's Board of Trustees, Mr. Frazier is the head of the Special Investigations Task Force, which retained FSS. Pepper Hamilton's August 2012 acquisition of FSS -- coupled with its ties to certain members of the Board of Trustees -- certainly calls into question the independence of FSS' investigative team.

Further, for months, the planned release of the Freeh Report had been August 2012. This was the position of FSS until early July 2012. Then, with no warning, and for no discernible reason, the release of the Report was rushed forward to July 12, 2012. A fair question arises whether the release of the Report was moved forward in an effort to have the Report released prior to the announcement of the acquisition of FSS by Pepper Hamilton, thereby avoiding the inevitable questions and concerns about the investigation being conducted by a law firm that has represented companies affiliated with individual Trustees.

because it was impossible to complete such an investigation and arrive at the conclusions reached by the investigative team, given the lack of availability of nearly every critical witness. Again, the Freeh Report should have acknowledged that it was impossible and advised the University that a further investigation would be appropriate once the criminal proceedings were closed and additional witnesses could be interviewed.

Furthermore, the Report's refusal to identify the witnesses it did interview, and those upon whose statements it relied, again is wholly inconsistent with a final report to be relied upon by a client. For example, it is quite possible that the University itself would have reason to disbelieve certain witnesses due to bias or other reasons; yet, by citing "unnamed" individuals and releasing these statements to the public, FSS allowed the public -- and as set forth below the NCAA -- to believe that the statements were accurate and accepted by the University. Similarly, the Freeh Report never identified whether other witnesses had provided conflicting information and upon what basis the investigative team made credibility determinations.

Next, the report is divided into "chapters" with certain "key findings" highlighted at the beginning. Incredibly, in many instances, the "key findings" are not supported by documented evidence within the Report itself, and worse yet, often represent the unsupported conclusions of the author. These "key findings" are neither "key" nor "findings", and should not have been represented as such. Instead, to the extent a summary was offered, each and every "finding" should have been supported by evidence, and the specific evidence in support should have been expressly identified. The average reader of the Freeh Report would simply review the "key findings" and treat them as fact. In reality, these "findings" were - - by the Report's own admission -- not based on documented evidence.

Additionally, the Report attempts to treat Dr. Spanier, Mr. Curley, Mr. Schultz, and Mr. Paterno as though they were a single person, each having the full knowledge of the other. In fact, there is no evidence to support such a finding. To the contrary, the evidence contained within the Report is just the opposite: each played a very different role and each had varying degrees of knowledge and involvement.

To ascribe the knowledge of all of them collectively to each of them individually was inappropriate. Rather, if FSS was insistent upon examining each individual, the Report should have considered each separately, as would be done in a proper internal investigation. However, to do so would have exposed the incredible lack of support for FSS' "findings". As a result, and since no other rational basis exists,

it stands to reason that the Freeh Report elected to lump the four individuals together as one to make it appear as though there was some evidence of a concerted effort on the part of the four individuals when, in fact, there was no such evidence.

Further, the Report placed undue and misplaced reliance on four emails from 1998 and 2001 that included Dr. Spanier and Messrs. Curley and Schultz. While the Report characterized those emails as the “most important documents in this investigation”, their value was, at best, limited, since the investigative team did not interview either Mr. Curley or Mr. Schultz and the emails in question were impossible to place into context, were incomplete in that portions were missing, and were wholly lacking in authentication. For FSS to rely so heavily on ambiguous emails represented a substantial departure from good practice and common sense.

A proper investigation would have considered the emails, discussed all possibilities relative to the emails, acknowledged the questionable authenticity of certain emails, recognized that the emails were incomplete and potentially out of context, and advised the University that, as a result of the above, and the fact that Messrs. Curley and Schultz were not interviewed, no determination could be made relative to those emails.

Finally, and perhaps most egregious, the Report reaches conclusions that are, at best, not supported by facts and, at worst, a deliberate attempt by the author to create a media frenzy designed to castigate four individuals. The Report bases its repeated accusations on the following conclusory statement:

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 of 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.

[Freeh Report at 16]. This statement by FSS is, in a word, outrageous.

The Freeh Report does not offer even a shred of evidence to support such a damning allegation of intentional concealment and motive, and the actual facts and evidence set forth in the Report itself provide absolutely no basis for such a

conclusion.<sup>7</sup> Each and every part of the above passage is: (1) unsupported by actual evidence; and (2) impossible to conclude based upon the failure to interview critical witnesses. Incredibly, FSS did not even attempt to identify any support for such a statement.

The Report apparently rejects the testimony of Messrs. Schultz, Curley and Paterno and Dr. Spanier, in favor of conclusions FSS finds “more reasonable.” However, the Report never identifies the basis for those conclusions. A review of the Report, in its entirety, reveals no such basis, nor does FSS provide insight to its client into how it reached those conclusions, what it relied upon to do so, and why it rejected the testimony of the four individuals.

Undoubtedly, the clear intent of the Report was to suggest that Messrs. Curley, Paterno, and Schultz, and Dr. Spanier orchestrated a “cover-up” of the 1998 and 2001 Incidents. However, not only is there no evidence whatsoever in the Report to support such a conclusion, the evidence of record reveals the complete opposite.

As to 1998, it is beyond dispute that the matter was fully investigated by law enforcement and child welfare officials after it was reported by the University. The following law enforcement and child-welfare entities were involved in the investigation of the 1998 Incident: (1) University Police Department; (2) Centre County Children and Youth Services (“CYS”); (3) State College Borough Police Department; (4) Centre County District Attorney; and (5) Pennsylvania Department of Public Welfare (“DPW”).

After a complete investigation, these trained child welfare professionals and law enforcement officials concluded that the 1998 Incident did not warrant the filing of criminal charges against Sandusky. This decision was made **after** comprehensive interviews of two alleged victims, the mother of an alleged victim, and Sandusky, as well as evaluations of an alleged victim by trained professionals.

Moreover, several law enforcement officials were privy to a conversation wherein Sandusky admitted to showering with the victim and touching the victim while showering. Despite these admissions, a conclusion was made -- with absolutely no involvement by the University or any of its officials -- that criminal charges were

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<sup>7</sup> For instance, the Freeh Report did not even attempt to explain how it reached the conclusion that there was a concealment to “avoid the consequences of bad publicity.” The Report did not identify a single document, single statement, single comment, or single suggestion of **anyone** as to the “intent.” To make such an allegation and place it into the public domain as “fact” -- without a scintilla of support -- is simply shocking.

not proper.<sup>8</sup> It is simply beyond dispute that there was nothing alleged, or even suggested, that any of the four University officials “concealed” the events of 1998 given the involvement of **five different law enforcement and child welfare entities**.

As to 2001, the incident was reported by Mike McQueary to Mr. Paterno the day after he witnessed it. But within minutes of the incident, Mike McQueary reported it to his father, John McQueary, and to a family friend, Dr. Jonathan Dranov.<sup>9</sup>

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<sup>8</sup> Moreover, a decision was apparently made by DPW not to report the 1998 Incident to The Second Mile. This is significant because the victims were introduced to Sandusky through that charity. Thus, the state entity charged with protecting the welfare of children concluded that the events were not sufficient to warrant alerting The Second Mile. Despite this fact, which is ignored in the Report, the investigative team concluded that Mr. Paterno was derelict in not warning his other coaches as to Sandusky, notwithstanding the findings of law enforcement and child welfare agencies.

<sup>9</sup> As indicated below, just minutes after the 2001 Incident, Dr. Dranov met with Mike McQueary and has testified that he specifically asked McQueary multiple times what he “saw.” In response, McQueary never stated that he “saw” anything sexual but instead went back to what he “heard.” It was upon this statement that Dr. Dranov did not recommend McQueary report the matter to police, and instead, report it to Mr. Paterno. The Freeh Report does not even address its incomprehensible failure to interview Dr. Dranov or to review and cite his sworn testimony from the Sandusky trial. It is beyond question that the Freeh Report should have identified the fact that McQueary’s statements to Dr. Dranov (*i.e.*, that he “heard” something he thought was sexual) may well be at odds with what he purports to have told Messrs. Curley and Schultz. Similarly, McQueary’s statements to Dr. Dranov immediately after the incident were wholly consistent with what Messrs. Curley and Schultz have testified was relayed to them by McQueary approximately ten days later. Certainly, Dr. Dranov’s testimony would cast doubt upon the testimony of McQueary relative to what he told Messrs. Curley and Schultz.

At a minimum, the Freeh Report should have advised the University of this very significant inconsistency, to enable the University to weigh the prospects of whether McQueary has testified accurately as to what he advised Messrs. Curley and Schultz. Stated differently, the **entire perspective of the Report’s alleged concealment changes dramatically if it is determined that McQueary never told Messrs. Curley and Schultz that he saw something of a sexual nature**. Again, while impossible to establish one way or another, such a possibility is most real, particularly in light of Dr. Dranov’s testimony.

Moreover, the Freeh Report failed to address other significant issues related to Mike McQueary that will undoubtedly raise significant questions as to his credibility and the veracity of any statements he made under oath. This includes information from McQueary’s cell phone and/or computer. Since, according to the Report, the investigative team had “unfettered” access to University data, it most certainly would have been aware of any information contained on University-issued cell phones or computers related to McQueary. As such, if it is determined that

John McQueary and Dr. Dranov both advised Mike McQueary that, because he told them that he did not see anything of a sexual nature, he should report the matter to Mr. Paterno, as opposed to law enforcement officials.

After meeting with Mike McQueary, Mr. Paterno, in accordance with University policy, reported it to his superior, Mr. Curley, the following day. Mr. Curley immediately reported the matter to Mr. Schultz. On that same day, Mr. Schultz sought legal advice from the University's longtime outside legal counsel, Wendell Courtney. The following day, Mr. Curley and Mr. Schultz reported the matter to Dr. Spanier. Hours later, Mr. Schultz also contacted Thomas Harmon, former Chief of the University Police Department, regarding Sandusky.<sup>10</sup> Subsequently, Messrs. Curley Schultz met with Mike McQueary.

As a result, within 72 hours of the 2001 Incident, the following individuals had knowledge, in part, of the incident: (1) Sandusky; (2) alleged Victim 2; (3) Mike McQueary; (4) Dr. Dranov; (5) John McQueary; (6) Mr. Paterno; (7) Mr. Curley; (8) Mr. Schultz; (9) Attorney Courtney; (10) Dr. Spanier; and (11) Chief Harmon. Subsequently, an administrative assistant of Mr. Schultz, Joan Coble, was copied on emails outlining the plan for the University to confront Sandusky and report the matter to his employer, The Second Mile. Additionally, Mr. Curley reported the incident to Jack Raykovitz, Executive Director of The Second Mile.

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there was information on McQueary's cell phone or computer that raises serious concerns about his character for truth, the failure of FSS to advise the University of that fact is unconscionable. Similarly, if the investigative team failed to examine McQueary's University-issued cell phone or computer, such failure is inexcusable.

<sup>10</sup> The Freeh Report contained a single email from Chief Harmon to Mr. Schultz, dated February 12, 2001, wherein Chief Harmon stated, "Regarding the incident in 1998 involving the former coach, I checked and the incident is documented in our imaged achives [sic]." [Freeh Report at Exhibit 5D]. No context is offered for this Exhibit within the Report. This is yet another dramatic example of the shortcomings of the Report: the issue of what Mr. Schultz told Chief Harmon about what he was seeking and the purposes for his request would absolutely bear significantly on the very issue that FSS was engaged to investigate.

In other words, if Chief Harmon was advised that there was another incident involving Sandusky (which is without question a reasonable conclusion), the entire suggestion of a "cover-up" would be eviscerated, since Chief Harmon was the highest ranking law enforcement official within the jurisdiction. However, by electing to release the Report without interviewing Chief Harmon and Mr. Schultz, FSS prevented those facts from being discovered and addressed. This failure was simply inexcusable. The Report should have noted that this was a paramount issue and that, until Messrs. Harmon and Schultz could be interviewed, no conclusion could be reached on the issue.

Thus, within several weeks of the 2001 Incident, it is undisputed that at least 13 people, and perhaps additional individuals, were aware of some incident involving Sandusky. Of all of those individuals with some knowledge of the 2001 Incident, the investigative team interviewed only one -- Dr. Spanier, who himself has condemned the Report as wholly inaccurate.

Yet, despite not interviewing a single other critical witness, the Report somehow reached the conclusion that Dr. Spanier and Messrs. Curley, Paterno, and Schultz engaged in some form of “concealment” or cover-up of that incident. Such a finding is wholly unsupported by the facts or common sense. It strains all credulity to suggest a cover-up when it is undisputed that many people outside of the University were aware of the 2001 Incident and not a single person stated that there was a plan or directive not to discuss the 2001 Incident.

It strains credulity to suggest a cover-up by Mr. Paterno when he contacted Mr. Curley and met with Messrs. Curley and Schultz to share what Mike McQueary told him. It strains credulity to suggest a cover-up by Mr. Schultz when he contacted outside legal counsel, Mr. Courtney, for advice.<sup>11</sup> It strains credulity to suggest a cover-up by Mr. Schultz when he contacted Dr. Spanier to advise him of the 2001 Incident and contacted the Chief of the University Police Department. It strains credulity to suggest a cover-up by Mr. Curley when he contacted Dr. Raykovitz to alert him as to the incident and advise him that Sandusky had been banned from bringing Second Mile children on campus. It strains credulity to suggest a cover-up by Messrs. Curley, Paterno, and Schultz when each met with Mike McQueary and, at no point, directed or suggested he not discuss the matter with anyone.<sup>12</sup>

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<sup>11</sup> It is significant to note that, although the investigative team did not interview Attorney Courtney, they were aware that Attorney Courtney had advised that, if he believed the 2001 Incident was “reportable,” he would have insisted that Mr. Schultz report it. Again, the Freeh Report completely omits this information, presumably because it would not support the suggestion that there was an intended concealment. The issue of what advice was provided by Attorney Courtney to Mr. Schultz is paramount to the crux of the issue. The fact that Attorney Courtney refused to be interviewed most certainly is significant and should have been much more prominently addressed in the Report. In sum, Attorney Courtney’s statements will be critical in assessing the propriety of the actions of the University in response to the 2001 Incident. Stated differently, the entire Report fails as to 2001 if the various individuals were acting consistent with the advice of the University’s counsel.

<sup>12</sup> Further, shortly after the 2001 Incident, Mr. Schultz met with John McQueary and Dr. Dranov on an unrelated matter. During the meeting, the 2001 Incident came up. However, at no point

In short, **there was simply not a shred of evidence to suggest any concealment or cover-up.** In hindsight, there was certainly an error in judgment by one or more individuals. Such an error -- when viewed with the knowledge that existed in 2001, as opposed to 2012 -- is far different than any deliberate attempt at concealment, as the Report suggests.

Additionally, before accusing Dr. Spanier and Messrs. Curley, Paterno and Schultz of concealing these allegedly horrific crimes, FSS should have engaged the services of a trained psychologist or other medical professional to provide guidance on this issue. For example, one question that should have been considered was this: is it likely that four highly-respected individuals, who in their entire lives had never been accused of a crime of any nature, would intentionally conceal a known crime against a child to protect the reputation of the University (or the University's football program)? Another question would be if there was an intent to conceal the events, would these individuals have contacted outside counsel, the police, and representatives of the The Second Mile? Moreover, would these individuals engage in such concealment when, less than three years earlier, some or all of the same individuals were aware of an outside investigation of Sandusky by law enforcement and child welfare professionals when Sandusky was actually employed by the University and the football program at the time? Consultation with a medical professional would undoubtedly shed light on these questions and others, and most certainly would have been invaluable to a true investigation where the individuals accused by FSS were not interviewed. The Report does not even address FSS' failure to conduct this most basic analysis.<sup>13</sup>

Simply put, the Report is flawed and incomplete as it relates to the 1998 Incident and the 2001 Incident. FSS should have advised the University that, because of an inability to access critical witnesses and evidence, it was impossible to reach any conclusions regarding the 1998 and 2001 Incidents at this time. Instead, by drawing unsupported conclusions and reporting them as facts, the Report has tainted the University, as well as Dr. Spanier and Messrs. Curley, Schultz, and Paterno. The resulting frenzy will impact the University and the upcoming trials of

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was there any suggestion or direction by Mr. Schultz for John McQueary or Dr. Dranov not to discuss the 2001 Incident. Again, these facts suggest the complete opposite of a cover-up.

<sup>13</sup> A trained psychologist or other medical professional could also have provided insight into the difficulties of individuals being told that someone well-known to them, who had been widely recognized for his work with children and his charity to aid disadvantaged children, may have been engaged in improper conduct with a child.

Messrs. Curley and Schultz, along with tens of thousands of students, alumni, and supporters of the University.

Worse yet, the Report has diverted attention from the real issue of why multiple law enforcement and child welfare agencies failed to take action upon being placed on notice and conducting a full investigation of Sandusky in 1998. It is incredible to believe that the Report vilified four individuals with no training in law enforcement or child welfare, while those professionals and entities who were so trained, and did investigate Sandusky, are ignored. There is, simply, no logical or rational explanation for the failure of the Report in this regard, other than an effort to reach a pre-determined outcome.