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CRITIQUE OF THE FREEH REPORT: THE RUSH TO INJUSTICE REGARDING JOE PATERNO

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CRITIQUE OF THE FREEH REPORT: THE RUSH TO INJUSTICE REGARDING JOE PATERNO

After the Freeh Group, which had been retained as Special Investigative Counsel (“SIC”) by the Penn State Board of Trustees to investigate the Jerry Sandusky child sex abuse scandal, released its report in July 2012, the Paterno family asked King & Spalding to conduct a comprehensive review of both the report and Joe Paterno’s conduct.¹ They authorized us to engage preeminent experts and to obtain their independent analyses as an essential part of that review. This Critique of the Freeh report, which incorporates and attaches those independent analyses in full, sets the record straight. We conclude that the observations as to Joe Paterno in the Freeh report are unfounded, and have done a disservice not only to Joe Paterno and to the Penn State University community, but also to the victims of Jerry Sandusky and the critical mission of educating the public on the dangers of child sexual victimization.

Dick Thornburgh, former Attorney General of the United States, and experts Jim Clemente and Fred Berlin, have each carefully examined the July 12, 2012 report prepared by Louis Freeh, and have each determined that the report is deeply flawed and that key conclusions regarding Joe Paterno are unsubstantiated and unfair.

This Critique summarizes their expert conclusions and describes the most glaring errors on which the Freeh report is based. As Dick Thornburgh explains, the Freeh report reflects an improper “rush to injustice.” There is no evidence that Joe Paterno deliberately covered up known incidents of child molestation by Jerry Sandusky to protect Penn State football or for any other reason; the contrary statements in the Freeh report are unsupported and unworthy of belief. As described in more detail below, there is no reason to believe that Joe Paterno understood the threat posed by Jerry Sandusky better than qualified child welfare and law enforcement professionals. There is no evidence that Joe Paterno conspired with Penn State officials to suppress information because of publicity concerns. And Joe Paterno’s testimony before the grand jury in 2011 was truthful. As Messrs. Thornburgh and Clemente and Dr. Berlin have each concluded, the full story behind the tragic events involving Jerry Sandusky is not the one told by the Freeh report.

SUMMARY OF KEY POINTS

- Joe Paterno’s last written words before his death focused on the victims of Jerry Sandusky. In a handwritten note, Joe Paterno emphasized: “Good side of scandal - it has brought about more enlightenment of a situation (sexual abuse of young people) in the country.”
- The Paterno family directed King & Spalding to seek independent opinions of the Freeh report by experts in identifying and investigating child victimization and pedophilia, as well as by experts in conducting independent and reliable internal investigations. Those independent experts include the former top legal officer of the United States, Attorney General Dick Thornburgh; former FBI profiler and child molestation and behavioral expert, Jim Clemente; and The Johns Hopkins Hospital and School of Medicine physician and psychologist, Fred Berlin.

- King & Spalding’s Critique of the Freeh report, which incorporates the independent analyses of these three prominent experts, concludes that the Freeh report is deeply flawed and that its conclusions as to Joe Paterno are unfair and unsupported.
- Each one of the Freeh report’s main observations about Joe Paterno is wrong: each is either contradicted or unsubstantiated by the evidence. The authors of the Freeh report chose not to present alternative, more plausible, conclusions regarding Joe Paterno’s role in the events involving Jerry Sandusky.
- This Critique concludes, based on our interviews, including of Coach Paterno before his death, based on our review of documents and testimony, and, importantly, based on information from our access to the lawyers for other Penn State administrators, that (1) Joe Paterno never asked or told anyone not to investigate fully the allegations in 2001, (2) Joe Paterno never asked or told anyone, including Dr. Spanier and Messrs. Curley and Schultz, not to report the 2001 incident, and (3) Joe Paterno never asked or told anyone not to discuss or to hide in any way the information reported by Mr. McQueary. Joe Paterno reported the information to his superior(s) pursuant to his understanding of University protocol and relied upon them to investigate and report as appropriate.
- Former Attorney General Thornburgh is an expert in conducting effective fact investigations. He has reviewed the Freeh report and concluded that its investigative methodology is flawed, that its factual findings are limited and incomplete, and that its observations as to Joe Paterno are unreliable and unfounded. In the former Attorney General’s own words, he concluded:
 - “The lack of factual support for the SIC’s inaccurate and unfounded findings related to Mr. Paterno and its numerous process-oriented deficiencies was a rush to injustice and calls into question the credibility of the entire Report.”²
 - “In my opinion, the Freeh Report is seriously flawed, both with respect to the process of the SIC’s investigation and its findings related to Mr. Paterno.”³
 - “When considered in the context of investigation ‘best practices,’ it is evident that the Freeh Report and many of its findings as they relate to Mr. Paterno are not accurate, thorough, fair or credible. . . . The process of the SIC’s investigation was deficient in numerous ways, including the failure to interview virtually all of the key witnesses and the reliance upon limited, ambiguous documents.”⁴
 - “Perhaps most significantly, the findings in the Freeh Report about Mr. Paterno concerning his alleged knowledge of the 1998 incident and purported concealment of the 2001 incident were not properly supported.”⁵
 - “This lack of evidence supporting the Report’s most scathing findings and the serious flaws with respect to the process of the SIC’s investigation cause me to conclude that the Report’s findings concerning Mr. Paterno are unjust and wrong.”⁶

- The Freeh report was oversold to the public. Penn State officials, the NCAA, and other bodies detrimentally relied on the Freeh report in a rush to judgment about Joe Paterno. The limitations of the investigation, which were numerous and fatal to fundamental fairness, were not adequately explained or understood before that rush to injustice solidified the false public narrative about Joe Paterno.
- The Freeh report missed a critical opportunity to educate the public on the identification of child sexual victimization, and instead used the platform created by this scandal to sensationalize the blaming of Joe Paterno. The Freeh report ignored decades of expert research and behavioral analysis regarding the appropriate way to understand and investigate a child sexual victimization case. Mr. Jim Clemente is one of the leading former FBI profilers of child sex offenders, and himself a survivor of childhood sexual victimization. As Mr. Clemente bluntly put it:
 - “The SIC failed to properly factor the dynamics of acquaintance child sexual victimization cases into their investigation. Consequently, the SIC misinterpreted evidence and behavior and reached erroneous conclusions. Any investigation will reach the wrong result by using the wrong approach and by interpreting the facts through the wrong filter.”⁷
 - “There is no other way to say it: on the most critical aspects of the Sandusky investigation, the SIC report is a failure. It does a tremendous disservice to Penn State, Joe Paterno, and the victims of Jerry Sandusky.”⁸
- Expert analysis shows that Jerry Sandusky was a “skilled and masterful manipulator,” who deceived an entire community to obscure the signs of child abuse, using a variety of proven techniques. Those techniques included: perpetuating an image as a playful “nice guy” who was a foster and adoptive parent with kids around him at all hours in all types of capacities, leveraging his position as a respected member of the community, and creating a children’s charity to legitimize his credibility in interacting with kids.
- Expert analysis shows that Jerry Sandusky fooled qualified child welfare professionals and law enforcement, as well as laymen inexperienced and untrained in child sexual victimization like Joe Paterno. Sandusky’s techniques as a pillar of the community created a proven psychological and cognitive impediment for them to recognize the red flags and other signs that Sandusky was a child molester. Joe Paterno himself knew very little about Jerry Sandusky’s personal life and did not know private details about Sandusky or his victims. For decades, Joe Paterno respected Sandusky’s talent as a coach and professional colleague and recognized Sandusky’s widely-stated passion for helping kids, but the Freeh report missed that they disliked each other personally, had very little in common outside work, and did not interact much if at all socially.
- Expert analysis shows that while signs of Jerry Sandusky’s child molestation existed with the benefit of hindsight, at the time of the 2001 shower incident reported by graduate assistant Mike McQueary, information was conveyed to Joe Paterno in terms that were too general and vague for him to disregard decades of contrary experience with Sandusky

and to conclude that Sandusky was a child predator. As summarized in former FBI profiler Jim Clemente's own words:

- “Given my 30 years of education, training and experience working, evaluating and assessing child sex crimes investigations around the world, it is my expert opinion that Paterno did not know, or even believe in the possibility, that Sandusky was capable of sexually assaulting boys. At worst, he believed that Sandusky was a touchy-feely guy who had boundary issues. This fact is clear from his repeated statements before he died.”⁹
 - “[Paterno] did what he believed was reasonable and necessary to address the situation based on his understanding of the facts, and his position at the time. Paterno did what most people who cared about children would have done in the same situation. More than a decade later, and in hindsight, Paterno showed his concern for the victims when he stated he, ‘wished [he] had done more.’”¹⁰
 - “Paterno, like everyone else who knew Sandusky, simply fell victim to effective ‘grooming.’ [Grooming is a dynamic process of seemingly innocent, positive public behaviors by the offender, aimed at gaining the trust of the targeted child, parents and the community.] As an expert behavioral analyst and based on my review of the evidence, Paterno did not believe that the information he received from McQueary amounted to Sandusky being a predatory child sex offender.”¹¹
- The Freeh report is uniformly biased against Joe Paterno. For the authors of the report, there are no gray areas. They ascribe motives to people they never met or interviewed, and interpret ambiguous documents with a clarity and decisiveness that is impossible to justify.
 - None of the experts found any support for the Freeh report's assertion that Joe Paterno, along with three other Penn State administrators, including the President, conspired to conceal Jerry Sandusky's actions because they wanted to avoid bad publicity. That core “conclusion” by Mr. Freeh was entirely unfounded and has resulted in a great disservice to everyone involved in this tragedy.
 - Mr. Freeh irresponsibly blamed Joe Paterno in this scandal, and violated the most basic notions of due process by offering a flawed, one-sided viewpoint without affording any meaningful opportunity for Joe Paterno, his representatives, or any neutral third party to assess or even respond to Mr. Freeh's opinions before he announced them as proven at a national press conference. Mr. Freeh generated a rapid domino effect of negative coverage that immediately and unfairly tainted perceptions of Joe Paterno by the media, the Penn State community, the NCAA, and the public.
 - The timing of Mr. Freeh's press conference and report ensured that the rush to judgment occurred without any meaningful review of the Freeh report itself. The Freeh report, which was 267 pages and included 702 endnotes and 105 pages of appendices, was released only an hour before his press conference. The virtually instantaneous and uniformly negative reporting after his press conference perpetuated his many unproven

assertions and opinion-based conclusions, without any evaluation or analysis by the news outlets that adopted Mr. Freeh's wide-ranging and unchallenged proclamations.

- The NCAA improperly relied on the Freeh report in compelling Penn State to enter into a “consent” decree and accept draconian penalties. Only eleven days after the release of the Freeh report, and without conducting any factual investigation of its own, the NCAA announced severe sanctions that deeply impacted the University and the community. The NCAA circumvented its established enforcement mechanisms and violated its own due process rules. It never identified a single infraction of NCAA rules based on Sandusky's crimes, much less an infraction by Penn State that implicated the NCAA's jurisdiction and core mission of ensuring competitive balance in amateur athletics.
- The Freeh report is full of errors, unsupported personal opinions, improper allegations and biased assertions. Despite the Freeh report's claim to the contrary, access to vital documents and critical witnesses was severely limited. Those limitations, which were understated or ignored in the report, call into question the report's legitimacy. Despite reportedly reviewing millions of documents and interviewing hundreds of witnesses, the Freeh report relies primarily on a handful of emails, none of which Joe Paterno authored or received, to make assertions about Joe Paterno, and shockingly does so even though Mr. Freeh never interviewed the actual authors of the emails. This Critique of the Freeh report addresses seven of the most egregious, unfounded, and unfair conclusions about Joe Paterno; the three other expert reports attached to this Critique combine to expose and address many more.
- The facts establish that Joe Paterno acted honestly and in good faith throughout the Sandusky scandal, from the moment he received Mr. McQueary's 2001 report, through his grand jury testimony, until the day of his death in January 2012. Dr. Fred Berlin, a preeminent physician and psychologist from The Johns Hopkins Hospital and School of Medicine, studied and reviewed the evidence in this case, and he assessed Joe Paterno's life more broadly. Dr. Berlin concluded:
 - “I have not seen evidence supporting a conclusion that Joe Paterno had acted in bad faith, nor have I seen evidence supporting a conclusion that he has ever been a man who lacked a genuine concern about the wellbeing of others — including the wellbeing of children.”¹²
 - “In my professional opinion, there is absolutely nothing about the way in which Mr. Paterno had led his life, or about his characterological makeup, that would support the unsupported inference that ‘in order to avoid the consequences of bad publicity,’ he had been one of the ‘powerful leaders’ at Penn State who had ‘repeatedly concealed critical facts related to Sandusky's child abuse from the authorities, the University's Board of Trustees, the Penn State community, and the public at large.’”¹³
- In any fair courtroom or truly independent investigation, the target of an inquiry rightfully would expect all the facts, including the full scope of his life, to be considered when assessing his culpability. In this instance, however, the Freeh report ignores Joe

Paterno's lifetime record of moral conduct and altruism as if it were irrelevant to the case. Experts in the behavioral dynamics of child sexual victimization, as well as experts in conducting sensitive investigations, have concluded that such an omission was a serious flaw that undermines the credibility of the report. That conclusion is captured by Dr. Berlin:

- “Joe Paterno had known very little about the extent of the acts for which Mr. Sandusky had subsequently been convicted. In my judgment, given his history of a life well led, and of good character, and in light of the unsubstantiated nature of the inferences against him, to conclude that for any reason he would have been unconcerned about the wellbeing of children, would require turning a blind eye to the values that he had consistently demonstrated, and to the essence of what his life had been all about.”¹⁴
- Joe Paterno died just over a year ago concerned for the victims, determined that the full truth should be revealed, and hopeful that these events could raise consciousness of child abuse detection more broadly and prevent its recurrence. As in his life, Joe Paterno remained committed to helping others at his death.
- Sue Paterno and her family remain deeply committed to that mission and will continue supporting significant steps, and making more contributions financially and emotionally, to increase child abuse awareness, identification and education in this country. This effort is one important chapter in that journey.

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I. Introduction

Rank speculation. Innuendo. Subjective opinions. This rhetoric, not objective facts and evidence, forms the core of the Freeh report's conclusions regarding Joe Paterno.

Speculation and subjective opinions are regularly rejected in the American justice system as unreliable and inadmissible in proceedings designed to discover the truth. Mr. Freeh knows these fundamental rules as a former judge, but sadly he ignored them in favor of substituting his personal opinions for objective factual findings and conclusions throughout his report. Although his report is confident in its conclusions, it lacks the careful distinctions, scrupulous weighing of evidence, and fair consideration of relevant information that is expected of a report addressing issues of such importance.

In the six months since release of the Freeh report, world-renowned experts, including the former Attorney General of the United States, one of the foremost former FBI profilers of child sex crimes, and a leading physician and psychologist specializing in pedophilia at The Johns Hopkins Hospital and School of Medicine, among many others, have reached similar conclusions: The Freeh report is deeply flawed and incomplete, and its statements specifically as to Joe Paterno are unfounded and unfair.

Although any fair-minded reading of the report would expose these clear shortcomings if key observers had taken the time to analyze it before rushing to judgment, the report has been given authoritative weight by both the press and the NCAA.

Adding to the tragic experiences of the victims of Jerry Sandusky, child exploitation experts have observed that the report missed a critical opportunity to educate the public on the identification and prevention of sexual molestation by child predators. Instead, the report sensationalized its "conclusions" with unfounded assertions of conspiracies and cover-ups by Penn State administrators as if they acted as a single-minded, collective group. At the same time, the report ignored the pathology of and psychological manipulation by child predators who gain the trust of entire communities by hiding in plain sight even when abuse warning signs emerge.

In short, Mr. Freeh unilaterally anointed himself the judge, jury, and executioner by deciding to redefine Jerry Sandusky's personal crimes as a Penn State and Joe Paterno football scandal. That bell can never be unrung, but the many associated errors can be corrected.

Mr. Freeh also violated the most basic notions of due process by offering his one-sided viewpoint without affording any meaningful opportunity for Joe Paterno, his representatives, or any neutral third party to test and respond to Mr. Freeh's opinions before he announced them as gospel at a national press conference.

Unlike Mr. Freeh, we are hesitant to speculate about individual motives in this case and why his report drew such irresponsible conclusions. To be clear, we do not impute bad faith to Mr. Freeh, who produced a report under pressure, in a time-sensitive, emotionally charged, and difficult situation. It is readily apparent, however, that the Freeh report viewed the few documents that even relate to Joe Paterno in the light least favorable to him, and through a conspiratorial lens that discarded an entire life of integrity, charity, and dedication to shaping

young men of character. In addition, as a widely respected, former FBI profiler and expert concluded, because the Freeh team approached their investigation the wrong way, and failed to account for the proven behavioral and psychological dynamics of crimes by acquaintance child sexual offenders that fit Sandusky's profile, they reached erroneous conclusions and failed to understand how Sandusky got away with his crimes for so long.

Mr. Freeh and his team wrote their report as if it were an indictment, with the unchecked power of a prosecutor, and delivered unsupported but headline grabbing theories as fact. We may never know if Mr. Freeh was motivated to pursue maximum publicity, to align his views with the media story line that had already been established, to satisfy a desire on the part of many who sought someone to blame in addition to Jerry Sandusky for the awful abuse of children, to justify a pre-conceived conclusion he reached in good faith but that he could support only by contorting "evidence" that did not fit his theory, or something else.^a Only the test of time will judge those motives.

Recognizing always that the victims of Jerry Sandusky have suffered the most, it remains shocking to see the amount of damage the Freeh report and its aftermath have wreaked upon Penn State University, its alumni, the community, and the individuals targeted by the report. Many faculty, students, student-athletes, alumni, certain members of the Penn State Board, the Governor of Pennsylvania, and, ironically according to press reports, even a member of the Freeh Group itself, have expressed their disappointment and dismay that the NCAA subsequently used mainly the Freeh report as the basis to levy unprecedented, historic penalties on and criticism of Penn State.¹⁵

^a Mr. Freeh's personal opinions are not subject to any greater weight than informed observers' given the lack of facts regarding Joe Paterno, and his speculation about Joe Paterno's "legacy" are no more appropriate than ours about his tenure as the Director of the FBI. In that capacity, Mr. Freeh's judgment was criticized by Congress for such matters as the inappropriate handling of terrorism preparedness leading up to the 9/11 terrorist attacks, the inappropriate handling of matters relating to the follow up investigation of the Ruby Ridge killings, and presiding over the FBI with devastated morale from a perceived double-standard of discipline that favored senior FBI personnel at the expense of the rank-and-file agents, and which prompted multiple independent reviews and reversal of certain of Mr. Freeh's mandated FBI policies. We cite these examples not to opine on those allegations here, but to demonstrate simply that broad, opinion-based conclusions about leaders of large organizations are irresponsible, dangerous, and much easier to allege during press conferences and in self-written reports than to prove in a court of law or any other setting that requires reliability.

Mr. Freeh seemed particularly sensitive to these issues in connection with the release of the bipartisan 9/11 Commission report, when in 2005 he published a passionate op-ed in the Wall Street Journal titled "An Incomplete Investigation." Mr. Freeh went so far as to call for the country to assess the credibility of the *bipartisan* 9/11 Commission itself. Among Mr. Freeh's assessments: the Commission ignored the most relevant fact of the entire post-9/11 inquiry; the commission's chair routinely "espous[ed] his own conclusions about 9/11 . . . long before all the facts were in"; and the Commission "grossly neglected" evidence, reached a "half-baked conclusion," and ignored "direct evidence to the contrary." Ironically, Mr. Freeh's own criticisms of the 9/11 Commission apply as forcefully to his own report here and his personal conclusions about Joe Paterno. Louis Freeh, *An incomplete investigation*, WALL ST. J., Nov. 17, 2005.

Indeed, such criticism of Mr. Freeh's alleged speculative capacity is not limited to Mr. Freeh's FBI tenure. In July 2012, over a year after Mr. Freeh was retained as an independent investigator by the Ethics Committee of FIFA (international soccer's governing body) in the FIFA sports bribery scandal regarding Mohamed Bin Hammam, the Court of Arbitration of Sports ("CAS") overturned the FIFA decision, which had been based on Mr. Freeh's investigation. According to the CAS panel, Freeh's report "did not sufficiently investigate" key evidence and "was not complete or comprehensive enough to fill the gaps in the record." *Mohamed Bin Hammam v. FIFA*, CAS 2011/A/2625, Arbitral Award, at 50, 54 (July 19, 2012).

In reality, the Freeh report uncovers little new factual information as to Joe Paterno and does very little to advance the truth regarding his knowledge, or more accurately lack of knowledge, of Jerry Sandusky's molestation of children.^b Instead of recognizing the substantial holes that are apparent from a substantive reading of the Freeh report and the incomplete record on which it is based, Mr. Freeh has done the opposite. He has claimed that the report is exhaustive and thorough, and pronounced grand and sweeping conclusions to the media about what Joe Paterno, in Mr. Freeh's personal view, knew and should have done about Jerry Sandusky. His unsubstantiated personal view has been adopted, incorrectly, by media and observers as proven fact, literally minutes after Mr. Freeh's press conference and before any meaningful study of the actual report was even possible.

In the months following the release of the Freeh report, the Paterno family requested a careful, thoughtful review of the results of the report, which purports to summarize the findings of over 430 interviews and a massive review of data — more than 3.5 million pieces of electronic data and documents — over more than seven months of investigation by Mr. Freeh.¹⁶

During our review, the judicial system proceeded swiftly as to Jerry Sandusky. In October, 2012, a state court sentenced him to 30-60 years in prison, effectively a life sentence, for his June convictions on 45 counts of child abuse. Sandusky's victims and their families confronted him directly at sentencing, and even then he continued to deny his guilt in the face of massive evidence at trial to the contrary.¹⁷ But with Sandusky held accountable for his actions and the fever pitch regarding Penn State stabilizing with the benefit of time and perspective, a growing chorus of observers recognized that they could provide an honest assessment of the Freeh report without being vilified as defenders of a child molester.

Even during our relatively short review, it is clear that the Freeh report's key findings regarding Joe Paterno are unsubstantiated by the evidence, are the product of Mr. Freeh's personal opinions, and are entitled to no more weight than any other observer's views of these events. The Freeh report's conclusions are distorted by Mr. Freeh's use of Joe Paterno as a lightning rod in this tragedy, and by his repeated and unfair grouping of evidence regarding multiple individuals when the evidence shows that Joe Paterno, himself, knew virtually nothing about Jerry Sandusky's private or personal life or that of his victims, and received very few details about the two key incidents in question.

In these limited pages, and with the hope of continuing the process to find the truth in these horrific events, we seek to collect in one location the unwarranted conclusions and distortions in the Freeh report regarding Joe Paterno. More meaningfully, we also focus this report on one of the most important — and neglected — aspects of this entire scandal: the identification and recognition of child molestation and its prevention in our communities.

^b Our review specifically evaluates the Freeh report's subjective opinions specific to Joe Paterno, and does not at this point discuss the many other logical gaps and infirmities in the report as to other aspects of his "findings."

II. Process of King & Spalding's review of the Freeh report & mandate to find the truth

When Mr. Freeh held a press conference and simultaneously released his report on July 12, 2012, the Paterno family and others familiar with the facts of the Sandusky scandal were stunned. The report contained few new facts, but the charges leveled against Joe Paterno were extreme, inaccurate, and completely unfounded.

The Paterno family immediately asked King & Spalding, led by Wick Sollers, Mark Jensen, and Alan Dial, to undertake a comprehensive review of the Freeh report and Joe Paterno's actions. They authorized us to engage the best, most respected experts, and to go wherever the facts and theories led us.

Accordingly, we obtained independent analyses and independent reviews of the Freeh report from the leading experts in their fields. When we retained these experts, two of the three knew Mr. Freeh in professional capacities and held him in high regard, a fact that later would lend additional credibility to their expert opinions. These preeminent experts are:

- Former United States Attorney General Dick Thornburgh, the country's top legal officer, who also was a renowned federal prosecutor, Assistant Attorney General in charge of DOJ's Criminal Division, experienced investigator, and the Governor of Pennsylvania. We retained Mr. Thornburgh to examine whether the Freeh investigation and its findings were thoroughly developed, accurate, fair, and credible, particularly with respect to Joe Paterno.
- Former FBI Supervisory Special Agent and former state prosecutor Jim Clemente, who is one of the foremost former FBI profilers and experts on how to investigate, analyze, and understand the facts and behaviors of witnesses, offenders, and victims in child sexual victimization cases. He also is a survivor of childhood sexual victimization. We retained Mr. Clemente to review and assess the Freeh report and its conclusions, with an emphasis on whether the Freeh report accounted for the extensively-studied behavioral dynamics at issue in child molestation cases.
- Dr. Fred Berlin, a treating physician, psychologist, and leading expert in sexual disorders and pedophilia at The Johns Hopkins Hospital and School of Medicine. He founded The Johns Hopkins Sexual Disorders Clinic, and is an expert in behavioral science and in the assessment of mental and motivational states. We retained Dr. Berlin to evaluate the Freeh report's conclusions about Joe Paterno's conduct.

In retaining these experts, we did not cherry-pick from a group of possible experts to find and secure the most favorable opinions. Instead, these were the only three experts we approached because of their impeccable credentials and reputations. They were compensated for their time, but each agreed to the engagement only if we would accept their unvarnished, objective opinions, whatever those turned out to be.

Despite statements by the Freeh Group that they conducted over 430 interviews and reviewed over 3.5 million documents, that effort yielded remarkably little evidence to advance the truth.

Their overall conclusions regarding the range of issues reviewed were supported by attachments numbering a mere 30 exhibits, including 17 emails, none of which were authored or received by Joe Paterno. We therefore quickly concluded that a “reinvestigation of the investigation” would be unproductive and focused our efforts on reviewing relevant public records, which of course included the Freeh report itself and its exhibits, witness interviews, grand jury and trial testimony, media reports, and other documents we could access to evaluate the Freeh report’s conclusions. The Freeh Group never interviewed any of the key witnesses, with the exception of President Spanier, concerning the facts of the 1998 and 2001 incidents. We interviewed Joe Paterno and others and met with the lawyers for Messrs. Curley and Shultz and Dr. Spanier.

The Paternos gave us a direct mandate to set the record straight and find the truth as to Joe Paterno’s conduct, whether positive or negative. They committed to complete transparency of our findings and those of the independent experts. All our full reports are available at www.paterno.com.

III. Mr. Freeh’s press conference, the NCAA’s immediate adoption of the Freeh report & the rush to judgment in the absence of facts regarding Joe Paterno

At 10:46 am on July 12, 2012, Mr. Freeh completed a 42-minute press conference where he repeatedly asserted his personal opinions about Joe Paterno’s role in the Jerry Sandusky child molestation scandal. Perhaps his most pointed opinion was that four Penn State senior employees, including Joe Paterno, actively concealed facts about Jerry Sandusky to avoid consequences of “bad publicity.”

The report had few new facts, but the conclusions were a surprise to many, including the Paterno family who trusted that Mr. Freeh would provide a report that was fair and balanced. The family reviewed and challenged the report, emphasizing that Joe Paterno accurately reported the 2001 incident and never would have allowed bad publicity to trump child safety if he had any belief that Sandusky molested children. Mr. Freeh presented not one shred of evidence that Joe Paterno interfered with any investigation or asked anyone to conceal relevant information. The family’s view largely became relegated to a footnote in the contemporaneous and subsequent media frenzy surrounding the Sandusky scandal.

That morning, major news outlets around the country reported Mr. Freeh’s sweeping conclusion as fact, repeating that Joe Paterno covered up for a known child molester. The Freeh report, which was 267 pages and included 702 endnotes and 105 pages of appendices, had been released at approximately 9:15 am, less than an hour before his press conference. The virtually instantaneous negative reporting belies any suggestion that the Freeh report, and its many unproven assertions and opinion-based conclusions, had been thoroughly studied and evaluated by the news outlets that adopted and perpetuated Mr. Freeh’s wide-ranging, definitive, and unchallenged proclamations.

Within 24-hours, even respected news journalists^c wrote that Joe Paterno “lied” and “concealed” his role in the Sandusky affair and that he knew the salacious details of two incidents deemed critical by the Freeh report: (i) a 1998 joint investigation of Sandusky by the district attorney, law enforcement officials, and the Department of Public Welfare, which concluded that no crime would be charged and that no sexual misconduct occurred, and (ii) a 2001 shower incident that graduate assistant Mike McQueary reported to Joe Paterno in general terms and that Joe Paterno learned about on Saturday, February 10, 2001, and reported promptly to his superior(s) that same weekend on Sunday, February 11, 2001.^d

Only ten days after release of the Freeh report, on Sunday, July 22, 2012, and six months following Joe Paterno’s death, Penn State removed his statue from the football stadium amid mounting pressure and criticism generated by the Freeh report and impending sanctions from the NCAA. The Big Ten Conference and private interests would subsequently remove Joe Paterno’s name from significant awards and charitable projects.¹⁸

Only eleven days after release of the Freeh report, on Monday, July 23, 2012, the NCAA announced significant sanctions against Penn State, including a \$60 million fine that would establish a child abuse endowment, the loss of scholarships, probation, waiver of transfer rules that allowed student-athletes to transfer from Penn State immediately, a post-season bowl appearance ban, deprivation of wins from 1998 through 2011, and the imposition of significant compliance and monitoring obligations. The NCAA adopted the sweeping compliance recommendations in Chapter X of the Freeh report and made multiple negative references to the culture of the football program. The NCAA also had considered banning the Penn State football program from NCAA competition entirely, known as the “death sentence,” but elected instead to issue the above penalties.¹⁹

In imposing these sanctions, the NCAA acted in an unprecedented manner: it did not follow its own infractions process or abide by its due process rules. The NCAA did not provide Joe Paterno’s representatives, any other coaching staff or player impacted by the sanctions, or any of the impacted Penn State administrators cited in the Freeh report, an opportunity to be heard despite such requests. But the President of the NCAA, during his press conference, reserved the ability to impose sanctions on individuals, pending the outcome of ongoing legal proceedings.

The NCAA did not conduct an independent investigation of the facts, and admittedly relied on the Freeh report in forming its view of this scandal and meting out draconian penalties. The President of the NCAA has stated that the NCAA relied on the Freeh report because the Freeh report was much more thorough than any investigation they could conduct without subpoena

^c Some of the most scathing commentaries emanated from journalists who previously were either supportive or balanced in their coverage of Joe Paterno’s role in this matter. Whether those journalists were more concerned about their own reputations without fully assessing the extraordinary gaps in the Freeh report, simply reacting in good faith to Mr. Freeh’s blanket and irresponsible assertions, or something else, only time will tell as the truth in this matter continues to emerge.

^d In June 2012, a Centre County jury convicted Jerry Sandusky of 45 of 48 counts related child molestation. He was not convicted on the most serious of the five counts of sexual assault relating to the incident that McQueary discussed with Joe Paterno. McQueary acknowledged in this grand jury testimony, at a preliminary hearing for Tim Curley and Gary Schultz, and at trial that he did not provide graphic details to Joe Paterno about what he saw out of respect to Joe Paterno. *See infra* note m.

power, ignoring that the Freeh Group also lacked subpoena power and did not talk to most of the key witnesses.^e

On November 24, 2012, the Penn State football team concluded its season with an 8-4 record despite a decimated program and numerous player transfers before the season as a result of the NCAA sanctions. The team would have qualified for a post-season bowl game absent the sanctions. To this day, the NCAA Committee on Infractions, the NCAA's regular enforcement body, has not identified a single infraction of NCAA rules from Sandusky's personal crimes, much less an infraction by Penn State that implicated the NCAA's jurisdiction and core mission of ensuring competitive balance in amateur athletics.²⁰

The NCAA completely disregarded its own "fundamental policy" that its rules apply only "to basic *athletics* issues such as admissions, financial aid, eligibility and recruiting."²¹ The NCAA's own rules permit major sanctions, such as those imposed on Penn State, only when the rules violations lead to a "competitive advantage."²² Remarkably, even the NCAA seemed to recognize the limits of its typical authority in the Consent Decree itself with Penn State: "[t]he 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."²³

That fact did not deter the President of the NCAA from relying heavily on the Freeh report to circumvent his organization's established procedure, and to invoke morality clauses never extended outside basic athletic and competition infractions to assert that Penn State had institutional culpability for violating amorphous NCAA "expected norms and values" reflected in the NCAA Constitution and Bylaws, including a mandate to "promote civility in society."²⁴

The NCAA's position as the moral authority on matters unrelated to competition but squarely within the American judicial system is even more perplexing given its own ethical track record of matters actually within its normal jurisdiction.

In the last three months alone, the NCAA has been criticized for (1) reported confidentiality violations and negatively prejudging the case of a UCLA basketball player before his reinstatement,^f (2) a report accusing a former USC coach of ethical breaches, that a state court judge described as "flawed" in a ruling that allowed the coach to pursue his defamation claims against the NCAA; the judge reviewed sealed documents and characterized the NCAA's actions as "malicious" and "over the top,"^g and (3) a reported lack of integrity in an ongoing NCAA investigation into the University of Miami, where a lawyer, acting at the request of a NCAA investigator, is alleged to have improperly obtained information during a legal proceeding to assist the NCAA's investigation, and subsequently was found to be on the NCAA's payroll.²⁵ The same President of the NCAA who announced the Penn State sanctions has said that the

^e According to NCAA President Mark Emmert, the Freeh Group "had more power than we have — we don't have subpoena power, which was more or less granted to them by the Penn State board of trustees." *NCAA prez: Penn St. responding well*, ASSOCIATED PRESS, Sept. 24, 2012.

^f Baxter Holmes, *Overheard conversation suggests NCAA prejudged Shabazz Muhammad case*, L.A. TIMES, Nov. 14, 2012; Joe Nocera, *Race and the NCAA*, N.Y. TIMES, Nov. 19, 2012.

^g Anthony McCartney, *Judge says NCAA 'malicious' in USC investigation*, ASSOCIATED PRESS, Nov. 21, 2012.

NCAA did not approve the hiring of the lawyer, and that he had no knowledge of the issue until the lawyer's bills arrived in the mail.²⁶ Indeed, the NCAA, while using the flawed Freeh report to cast stones at Penn State for the lack of "institutional control," appears to have exposed itself to criticism that it has lost institutional control over its own organization.^h

The definitive and sweeping proclamations of misconduct in the Freeh report, immediately parroted and endorsed by the NCAA President, became the perceived truth about Joe Paterno and Penn State University despite the many errors that infected those conclusions.

The effect, unfortunately, was to stymie any additional fact investigation into the truth of these matters by non-law enforcement — no additional fact investigation apparently occurred on how Jerry Sandusky could avoid detection as a child molester by his charity, The Second Mile, by child welfare experts, by state authorities at the time, or by foster care and adoption professionals. Instead, three former Penn State administrators are embroiled in the judicial process in their individual cases, but the final chapter on Penn State and Joe Paterno, according to Mr. Freeh and the NCAA, has been written and the book closed.ⁱ That rush to judgment was a disservice to the truth, the victims of this tragedy, the community of Penn State, and the family of Joe Paterno. All deserve a fair and balanced assessment of the facts.

In short, the personal, subjective, and unsubstantiated opinions of Mr. Freeh, both in his report and in his press conference, provided the basis for an unprecedented assault on the character and integrity of Joe Paterno that has altered dramatically any neutral assessment of the facts in the Jerry Sandusky abuse scandal. A correction of the multiple errors and speculative opinions in the Freeh report follows. More critically, we provide guidance from world-renowned experts on the identification of child sexual victimization that could help to prevent this tragedy from recurring.

IV. Jerry Sandusky fooled the entire Penn State community, including Joe Paterno, who missed the red flags of child molestation as part of proven behavioral dynamics of "acquaintance" child sex offenders; Sandusky's deceptions and behavior are a case study for the public to learn how to detect and prevent child molestation

The entire Penn State community, including Joe Paterno, was fooled by Jerry Sandusky. Joe Paterno missed the red flags of child molestation, and he never believed Sandusky was a child molester due to the proven behavioral and psychological dynamics and blind spots created by "nice-guy" acquaintance child sex offenders. This case, if analyzed correctly through the lens of

^h Dana O'Neil, *NCAA its own worst enemy — again*, ESPN.COM, Jan. 24, 2013; Joe Nocera, *The N.C.A.A.'s ethics problem*, N.Y. TIMES, Jan. 25, 2013

ⁱ The NCAA, in responding to the Pennsylvania Governor's January 2013 lawsuit claiming the NCAA overstepped its authority and illegally sanctioned Penn State, remarkably referred to the lawsuit as an "affront" to the victims. Press Release, NCAA responds to Corbett's Penn State sanctions lawsuit (Jan. 2, 2013). The NCAA's repeated use of language as the moral authority in this matter is unfortunate. The NCAA abdicated its responsibility to conduct an investigation of any kind, and closure for victims will depend significantly on the American judicial system, which will afford affected parties due process rights, will take years to resolve, and is well beyond the NCAA's jurisdiction. In the meantime, whether the NCAA has violated federal antitrust laws by issuing the Penn State sanctions is a legal question distinct from Sandusky's personal crimes.

criminal and psychological research, can serve as a model for the public to learn how to identify and prevent child sexual victimization.

One of the most significant lost opportunities in the Freeh report is its failure to educate the public on the root causes of Sandusky's ability to molest children while holding a highly visible and exalted position in the community. This Critique will not repeat the Freeh report's mistake, and instead attempts to draw some lessons from this scandal. The lessons learned from the Sandusky case, if identified properly and used to sensitize child care organizations, foster care agencies, charities, parents, teachers, coaches, neighbors, and others, could have a powerful impact in preventing child molestation in communities throughout the country.

To that end, both Dr. Fred Berlin and Mr. Jim Clemente have described the difficulty of identifying acquaintance child sex offenders.

Mr. Clemente characterized Jerry Sandusky as an acquaintance child molester who fooled his entire community for decades and gained its widespread trust. He concludes that Sandusky:

- “effectively groomed^j most of the people who came in contact with him, including child care experts, psychologists, professionals, celebrities, athletes, coaches, friends, and family. And most notably, [Sandusky] was approved numerous times over thirty years as both a foster parent and an adoptive parent by child care professionals.” Based on Mr. Clemente's experience, he would describe Sandusky as “a skilled and masterful manipulator . . . in the top one percent of effective ‘groomers.’”²⁷

Mr. Clemente also concludes that the Freeh report ignored decades of this expert research and behavioral analysis into the appropriate way to understand and investigate a child sexual victimization case like this one.^k He put it bluntly:

- “The SIC failed to properly factor the dynamics of acquaintance child sexual victimization cases into their investigation. Consequently, the SIC misinterpreted

^j Mr. Clemente describes “grooming” in his Analysis: “In the context of child sexual victimization, grooming is a dynamic process utilizing a constellation of seemingly innocent behaviors aimed at gaining the cooperation of the child to achieve sexual gratification for the offender. In other words, it is a pattern of activity employed by preferential child sex offenders to gain access, authority, and control over children for sexual purposes, to ensure their silence, and to keep them in a position in which they can be repeatedly victimized. This dynamic process is aimed at potential child victims, their parents or guardians, and the community that surrounds them. Those who are closest to the child victims or the offender are precisely the ones who are most affected by grooming practices.” Clemente at 9.

^k “Stranger” offenders have a dramatically different profile and behavioral pattern than “Acquaintance” offenders like Jerry Sandusky, and these important distinctions require different analytical approaches to understand each type of offender's crimes. Clemente at 11, n.19. For example, the distinction between sexually motivated “stranger” child abductors and “acquaintance” child molesters is that “stranger” offenders typically do not have the skills to groom their victims or community, and they therefore resort to abduction to gain access to children for sex. *Id.* In contrast, the acquaintance offender includes a “particularly insidious sub-category” called “nice-guy” offenders “sometimes referred to as the ‘pillar of the community’ or ‘man of the year’ offenders.” *Id.* at 8. Mr. Clemente notes that the acquaintance, “nice-guy” sub-category of offenders is very difficult to detect even for trained law enforcement officers. *Id.* at 8-9. He further notes that these two types of offenders use methodologies that differ to such an extreme that professional expertise in evaluating one typology does not necessarily guarantee an expertise in the other. *Id.*

evidence and behavior and reached erroneous conclusions. Any investigation will reach the wrong result by using the wrong approach and by interpreting the facts through the wrong filter.”²⁸

- “There is no other way to say it: on the most critical aspects of the Sandusky investigation, the SIC report is a failure. It does a tremendous disservice to Penn State, Joe Paterno, and the victims of Jerry Sandusky.”²⁹

Echoing the difficulty of detecting acquaintance child molesters, Dr. Berlin explained:

- “[t]he fact that persons with pedophilia can so often enjoy spending time with children, showing concern for them, can easily seem so positive; masking the hidden nature of their sexual desires. As a consequence, numerous public examples exist documenting just how difficult it can be for friends, colleagues, relatives, and close acquaintances to appreciate the risk that such an individual can pose to children.”³⁰

Expert analysis, not surprisingly, shows that such a profile is not unique to Sandusky. It is common in many other case studies of prominent child molesters who hide in plain sight by cultivating and leveraging community trust to escape detection, even in the face of key signs that, in hindsight, indicated child abuse. That fact — the cognitive disconnect between what the community believes it knows about one of its well-regarded members and its inability to reconcile and accept what it later learns about signposts of child abuse — is a behavioral, medical, and psychological reality that repeatedly allows pedophiles to explain away complaints of inappropriate activity. Often, recognition of child molesters is even more difficult for those colleagues or friends who work or socialize most frequently with the child molester, as their own personal experiences and belief that they know the person well in some capacity allows them to accept alternative explanations in the absence of training on how to identify a sophisticated and manipulative child molester.

Jerry Sandusky, unfortunately, benefited from this acquaintance offender profile, which helped him escape detection even when red flags emerged. For example, as Mr. Clemente states concerning the 1998 incident:

- “[f]or those who worked closely with Sandusky and knew about the 1998 incident, the closing of this [District Attorney’s office] investigation as unfounded was *confirmation* of Sandusky’s outstanding reputation and *their belief* that he was a devoted advocate for children.”³¹ In short, as Mr. Clemente put it, the 1998 matter validated Sandusky’s status as a pillar of the community after he was exonerated following a thorough investigation.³²

In analyzing Jerry Sandusky’s profile and grooming techniques, expert analysis has categorized him as a textbook “nice-guy” offender who used his prominent position in the community as a founder of a kids charity, a foster parent, an adoptive parent, and a college football coach to cultivate an image of a safe and trusted figure. Sandusky embraced and perpetuated an image as a “nice guy,” “goofy,” and even “playful” to lure parents, kids, work colleagues, and many others, to establish a natural explanation for such warning signs as playing physical games with kids, “horsing around” in the shower after workouts, sleep-overs, and generally being with kids of all ages at all times of the day and night in any context.³³

Mr. Clemente's report describes how Joe Paterno, like many others, was fooled by Sandusky's nice-guy, goofy image. In Mr. Clemente's expert judgment as an FBI profiler who specializes in child sexual victimization investigations, Joe Paterno was not equipped to process and recognize a preferential "nice-guy" child molester under the circumstances of this case.

Mr. Clemente analyzed the 2001 report of a Sandusky shower incident from graduate assistant, Mike McQueary, to Joe Paterno. Mr. Clemente concluded that the report was couched in too vague and general terms for Joe Paterno, as a 72-year-old football coach who was untrained in the complicated, counterintuitive dynamics of child sexual victimization and who came from a traditional background where even consensual sex was not discussed, to conclude that Sandusky was a child molester.

As summarized in Mr. Clemente's own words:

- "Given my 30 years of education, training and experience working, evaluating and assessing child sex crimes investigations around the world, it is my expert opinion that Paterno did not know, or even believe in the possibility, that Sandusky was capable of sexually assaulting boys. At worst, he believed that Sandusky was a touchy-feely guy who had boundary issues. This fact is clear from his repeated statements before he died."³⁴
- "[Paterno] did what he believed was reasonable and necessary to address the situation based on his understanding of the facts, and his position at the time. Paterno did what most people who cared about children would have done in the same situation. More than a decade later, and in hindsight, Paterno showed his concern for the victims when he stated he 'wished [he] had done more.'"³⁵
- "Paterno, like everyone else who knew Sandusky, simply fell victim to effective 'grooming.' As an expert behavioral analyst and based on my review of the evidence, Paterno did not believe that the information he received from McQueary amounted to Sandusky being a predatory child sex offender."³⁶

Dr. Berlin, after evaluating the behavioral dynamics of acquaintance sexual victimization in this case, has reached similar conclusions about Joe Paterno's good faith and limited knowledge of Sandusky's issues:

- "It has been argued in retrospect that Mr. Paterno should have done more, and 'knowing now what he did not know then,' Mr. Paterno himself had expressed that very sentiment. However, in 2001 he had had absolutely no knowledge whatsoever about the extent of Mr. Sandusky's sexual involvements with multiple children; involvements that have only recently been more fully documented in 2012 via Mr. Sandusky's criminal convictions."³⁷
- "In looking back, with the advantage of hindsight, it is one thing to suggest that perhaps more could have been done, and that there are lessons to be learned. Arguably, in any situation there is almost always more that can be done, and life often involves a series of adjustments and learning experiences. It is another thing entirely to impugn a lack of

good faith, and malevolent self-serving motives, in the absence of compelling evidence.” As a football coach, having reported his concerns to his superiors, Mr. Paterno may not have been well equipped to fully appreciate how best to handle such a vexing situation. However, to infer as did the ‘Freeh Report,’ that he may have been one of those at Penn State who had manifested a ‘total and consistent disregard . . . for the safety and welfare of Sandusky’s child victims,’ is to itself show a serious disregard for Mr. Paterno’s repeatedly demonstrated moral values; to his lifelong pattern of responsible conduct and leadership; and to his dedicated commitment to the best traditions of the Pennsylvania State University.”³⁸

Joe Paterno was one of many deceived by Jerry Sandusky. Experts much more versed in recognizing child abuse than Joe Paterno failed to detect Sandusky’s abuse. Between 1998 and 2001 alone, the following trained experts were fooled by Sandusky’s deceptions: a detective, a police officer, a caseworker for the Department of Public Welfare, a caseworker for the Centre County Children and Youth Services, an outside counselor who did contract work for Children and Youth Services, and apparently everyone at a kids charity, The Second Mile, including its executive director, Jack Raykovitz, who is a licensed psychologist.

Furthering Sandusky’s carefully crafted image as a protector and advocate for kids, he legally adopted six children, in addition to his role as a foster parent for many others. Three of his children were adopted as infants, and three were adopted presumably after they first entered the foster care system. In other words, on six different occasions, Sandusky was evaluated by state officials and a Pennsylvania judge for fitness to adopt; and six times Sandusky passed that expert scrutiny.

- Sandusky’s youngest son, Matt, was fostered in 1996 and adopted several years later. Matt’s foster placement and adoption required numerous court appearances and state approval.³⁹ Sandusky has been convicted of molesting numerous young boys during that time period, and Matt alleges that Sandusky also was molesting him.⁴⁰ Yet, Sandusky’s conduct went unnoticed by all these state officials. Sandusky also served as a foster parent for many other children dating back to the 1970s, and none of the officials responsible for reviewing his fitness apparently identified his misconduct.⁴¹

Both Dr. Berlin and Mr. Clemente describe the proven behavioral dynamics of child sexual victimization, and their decades of combined experience have allowed them to identify and describe methods to detect child abuse and child predators in our communities.

We refer further to both experts’ reports and published works that provide more details on proven behavioral red flags to help identify child sexual victimization.⁴²

As part of the Paterno family’s ongoing commitment to Penn State and child abuse detection, it has pledged its full support of child sexual victimization awareness, training, and prevention. More details will follow on these innovative programs, some of which are previewed in Mr. Clemente’s recommendations, entitled “A Way Forward.”⁴³ Mr. Clemente’s recommendations also include his call for a full review of The Second Mile’s actions in this case, which will help to ensure that a trusted charity with experts in the field of child abuse does not miss the warning signs of child victimization again.⁴⁴

It is the Paternos' hope that King & Spalding's work, including the commissioning of the three attached expert reports, will take advantage of an opportunity that the Freeh report missed by using this rare national spotlight to publicize child molestation detection techniques. This review attempts to highlight some positive lessons from this tragedy by prioritizing that issue through these preeminent experts.

Unfortunately, the Freeh report suffers from the most basic procedural limitations in its investigative methods and information gathering. As detailed in the next section, a third independent expert, former Attorney General of the United States, Dick Thornburgh, concludes that the Freeh report is deeply flawed in its investigative processes and methodology, in its access to information, and in its reasoning based on the record, and that ultimately it draws unreliable, unfair, and incorrect conclusions as to Joe Paterno.

V. The Freeh report is deeply flawed in its investigative procedures & processes

The Paterno family, from its first review of the Freeh report, publicly urged against a rush to judgment given immediately obvious gaps in its methodology, limited access to critical witnesses and documents, and sensational conclusions as to Joe Paterno not based on facts.

Those requests were largely unheeded in the onslaught of media coverage and understandable rage against Jerry Sandusky. The test of time, however, has only amplified the limitations of the Freeh report, as now confirmed by the former top legal officer of the United States who served in the Justice Department under five Presidents.

Former United States Attorney General Dick Thornburgh undertook an independent review of the Freeh report and its conclusions. Attorney General Thornburgh is a preeminent expert in conducting investigations, having been a federal prosecutor, both as United States Attorney in his home town of Pittsburgh and as Assistant Attorney General of the United States in charge of the Department of Justice's Criminal Division. As a private lawyer he has investigated matters related to the bankruptcy of WorldCom and inaccurate reporting at CBS News "Sixty Minutes Wednesday" by news anchor Dan Rather, among other matters. He also served as a consultant to the World Bank, the Inter-American Development Bank, and the United Nations on investigative techniques to be utilized against allegations of corruption within those organizations. He is the former Governor of Pennsylvania whose management of the Three Mile Island nuclear accident was widely praised⁴⁵ and is nationally respected for his bipartisanship and independent judgment.⁴⁶

We expressly requested Attorney General Thornburgh to review independently the facts and circumstances associated with the Freeh report and to reach any conclusions he and his team deemed appropriate in their legal judgment, regardless of his conclusions as to Joe Paterno.

Attorney General Thornburgh confirms that the Freeh report suffered from critical deficiencies, including substantive flaws in its findings as to Joe Paterno and in its processes and limited access to key witnesses and evidence. Mr. Thornburgh details a variety of specific infirmities in the Freeh report's methodology and conclusions. As an illustrative sample of his observations:

- “When considered in the context of investigation ‘best practices,’ it is evident that the Freeh Report and many of its findings as they relate to Mr. Paterno are not accurate, thorough, fair or credible.”⁴⁷
- “The process of the SIC’s investigation was deficient in numerous ways, including the failure to interview virtually all of the key witnesses and the reliance upon limited, ambiguous documents. Perhaps most significantly, the findings in the Freeh Report about Mr. Paterno concerning his alleged knowledge of the 1998 incident and purported concealment of the 2001 incident were not properly supported.”⁴⁸
- “Although the Freeh Report’s description of its interview process sounds impressive . . . [it] fails to acknowledge that, as a result of the above-described limitations, it lacked access to the most *critical* witnesses, which severely limits the reliability and usefulness of the Report.”⁴⁹
- “Indeed, the SIC interviewed only one witness (Dr. Spanier) who had direct knowledge about the most important incidents discussed in the Freeh Report. Despite this fact, the Freeh Report states that, while the information [that] unavailable witnesses ‘could have provided would have been pertinent to the investigation, the findings in this report represent a fair, objective and comprehensive analysis of the facts.’ Incredibly, considering the findings in the Freeh Report are supported substantially by less than 30 contemporaneous documents, the Report goes further, stating that the ‘extensive contemporaneous documentation that the Special Investigative Counsel collected provided important insights, even into the actions of those who declined to be interviewed.’ In light of the broad and damning conclusions in the Freeh Report, such statements by the SIC are irresponsible and self-serving.”⁵⁰
- “In my opinion, the Freeh Report is seriously flawed, both with respect to the process of the SIC’s investigation and its findings related to Mr. Paterno.”⁵¹
- “[The] findings in the Report are not accurate, supportable or fair.”⁵²

These shortcomings do not render the Freeh report irrelevant and of no value, but they do completely undermine the reliability of Mr. Freeh’s key conclusions and speculative opinions as to Joe Paterno. Attorney General Thornburgh’s conclusions are inescapable, and Mr. Freeh’s team did not have to proceed as it did.

Mr. Freeh had the option to describe the facts his team developed, responsibly embrace the limitations and gaps in his methodology, and render appropriately balanced, fair, and caveated observations. He had the option to recognize the plausibility of other conclusions given the limitations of his investigation. Instead, Mr. Freeh did the opposite: he championed his own report as the authoritative say on this controversy, and drew headline-grabbing and alarmingly unsupported conclusions, all while the reputation of an entire community hung in the balance. Everyone deserved better.

Our review has concluded, as did three respected experts, that the Freeh report is flawed in multiple ways and “got it wrong” as to Joe Paterno. This Critique of the Freeh report describes

seven of the most egregious, unfounded conclusions about Joe Paterno; the three other expert reports attached to this Critique address many more.

VI. The Freeh report is based on numerous errors and unsupported opinions

The Freeh report is full of errors and unsupported personal opinions, and accordingly it makes improper allegations and biased assertions. The limitations of its conclusions, which were understated or ignored in the report, call into question the legitimacy of the entire report.

A. Error & Unsupported Opinion #1: *Joe Paterno knew that Jerry Sandusky was a child molester and concealed it in 1998.*

Facts & Evidence. The Freeh report does not cite a single witness interview or one shred of evidence establishing that Joe Paterno knew that Jerry Sandusky molested anyone in 1998.

The Freeh report, after conducting over 430 interviews and reviewing millions of pieces of evidence, cites just two email strings that Mr. Freeh claims may refer to Joe Paterno in the context of a 1998 complaint about Jerry Sandusky.⁵³ Those two emails — in a sum total of 3 lines — come from a single person, Athletic Director Tim Curley, and were not sent or received by Joe Paterno, do not reference sexual conduct of any nature, and are devoid of any statements by Joe Paterno.

In the first of the two documents, Mr. Curley wrote an email that is untitled, dated May 5, 1998, and is subsequently included in an exchange between Mr. Curley, Senior Vice President Finance and Business Gary Schultz, and President Graham Spanier, consisting of a single line: “I have touched base with the coach. Keep us posted. Thanks.”⁵⁴ The next day on May 6, Mr. Schultz emailed Mr. Curley, copying Dr. Spanier, with a subject line “Re: Joe Paterno,” included the May 5 email, and he wrote a single line: “Will do. Since we talked tonight I’ve learned that the Public Welfare people will interview the individual Thursday.”⁵⁵

- The Freeh report includes no statements from either Mr. Schultz or Mr. Curley regarding the substance of these exchanges because Mr. Freeh’s team did not interview them.
- The Freeh report did reference an interview with Dr. Spanier and a written statement by him. In his interview, Dr. Spanier said he did not recall the email he received, and in his statement referred to the email as a “vague reference with no individual named.”⁵⁶ Dr. Spanier does not believe he was briefed verbally and otherwise had “absolutely no recollection”⁵⁷ of any alleged sexual misconduct by Sandusky prior to 2001. Put another way, Dr. Spanier’s account is devoid of any reliable evidence, or even a suggestion, that Joe Paterno learned of any sexual misconduct allegations in 1998. If anything, Dr. Spanier corroborates that that the 1998 event was not reported to either of them (if reported at all to Joe Paterno) in serious terms.

The Freeh report cites a second email string regarding the 1998 event that begins between Messrs. Curley and Schultz on May 13, 1998, and culminates in an June 9, 1998 email entitled, “Re: Jerry.” The June 9 email copies Dr. Spanier and the Director of Police at Penn State, Thomas Harmon. Mr. Schultz says in the June 9 email that the matter has been “appropriately investigated” and that “[the Department of Public Welfare investigator and police] met with

Jerry on Monday and concluded there was no criminal behavior and the matter was closed as an investigation.”⁵⁸ This email string contains a single line that may reference Joe Paterno in the May 13, 1998 email authored by Mr. Curley: “Anything new in this department? Coach is anxious to know where it stands.”⁵⁹

- The Freeh report concludes that “the reference to Coach is believed to be Paterno.”⁶⁰ In fact, it is not clear whether “Coach” refers to Sandusky, Paterno, or someone else. While one inference may be that the reference is to Joe Paterno, the Freeh Group’s inability to confirm a simple proposition — that an email in fact references Joe Paterno when it appears that it might — demonstrates more broadly the limitations on Mr. Freeh’s ability to fact-find, the lack of subpoena power, the limited access to witnesses, and ultimately the prevalence of his speculative judgments to connect dots that often do not even exist.
- Mr. Thornburgh, in his review of the very same email, offers a similar view: “the subject line, ‘Jerry,’ suggests that the ‘Coach’ could just as likely be Mr. Sandusky as Mr. Paterno.” Mr. Thornburgh explains, “[a]round this time, for example, Mr. Sandusky had proposed to the University administration the possibility of starting a football team at the University’s Altoona campus where he could be the head coach.”⁶¹ For the Freeh investigators not to consider this option as a reasonable interpretation of this email is telling, especially because the timing of these discussions would have been well documented in the administration files or known by the people in the administration that they interviewed.
- More importantly, the Freeh report offers no evidence about what Mr. Curley meant when he wrote this email, what if anything he conveyed to “Coach,” what “Coach” said in response, whether minors were referenced, whether showers were mentioned, whether a general description of an issue with a Second Mile participant was provided, such as “poor judgment” or “an administrative issue,” or if more specific details were provided.
 - What is *abundantly clear* from the record, however, is that this episode was thoroughly investigated and that experts outside the Penn State football program were informed, including a licensed psychologist, a detective and a police officer, a caseworker with the Centre County Children and Youth Services (a public agency), a caseworker and investigator from the Department of Public Welfare (a public agency), and the Centre County prosecutor in the District Attorney’s office (a public agency). The independent prosecutor’s office declined to bring charges and the investigation concluded without any finding of abuse.
 - The Freeh report faults some of these investigators with its 20/20 hindsight, but does not find any evidence of interference by Penn State administrators in the 1998 Sandusky investigation. More importantly, there is no evidence that any Penn State official acted in bad faith or in any way doubted the conclusion of no sexual misconduct. Furthermore, there is no evidence that Joe Paterno covered up anything regarding the 1998 incident, or indeed that there was anything to cover up given an ensuing investigation that included outside independent experts in the field of child abuse.

Despite this clear record, the Freeh report piles inference upon innuendo as to Joe Paterno by citing *Mr. Schultz's* inflammatory, May 4 & 5, 1998 notes that Mr. Schultz held “confidentially in his office and that had been concealed from the Special Investigative Counsel.”⁶² The May 5 set of notes apparently reflects a discussion with Thomas Harmon, the same head of police that eventually concluded, along with independent experts, that no sexual misconduct had been established.⁶³

- Mr. Schultz apparently made these notes on the first two days of the reported event, over a full month before the ensuing investigation ultimately exonerated Sandusky. Critically, Joe Paterno is not referenced anywhere in Mr. Schultz’s “confidential” notes, and there is no evidence that Mr. Schultz conveyed his personal thinking to Joe Paterno or otherwise shared the content of these notes with him.

Overall, the Freeh report suffers from a glaring and *indisputable flaw* in drawing conclusions from these two email strings: the Freeh Group never spoke with the author of the emails, Mr. Curley, nor did they speak with the other party to the alleged conversation(s), Joe Paterno.

- Former Attorney General Thornburgh identifies at least 14 key witnesses from the 1998 incident and investigation that the Freeh group apparently did *not* interview as part of the “record,” and he concludes that “[a]ny report of these events that excludes primary witnesses is dramatically deficient and incomplete and should not form the basis for findings of the nature of those in the Freeh Report.”⁶⁴

Put another way, the former Director of the FBI drew definitive and irresponsible conclusions about what Joe Paterno knew without talking to the two participants in the very conversation(s) at issue, and instead substituted his own speculation regarding what was said, what context did or did not exist, how it was interpreted by the participants, and what it meant.

Former Attorney General Thornburgh describes the Freeh report’s interpretation of the 1998 incident as one its “most significant failures,” adding:

- “The Freeh Report claims that Mr. Paterno knew about the 1998 incident involving Mr. Sandusky at or about the time that it occurred. However, there is no credible support provided in the Freeh Report for what, if anything, Mr. Paterno was aware of concerning the 1998 incident prior to 2011. Indeed, the Freeh Report ignored contrary evidence that Mr. Paterno did not have such knowledge.”⁶⁵

Former FBI profiler Jim Clemente likewise concludes that the Freeh report, in “discussing the 1998 incident [] reaches several misleading and erroneous conclusions that demonstrate the SIC report’s rush to judgment against Paterno.”⁶⁶ He explains:

- “As it relates to Paterno, there is very little to be said about the 1998 incident. As far as Paterno knew, if he knew anything, it was fully investigated and Sandusky was fully cleared. Had Paterno or anyone else taken any action against Sandusky, as far as they knew, they would be exposing themselves and the university to a lawsuit from Sandusky. Nonetheless, I will discuss the 1998 incident in some detail for two reasons. First, if Paterno did know about the 1998 incident and the fact that Sandusky was investigated

and cleared, this likely would have affected Paterno's understanding of the 2001 incident. Upon hearing the report from McQueary, Paterno could have reasonably believed that Sandusky was simply horsing around with the boy — just like he was determined to have been doing in 1998 — despite the fact that McQueary perceived it as 'over the line.'"⁶⁷

Mr. Freeh drew his conclusions about 1998 on a shockingly incomplete record. That is remarkable in the context of a report that purportedly is based on "facts." And in the context of highly charged opinions and a topic as sensitive as child molestation, it is disappointing that Mr. Freeh lacked the fundamental fairness to acknowledge that he could not reasonably draw such firm conclusions. If his intent was to be fair, Mr. Freeh would have allowed for the various alternative reasonable interpretations that exist for these and other elliptical emails upon which the report so heavily relies.

Rather, the Freeh report glossed over the glaring lack of evidence as to Joe Paterno, used these two email strings to saddle Joe Paterno with the evidence about what *other* officials at Penn State allegedly knew, and opined that it was all a conspiracy to conceal and avoid the consequences of bad publicity. Of course, although "avoidance of bad publicity" is the motive selected by Mr. Freeh for the conspiracy he suggests — and every conspiracy needs a motive — he does not produce a single document, or even interview, as to Joe Paterno that supports his thesis. In fact, the evidence or lack thereof completely undercuts his theory.

More fundamentally, Mr. Freeh's *entire premise is undermined* by the fact that in 1998 public agencies were investigating Sandusky and rendering independent decisions about whether any misconduct occurred, whether "bad publicity" would ensue, how to handle the issue with Sandusky, and ultimately whether to file any charges. Joe Paterno controlled none of that decision-making by public agencies, and suggesting he did so as the beginning of a conspiracy in 1998 misconstrues the record and invents facts not in the Freeh report because they do not exist. Indeed, Mr. Freeh assumes that very premise *in the face of direct evidence that proves the opposite*.

The Freeh Group also fails to acknowledge that they did not identify a single piece of evidence from Joe Paterno himself — not a single note, email, conversation — reflecting any knowledge of Sandusky and sexual misconduct allegations in 1998, despite having access to his files, as well as access to information provided from Joe Paterno's "Sandusky file."

Moreover, the Freeh report acknowledges that there was *no connection* between the May 1998 incident and Sandusky's 1999 retirement.⁶⁸ Indeed, Joe Paterno in his contemporaneous handwritten notes concluded that Sandusky would not be the next head football coach at Penn State.⁶⁹ He communicated that fact to Sandusky in early 1998, well before the incident described above.⁷⁰ Joe Paterno's private notes detail Sandusky's involvement with The Second Mile, which he thought at the time was entirely altruistic but too time consuming, and the notes reflect other details about Sandusky's performance.⁷¹ Yet, not one syllable of these private notes reveals any knowledge or concern about Sandusky and sexual misconduct allegations.

It is disingenuous to conclude that Joe Paterno could have such deep knowledge and concern of such serious allegations, yet fail to record them in contemporaneous, private notes when evaluating Sandusky's future, particularly when the Freeh report cites similar evidence as critical

in other contexts. But where, as here, the notes are exculpatory and show Joe Paterno's good faith, the Freeh Group conveniently ignores their significance because it is inconsistent with their decision to pillory Joe Paterno.

B. Error & Unsupported Opinion #2: *Joe Paterno lied in his Grand Jury Testimony, particularly about the 1998 incident.*

Facts & Evidence. Joe Paterno, at the age of 84, was interviewed by the district attorney, separately testified for 7 minutes before the grand jury in 2011, and honestly conveyed what he remembered about the 2001 incident reported by Mr. McQueary ten years earlier.

His testimony was corroborated by other accounts at Sandusky's trial, he fully cooperated with the Attorney General's office, and he was not designated as a subject of the investigation.¹ Mr. McQueary testified that Joe Paterno promptly met with Mr. McQueary at Joe Paterno's house on a Saturday,⁷² and that Mr. McQueary conveyed that Sandusky was engaged in inappropriate activity in the Lasch building. Mr. McQueary and Joe Paterno both testified consistently that Mr. McQueary was upset during the discussion and talked about general inappropriate activity that may have been of a sexual nature by Sandusky, but that Mr. McQueary, "out of respect" for the 75-year-old Joe Paterno and due to his own "embarrassment,"⁷³ did not provide him with specific and graphic details of the 2001 incident.^m

Mr. McQueary himself, when questioned, acknowledged that he did not see anything in the shower very clearly, such that some of these observations were indirect through a mirror⁷⁴ and his observations about Sandusky occurred over just "seconds,"⁷⁵ and that he reported hearing slapping sounds but did not communicate details of any actual sexual acts in the shower. Although Mr. McQueary's recollections have not always been consistent over time, Mr. McQueary repeatedly has emphasized he provided limited information to Joe Paterno.⁷⁶ Jim Clemente's Analysis provides a similar but much more extensive assessment of Mr. McQueary's observations and statements in the decade between the incident and the Sandusky trial in 2012.⁷⁷

Joe Paterno, like Mr. McQueary, consistently said he was provided no visual details and never was told or believed a boy had been raped in the shower in 2001.ⁿ He did not know if Mr.

¹ According to the Attorney General's office, "Joe Paterno was a witness who cooperated and testified before the grand jury. He's not a suspect." Mark Scolforo, *PSU official's lawyer shapes defense*, ASSOCIATED PRESS, Nov. 7, 2011.

^m According to McQueary, he told Joe Paterno that he "saw Jerry with a young boy in the shower and that it was way over the line," "[t]he rough positioning I would not have described in very much detail." Preliminary hearing at 24. "I told him what I had seen, again, on the surface." Sandusky trial transcript, June 12, 2012, at 205. McQueary has been clear that he did not use the terms "anal," "intercourse," "sodomy," or "rape." Preliminary hearing at 25. Sandusky trial transcript, June 12, 2012, at 205-06. McQueary explains he did not give these details "[o]ut of respect and just not getting into detail with someone like Coach Paterno," "in my mind I don't go to Coach Paterno and go into great detail of sexual acts. I would have never done that with him ever." *Id.* at 25, 74.

ⁿ According to the notes of Penn State then-university general counsel, on January 3, 2011, Joe Paterno told her that McQueary "[s]aw Jerry horsing around w the kid a young man in shower inappropriate behavior." Freeh report at 83. Paterno told the grand jury on January 12, 2011 that McQueary had seen "a mature person fondling, whatever you might call it — I'm not sure what the terms would be — a young boy." Transcript of Proceedings 4, Commonwealth of Pennsylvania Thirtieth Statewide Investigating Grand Jury, *In re Notice No. 29* (Jan. 12, 2011) ("Grand jury transcript"). Paterno told a biographer in November 2011 that McQueary "wasn't sure he saw anything. . . . I thought [McQueary] saw them horsing around. Maybe he thought he saw some fondling. I don't

McQueary thought he saw Sandusky just “horsing around” or something else, like “fondling,” but he knew his graduate assistant was upset and uncomfortable with inappropriate behavior. Joe Paterno repeatedly said that he honestly did not know how to handle the situation, that Sandusky no longer worked for him or reported to him, that as a college football coach he was not trained in this field, and that he consulted the Penn State guidelines.⁷⁸ He then contacted his superior, Mr. Curley, who had handled Sandusky’s retirement and was a skilled administrator.

Contrary to the Freeh report’s unsupported assertions, testimony confirms that Joe Paterno acted quickly. He encouraged Mr. McQueary for doing the right thing by reporting the information.^o He appropriately and promptly conveyed the information — the very next day — to Mr. Curley, the University Athletic Director responsible for all Penn State sports programs and coaches, and/or^p Gary Schultz, the Senior Vice President who oversaw the University Police Department.⁷⁹

Joe Paterno, after learning the details of Sandusky’s crimes, would say before his death that, with the benefit of hindsight, he deeply regretted that he did not do more in 2001, and that if McQueary had told him he saw Sandusky raping a young boy, “We would have gone to the police right then and there, no questions asked.”⁸⁰ The reality, however, is that Joe Paterno did not appreciate the gravity of the 2001 incident and missed the red flags of child molestation.

know about any of this stuff. But I could tell it made Mike very upset.” JOE POSNANSKI, PATERNO 272 (2012). On December 6, 2011, according to a former player and colleague, Paterno said that “McQueary had told him that he had seen Jerry engaged in horseplay or horsing around with a young boy. McQueary wasn’t sure what was happening, but he said that it made him feel uncomfortable. In recounting McQueary’s conversation to me, Coach Paterno did not use any terms with sexual overtones.” Letter from Gary Gray to Penn State President Rodney Erickson and members of the Board of Trustees (undated), http://www.collegian.psu.edu/archive/2012/08/22/2012-08-22_PSUemailfromEricksonstoGGray.pdf. In January 2012, Paterno told the Washington Post that McQueary said “it, well, looked like inappropriate, or fondling, I’m not quite sure exactly how he put it.” Sally Jenkins, *Joe Paterno’s last interview*, WASH. POST, Jan. 14, 2012. On October 24, 2011, Paterno was asked if McQueary told him that he saw a “sex act.” Paterno responded, “He never said that.” Statement to Agent Sassano and Randy Feathers, Oct. 24, 2011.

^o Joe Paterno gave consistent versions of what he said to McQueary. For example, on January 11, 2011, Joe Paterno told the grand jury the following: “I did tell Mike, Mike, you did what was right; you told me. . . . I would refer his concerns to the right people.” Grand jury transcript at 6. In November 2011, Joe Paterno told a biographer the following: “I told him he didn’t have to tell me anything else. I told him he did the right thing bringing it to me, and that now it was my job to get him together with the right people for him to report it.” POSNANSKI at 272. In early January 2012, Joe Paterno told the Washington Post the following: “I said you did what you had to do. It’s my job now to figure out what we want to do.” Sally Jenkins, *Joe Paterno’s last interview*, WASH. POST, Jan. 14, 2012. McQueary similarly testified regarding Paterno’s statement: “He said, you’ve done the right thing. He said, I know it’s probably tough for you to come here and tell me this, but you’ve done the absolute right thing.” Preliminary hearing at 27.

^p Former Attorney General Thornburgh appropriately noted the conflicting testimony as to precisely when, where, and whom Joe Paterno informed. *See* Thornburgh at 29 n.119; *See also* Freeh report at 68-69. Certain testimony states that Joe Paterno spoke with Mr. Curley over the phone the next day on Sunday, February 11, 2001, while other accounts indicate that Joe Paterno met with Mr. Curley and Mr. Schultz at this home that Sunday. The Freeh report’s asserted chronology indicates that Joe Paterno reported McQueary’s disclosure to *both* Curley and Schultz on Sunday, February 11, 2001. Freeh report at 23, 62. That distinction is less important than the fact that Joe Paterno acted in good faith by promptly reporting to at least one of them, Mr. Curley, if not both. At a minimum, Joe Paterno’s report resulted in further disclosures up his administrative line of supervisors. When referencing to whom Joe Paterno reported the 2001 incident, we use the convention “Mr. Curley and/or Mr. Schultz,” as well as “supervisor(s),” to avoid any ambiguity.

The extensive psychological and behavioral analysis of Joe Paterno's actions of this case, described in the attached expert reports, confirms this conclusion. In analyzing Paterno's behavior regarding the 2001 incident through the correct lens of established child sex offender research and experience, Mr. Clemente concludes:

- “As an expert in the field of child sexual victimization, I firmly believe that there is another far more reasonable explanation for Joe Paterno's behavior than the one proffered by the SIC Report: (1) McQueary did not convey to Paterno that he thought Sandusky was having sex with the boy, and (2) Paterno could not make the huge leap from the watered-down, sketchy description and superficial information McQueary told him to the realization that Sandusky was actually a child sex offender.”

“Paterno simply could not reconcile what he knew of Jerry Sandusky with the thought that Sandusky was a huge fraud and a child sex offender. The man Paterno thought he knew through thousands of interactions over decades working with him as a brilliant defensive coach, a loving husband and father, a devoutly religious man, a mentor to disadvantaged kids, an altruist, a teetotaler who looked down on those who drank alcohol, a selfless advocate for disenfranchised youth, a long time colleague, a compassionate advocate for players, and a ‘goofy’ prankster, could not possibly be a ‘monster predator.’ This man could not possibly have pulled the wool over Paterno's eyes for decades. He could not have fooled so many coaches, athletes, administrators, contributors, social services workers, psychologists, children, friends, and family. After all, if Sandusky had actually been victimizing children, where were all the victims that he took advantage of? Why hadn't any of them come forward? In fact, in all the years that Sandusky was molesting boys, not one of them came forward to make an allegation of sexual assault against Sandusky until Victim 1 did at the prodding of his mother and counselor in 2008.”

“To Paterno, what McQueary was ineptly suggesting must have all seemed like a huge misunderstanding. Nonetheless, McQueary seemed very upset about what he'd seen. So, in spite of all his reasonable doubts, Paterno reported what he learned up the chain of command in hopes that those more qualified than him would know how to handle the situation and ‘get to the bottom of it.’”⁸¹

Joe Paterno's grand jury testimony is consistent with this expert analysis. When asked during his brief grand jury appearance about any inappropriate sexual conduct by Sandusky with young boys aside from the 2001 incident, Joe Paterno did not recall specific details about 1998 and was not provided with any documents or other information to help him recall events that had occurred thirteen years earlier, when he was 72 years old.⁸² Joe Paterno testified that, “I do not know of anything else that Jerry would be involved in of that nature, no. 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.”⁸³

Joe Paterno acknowledged it was possible that someone conveyed a rumor or other unspecified concern to him about Sandusky, but if so, he did not recall it. This fact is especially significant because it is *consistent with the record*. The two 1998 email chains cited above do not establish

that Joe Paterno was provided with any details about sexual misconduct allegations in 1998, authorities did not conclude that any sexual misconduct in fact occurred in 1998, and his contemporaneous private handwritten notes about Sandusky demonstrate no knowledge in 1998 of any sexual misconduct allegations whatsoever.

Against this backdrop, the Freeh report attempts to retroactively impugn Joe Paterno's credibility regarding the 1998 Sandusky event by suggesting that Joe Paterno knowingly concealed details from the grand jury, without any evidence establishing what Joe Paterno actually knew 13 years earlier. The report suggests that, even though authorities who investigated the 1998 incident did not find that any sexual misconduct even occurred, Joe Paterno somehow believed that sexual misconduct, in fact, did occur — and then lied to the grand jury about it.

The only conclusion actually based on the record is that Joe Paterno told the truth to the best of his recollection in his grand jury testimony, and that if he was told anything about those 1998 events 13 years earlier, that information was not sufficiently specific, negative, or significant for him to have recalled it.

C. Error & Unsupported Opinion #3: *Joe Paterno concealed the 2001 incident reported by Mike McQueary as part of a 14-year conspiracy to avoid the consequences of “bad publicity.”*

Facts & Evidence. The Freeh report does not cite a single email, conversation, handwritten note, calendar entry, voicemail, statement or other record evidence establishing that *Joe Paterno* was concerned about consequences of bad publicity associated with the 2001 incident. Dr. Berlin, former FBI profiler Mr. Clemente, and former United States Attorney General Dick Thornburgh all have concluded that Mr. Freeh's opinion in that regard is baseless. The Freeh report *does* cite limited evidence in the context of allegations about *other individuals'* concern about publicity in 2001, but it unfairly and without support imputes that concern to Joe Paterno.

The evidence shows that when Mr. McQueary discussed the 2001 incident with Joe Paterno, Joe Paterno promptly reported it to Mr. Curley, the Athletic Director of a Big Ten institution, and/or Mr. Schultz, a Senior Vice President who oversaw a large, significant police force. Mr. Schultz, in turn, reported the incident to Dr. Spanier, the President of the University, and himself a victim of child abuse and a nationally respected Ph.D. in sociology, with particular expertise in family sociology and therapy.⁸⁴

In reality, Joe Paterno did the opposite of “conceal” this event. He reported it up his chain of command, and three senior administrators in that chain had broad authority under the University's procedures for handling and investigating significant complaints. There is no evidence establishing that Joe Paterno was concerned about bad publicity or, for that matter, that he believed the allegations would be hidden by the university police force and not reported publicly by them or through multiple channels he did not control, like The Second Mile.

Nor are Joe Paterno's actions following the grand jury announcements in 2011 consistent with a concern about negative publicity, much less representative of a concern that would compel him to protect a pedophile for over a decade. Joe Paterno volunteered for a regularly scheduled press conference following the indictments in this matter and would have fielded questions about his

recollection of any events.⁸⁵ However, the University cancelled that press conference, a fact that did not then, and cannot now, rewrite established history that Joe Paterno was prepared to be open, transparent, and responsive to questions about his knowledge regarding Jerry Sandusky.⁸⁶

Nonetheless, Mr. Freeh draws the conclusion that Paterno concealed the 2001 incident based on one sentence from an email authored by Mr. Curley, dated February 27, 2001. In that email, Mr. Curley writes to Mr. Schultz and Dr. Spanier: “After giving it some more thought and talking it over with Joe yesterday — I am uncomfortable with what we agreed were the next steps.”⁸⁷ The Freeh report then makes the extraordinary assumption that if any of those next steps were not executed — including confronting Sandusky, reporting the matter to The Second Mile and reporting to the Department of Public Welfare — that Joe Paterno must have participated in the decision-making for that strategic course.

Tellingly, Mr. Freeh in his press conference could not hide the gaping holes in this assertion. When asked if he could elaborate on the content of the alleged discussion between Mr. Curley and Joe Paterno, Mr. Freeh said: “I can’t. As you know, we didn’t have the opportunity to interview either of them. We are basing this reasonable conclusion on the emails, the circumstantial evidence. . . . [W]e do not know what the content of that conversation was.”⁸⁸

Of course, the reference to plural “emails” can only refer to a single sentence of a single email because the Freeh Group cites no other evidence in the millions of pages of data reviewed that references Joe Paterno and follow-up on the 2001 incident. (And the meager two lines in the two 1998 email strings do not establish the cover-up theory for reasons previously described.)

Former Attorney General Thornburgh explains some of the key flaws in Mr. Freeh’s assertions regarding this email:

- “Mr. Freeh’s mischaracterization of an e-mail critical to his Report at his July 12, 2012 press conference announcing his findings is emblematic of the SIC’s unjustified inferences and flaws in the Report. Mr. Freeh stated that an e-mail showed that it was Mr. Paterno who decided not to report to authorities the 2001 shower incident involving Mr. Sandusky and a young boy. However, this is not what the e-mail states. The e-mail suggests that it was Mr. Curley’s decision not to report the 2001 incident to authorities and does not state that Mr. Paterno was involved in such a decision or that he was even aware of it. Mr. Freeh did not supply any other evidence at the press conference to support the proposition that Mr. Paterno was involved in or aware of the decision. Indeed, the Report acknowledges that it was Mr. Curley’s decision and not Mr. Paterno’s in its ‘key findings’ about the 2001 incident.”⁸⁹

Like Mr. Thornburgh, Dr. Berlin analyzed this email from his perspective as a medical and psychological expert in behavioral sciences and the assessment of mental and motivational states. Dr. Berlin concludes that Mr. Freeh engaged in “disingenuous speculation” in negatively interpreting this 2001 email regarding Joe Paterno:

- “[I]n my judgment to conclude that the email phrase ‘after talking it over with Joe’ constitutes credible evidence that Joe Paterno had not wanted DPW [the Department of Public Welfare] to be informed, or that he lacked a genuine concern about the wellbeing

of children, would be a stretch. Innuendo and speculation in the ‘Freeh Report’ that Joe Paterno had control over his superiors when it came to making important decisions is nothing more than just that; disingenuous speculation. . . . [A]t no time whatsoever, has any credible evidence been uncovered documenting that Mr. Paterno himself had been attempting to ‘avoid bad publicity.’”⁹⁰

Furthermore, the Freeh report identifies not a single witness, even one email to or from Joe Paterno himself, a single page of notes from Joe Paterno reflecting such knowledge, or a single voicemail establishing that Joe Paterno expressed any view about, or even knew about, any discussions regarding the Department of Public Welfare or advised on any approach to that agency in 2001.

Undeterred by this lack of evidence, Mr. Freeh effectively opines that Joe Paterno participated in a decision to confront Sandusky, to report the incident to The Second Mile, but *not* to report the 2001 incident to the Department of Public Welfare. He then essentially reasons that because the University did not report the incident to the Department of Public Welfare at the same time as confronting Sandusky, Joe Paterno and Dr. Spanier and Messrs. Curley and Schultz all conspired to conceal the incident, even though Joe Paterno did not participate in and is not referenced in a series of subsequent communications over several weeks regarding next steps.

This illogical reasoning is superficial and fails on multiple levels. We provide just a few examples of many possibilities that are contrary to Mr. Freeh’s negative speculation about Joe Paterno and the content of that discussion.

- Assuming that Mr. Curley and Joe Paterno even had a discussion about Sandusky on February 26, 2001, we do not know that Mr. Curley and Joe Paterno discussed this precise issue of reporting at all, or what the content of *any* discussion may have been. The record does not reflect that any details were conveyed to Joe Paterno, nor does the record reflect the context, duration, location (hallway, office, phone call, etc.), other attendees (if any), other topics discussed unrelated to this subject matter, or other pertinent facts that would allow a reasonable assessment of any dialogue, what it meant, how it was left, or whether the parties even agreed or disagreed with each other during the interaction.
- Assuming that reporting was even discussed generally, Joe Paterno could have had a limited discussion and said that Mr. Curley should ensure the matter is handled according to University procedures, followed up on appropriately, and communicated to senior officials as necessary to do the right thing. The Department of Public Welfare may not have even been discussed.
- Assuming that reporting to the Department of Public Welfare was discussed specifically, Joe Paterno could have advised that reporting to that agency *was appropriate*, and/or that it made sense to gather the facts first and then make a report. If Mr. Curley wanted to gather facts by confronting Sandusky initially, speaking with The Second Mile, and then making a more comprehensive, subsequent report to the Department of Public Welfare, that scenario also is entirely consistent with Joe Paterno’s good faith, especially because the record shows that Joe Paterno was not involved in the subsequent reporting decisions.

Later emails in that same chain show reporting to the Department of Public Welfare *remained an option* that others continued to consider.

Furthermore, in direct contrast to Mr. Freeh's theory that there was a conspiracy among four reputable men to conceal facts to avoid bad publicity, Joe Paterno never asked Mr. McQueary to stay quiet about the 2001 incident at issue in this email, never asked him to refrain from reporting his concerns to third parties or others, and never asked him to ensure others he told about the incident — including Mr. McQueary's father and his friend Dr. Dranov — contained the spread of the information further. Surely, a co-conspirator under Mr. Freeh's version of events, particularly one as "powerful" and ill-motivated as he views Joe Paterno, would have urged his graduate assistant to bury the evidence. In fact, Joe Paterno did the opposite and told Mr. McQueary that he did the right thing by reporting his observations.

Mr. Clemente also evaluated the February 27, 2001 email in extensive detail, applying his expertise as a behavioral analyst and expert in criminal conduct. Mr. Clemente concludes that Mr. Freeh "misinterprets Curley's February 27, 2001 email," "erroneously conclude[s] that Paterno was involved in an active agreement to conceal," and that the evidence does not establish that Joe Paterno was any "intervening cause" regarding DPW reporting.⁹¹

- On the contrary, Mr. Clemente observes that, when the Freeh report analyzed the February 27 email, it "ignored" Mr. Schultz's prior notes of a meeting between Messrs. Schultz and Curley on February 12, 2001. Those earlier notes confirm that the *original plan* discussed between Messrs. Curley and Schultz was the same as their course of action described in the February 27 email with respect to DPW. The key adjustment did not remove the possible DPW approach, but rather involved first confronting Sandusky directly before taking any other steps. Hence, Mr. Clemente states, "[i]n my opinion, as discussed above, this purported 'change of plans' as concluded in the SIC report did not in fact happen."⁹² Irrespective of any DPW plans by others, Mr. Clemente further observes that "[t]here is no evidence that Paterno participated in the ultimate decision to inform or not to inform DPW."⁹³
- Mr. Clemente, like Dr. Berlin and former Attorney General Thornburgh, also concludes that informing The Second Mile was a significant step under the circumstances, and that fact undermines Mr. Freeh's assertion that Joe Paterno participated in an active agreement to conceal Sandusky's actions. Mr. Clemente summarized his views:
 - "[I]nforming The Second Mile is clearly not keeping the information in-house or concealing information. The Second Mile was an independent child care agency/charity founded by Sandusky but run by a board and a CEO. It is also the most likely place where Sandusky obtained access to the child in question. Accordingly, The Second Mile is precisely the organization that was in the best position to identify that child. And, because its CEO, Jack Raykovitz, was a licensed psychologist, he was a mandated reporter of any sexual victimization allegations regarding any children within his institutional care."⁹⁴
- Former Attorney General Thornburgh identifies even more third parties who discussed the 2001 incident with Mr. Schultz or Mr. Curley, including John McQueary (Mike's

father), Dr. Jonathan Dranov, and outside counsel Wendell Courtney, and he notes that the Director of The Second Mile told two additional people affiliated with The Second Mile.

- In short, citing these and other facts, Mr. Thornburgh observes: “the Report falls glaringly short of suggesting, let alone proving, any concealment by Mr. Paterno. . . . [I]t is wrong to make the overarching conclusion that Mr. Paterno chose not to report the 2001 incident for fear of bad publicity.”⁹⁵

Ultimately, the Freeh report’s interpretation of this single 2001 email does more to undermine the credibility of the report’s conclusions than it does to advance the truth, as the alleged conversation between Mr. Curley and Joe Paterno could have transpired in countless ways that exonerate Joe Paterno.

In fact, based on our review, including our discussions with the lawyers for Dr. Spanier and Messrs. Curley and Schultz, we conclude unequivocally that (1) Joe Paterno never asked or told anyone not to discuss or to hide in any way the information reported by Mike McQueary; (2) Joe Paterno never asked or told anyone to limit the investigation of Mike McQueary’s report in any way; and (3) Joe Paterno never asked or told anyone, including Tim Curley, Gary Schultz and Graham Spanier, not to report Mike McQueary’s story as deemed appropriate.

If anything, the February 27, 2001 email suggests that Mr. Curley himself gave the reporting issue more thought irrespective of Joe Paterno, reached his own conclusion, and then shared that conclusion with Mr. Schultz and Dr. Spanier. Indeed, Mr. Curley describes the issue in the first person, without ever saying that Joe Paterno contributed to any decision: “*I am uncomfortable,*” “*I am having trouble with going to everyone,*” and “*I think I would be more comfortable meeting with the person.*”⁹⁶ That language does not document that Joe Paterno expressed any view on the reporting issue, much less dictated a course of conduct.

- Mr. Freeh distorts Joe Paterno’s word choice in 2012 by quoting Joe Paterno’s final interview, published eight days before his death, when Joe Paterno recounted telling Mr. McQueary that he did the right thing by reporting the 2001 incident and that “[i]t’s my job now to figure out what *we* want to do.”⁹⁷
- Mr. Freeh leaves out of his description that Joe Paterno literally was dying — suffering from lung cancer, a broken pelvis, and active chemotherapy treatments and unable to eat or talk loudly because of radiation. And yet, Mr. Freeh emphasizes this one sentence, said more than ten years after the relevant facts, and actually points to the word “*we*” as significant evidence of a massive concealment strategy to protect a known child molester. In contrast, he completely ignores the actual language used in the *contemporaneous* email by Mr. Curley in 2001 — the multiple uses of the word “*I*” — that, *according to Mr. Freeh’s own logic*, clearly shows that Joe Paterno was not the decision-maker on where and how to report Sandusky’s activities.
- Even more remarkably, as former Attorney General Thornburgh points out, Mr. Freeh, in his own national press conference describing his report, mischaracterizes the content of

this very email, literally by changing the singular to the “plural to join Mr. Paterno with Mr. Curley’s actions: ‘After Mr. Curley consulted with Mr. Paterno, however, *they* changed the plan and decided not to make a report to authorities.’ In actuality, the e-mail very explicitly uses the singular when referring to Mr. Curley’s plan and does not state that Mr. Paterno joined in Mr. Curley’s decision or that he was even aware of the decision. . . . Such a misstatement and use of ‘collective guilt’ without foundation raise very serious concerns as to the credibility of the Report.”⁹⁸

In short, Mr. Freeh’s selective, inconsistent interpretation of the record has dictated his inevitable conclusion about Joe Paterno *despite* the evidence, not because of it.

Mr. Freeh also ignores hundreds of examples of Joe Paterno acting without regard to a concern about bad publicity and its consequences over decades, particularly as he aged and was less focused on generating positive media relations in favor of coaching.⁹

The Story of Rashard Casey. One of the best examples of Joe Paterno not bending his principles to concerns about bad publicity is the case of Rashard Casey. The Casey incident generated a maelstrom of criticism in 2000 — in between the 1998 and 2001 Sandusky incidents detailed above.

On May 16, 2000, the American public learned the news that Penn State’s starting quarterback for the upcoming season, Rashard Casey, had been arrested for assaulting an off-duty police officer. According to the New York Times and the Associated Press, Casey and a friend jumped the police officer, knocked him to the ground, and kicked him in the face.⁹⁹ The Hoboken Police Chief told reporters that the officer had to be taken to the hospital and would likely undergo facial surgery. According to the police chief, four witnesses had identified Casey as one the assailants; furthermore, Casey had a substantial amount of blood on his shirt.

The supposed reason for the alleged assault was infused with racial animosity: Casey and his friend, both black men, were allegedly upset that the off-duty police officer, a white man, was walking home with a black woman.¹⁰⁰ If convicted, Casey faced up to five years in prison.

Joe Paterno issued a public statement in support of Casey: “Rashard has not been a discipline problem during his time at Penn State and the conduct alleged in the charges is inconsistent with the personality he’s demonstrated to me and the members of the coaching staff. Rashard is a good young person who gets along well with his teammates of all races.”¹⁰¹ The statement did nothing to quell the criticism of Joe Paterno and his program. His decision, “set off a firestorm, with columnists across the country calling Joe Paterno a hypocrite and a sell out.”¹⁰² Joe Paterno responded, “People rush to judgment and they want to believe the worst.”¹⁰³

It became increasingly clear that the story going into the 2000 season would focus not on team accomplishments, but on Casey and Joe Paterno’s handling of the matter. At the annual Big Ten Conference press gathering Joe Paterno told reporters, “I’m going to play Rashard Casey until something convinces me I shouldn’t.” The media asked Joe Paterno what guidelines he follows

⁹ According to author Joe Posnanski, by 2004, “media requests, some of which had already been weeded out, would be cut off almost entirely. The speaking engagements, the appearances, the dinners with sponsors that had become rarities were stopped entirely. . . . Paterno would concentrate on coaching football.” POSNANSKI at 306.

on disciplinary matters involving his team. Joe Paterno responded, “Every situation is different. If I told you I had one hard-fast rule (for everybody), I think you’d be looking at a lousy human being.”¹⁰⁴

The criticism of Joe Paterno mounted, which was described as a “PR drubbing.”¹⁰⁵ Fans and the media speculated whether Joe Paterno, who was close to an inevitable surpassing of Bear Bryant’s win count, should have his record considered illegitimate because it might happen with a convicted felon and racist on the field. Critics said, for example:

- Joe Paterno was “tarnishing the record he had created.”¹⁰⁶
- “If Casey is guilty, or if he is found guilty, then Paterno will have exposed himself and the institution to which he is devoted to embarrassment and humiliation.”¹⁰⁷
- Joe Paterno was being “drummed out of the hall of saints . . . all because of Rashard Casey.”¹⁰⁸

All the while, Casey continued to start at quarterback, continued to be heckled by opposing fans, and the grand jury continued to meet as it decided Casey’s fate, and possibly Paterno’s. Joe Paterno, consistent with his long-standing, committed belief in racial equality and the personal character of Casey, withstood the criticism and let the legal process run its course when the safer, easier, and simpler reaction would have been to acquiesce to the crescendo of bad publicity.

In late October, as an otherwise disappointing season neared its end, the grand jury finally held a vote: Casey would not be indicted. Casey’s attorney had a message for “all those irresponsible journalists who wrote those unsavory things about Joe Paterno”: “May they burn in First Amendment hell.”¹⁰⁹ Casey sued the Hoboken Police Department for malicious prosecution, violation of his civil rights, and slander. In June 2003, the police department awarded Casey a cash settlement.¹¹⁰

Joe Paterno was not self-congratulatory in his reaction. Instead, he told a reporter that he did not “lose two minutes of sleep” over bad publicity. “You start worrying about that stuff, you’ll go nuts. I don’t worry about that. I do what I think is right, period. Even with the media.”¹¹¹

Many more examples exist where Joe Paterno suspended players and weakened his team on the field when he believed players did not follow the rules, no matter how good they were. In 1997, Paterno dismissed star running back Curtis Enis from the team for talking to and accepting improper gifts from an agent and lying about it.¹¹² Weeks later Penn State lost its bowl game against Florida. Enis became a first round NFL draft pick.

In Rashard Casey’s case, Joe Paterno believed in him despite the admonition that his legacy was being tarnished, that his life’s work was on the line, and that he was visiting embarrassment on the University. He looked beyond the criticism, ignored the bad publicity and associated rush to judgment, and did what he thought was right. As Attorney General Thornburgh notes about this example:

- “These facts [about Rashard Casey] raise the question of why Mr. Paterno would be willing to withstand bad publicity for a current player, yet be unwilling to endure bad

publicity for the actions of a former coach, whom he reportedly did not like much. When taken in context with what was occurring at the University in 2001 with a current football player, the Freeh Report's conclusion of an alleged cover-up to avoid the consequences of bad publicity becomes even more tenuous."¹¹³

Had Joe Paterno believed that Jerry Sandusky was a child molesting monster, no amount of concern for bad publicity would have motivated him to conceal it. Experts in child sexual victimization the who have studied this case, those who know Joe Paterno's character, and most importantly, the evidence, establish that conclusion.

D. Error & Unsupported Opinion #4: *Jerry Sandusky's Office was "steps away" from Joe Paterno's office, and, as one of the most "powerful" people at Penn State, Joe Paterno must have known but concealed that Sandusky was a pedophile.*

Facts & Evidence. Jerry Sandusky retired in 1999 after Joe Paterno declined to designate him as the next head football coach at Penn State, and the Freeh report acknowledges that Sandusky was "not pleased about the entire situation."¹¹⁴ The Freeh report concluded, and it is undisputed, that Joe Paterno communicated to Sandusky that he would not succeed him as head coach in February 1998, *before* the May 1998 incident. The Freeh report further concludes that Sandusky's retirement in 1999 was unrelated.¹¹⁵ Joe Paterno was not responsible for designating Sandusky with professor emeritus status, and the Freeh report cites evidence that such status and other details ultimately were approved by other administrators. Tom Bradley took over defensive coordinator duties for Sandusky and replaced him on Joe Paterno's staff, which resulted in Sandusky's office being moved to an office *across the street in a different building*.¹¹⁶

Therefore, at the time of the 2001 incident conveyed by Mr. McQueary, Sandusky had been *off the football staff for almost two years*, no longer reported to Joe Paterno, did not have an office "steps away" from Joe Paterno, and had infrequent, if any, interactions with Joe Paterno. All this evidence directly contradicts Mr. Freeh's suggestion that the two had offices in close proximity and that Joe Paterno had visibility into Sandusky's regular routine.

The Freeh report also neglected a fundamental reality that undermines any notion that Joe Paterno would protect Jerry Sandusky if he believed Sandusky molested kids: they were not friends, and Joe Paterno had been disappointed with Sandusky's commitment to football well before his retirement in 1999.

Joe Posnanski, in his 2012 biography of Joe Paterno, recognized that while the two coaches had a healthy respect for each other professionally, they were "never close" and "clashed for many years."¹¹⁷ He summarized their personal dynamics as follows:

The two men despised each other from the start. This was well-known among those who knew Joe Paterno and Jerry Sandusky, but at the end it seemed like nobody wanted to mention it. The news reports would assume they were the best of friends or, at the very least, colleagues who respected each other. . . . Sandusky, in the words of Penn State's marketing guru [] and many others, was "a knucklehead." He liked practical jokes and messing around, knocking a guy's hat

off his head, making prank calls, sneaking up behind people to startle them. . . . At one of the first practices before the season, Sandusky was supposed to be on the field but was instead joking around with some players. . . . Later, when Paterno watched film of the practice, he saw Sandusky running onto the field waving his arms like a bird and shouting, “The breakdown coach is on the way! The breakdown coach was on the way!” It was ridiculous. Paterno called in Sandusky, screamed at him at length, called him a complete goofball. . . . Over time, for all of their personal differences, Paterno did come to admire Sandusky’s coaching on the field. . . . When he was focused, Sandusky was a force of nature around the players; he connected to them in ways Paterno never could. He joked with them, hugged them, taunted them, and often inspired them. The players, most of them, loved him for that. . . . He was like a big brother teasing them, pushing them, grabbing them, reminding them that they could be great.¹¹⁸

It is no doubt true that they were professional colleagues for 30 years, and that their many years of professional interaction gave Sandusky the lasting opportunity to construct a false image as an advocate and protector of kids. But Joe Paterno and Jerry Sandusky had a limited social relationship that intersected only at occasional charity or football events for the university. They rarely spent any personal time together, they were not part of the other’s social circles, they had different social interests, there was a sizeable age gap of 18 years between them, and they believed in different religions and did not attend the same church. Jerry Sandusky did not drink alcohol and purposely made others, including Joe Paterno, who did drink socially feel uncomfortable.

They were work colleagues only, and Joe Paterno generally had no more insight into Jerry Sandusky’s personal affairs than the hundreds of other colleagues over his career whom Jerry Sandusky deceived in his role as a child predator. But Joe Paterno did have many thousands of benign work interactions with Jerry Sandusky, which as former FBI profiler Jim Clemente explains in detail, created a proverbial blind spot in which Sandusky hid by using his nice-guy, goofy reputation.

As additional context, and unmentioned in the Freeh report, Joe Paterno had an extraordinary schedule for a man of his age, or any age, at the time of these events. Not only was he coaching a Big Ten football team, recruiting, running key practices and off-season workouts, and generally managing a major football program, he also had community and university obligations, as well as family commitments as a father and grandfather. He simultaneously faced personal and health issues, including attending to his brother who had moved to Penn State to be closer to Joe and Sue Paterno and who was going through a long and difficult health decline, eventually dying in June 2002.

The Freeh report offers none of this context for why Joe Paterno was not focused on Sandusky and missed the signs, like virtually everyone else, that he was a child molester, nor does the report offer any other practical context over a 14-year period. Instead, the Freeh report selectively focuses on a few events to suggest an enduring, multi-year conspiracy that is simply not justified by the record over that period. The Freeh report, jaundiced by subsequent events and with the benefit of the Sandusky jury verdict, thousands of hours of investigation, and the perch of an armchair quarterback, carelessly assumes that Joe Paterno must have known that

Sandusky was a child molester and concealed it. It is a sensational conclusion, but it is not the truth.

E. Error & Unsupported Opinion #5: *A Janitor who apparently witnessed Sandusky's sexual misconduct in the Fall of 2000 chose not to report it for fear of losing his job because Joe Paterno must have known that Jerry Sandusky was a child molester and actively created a culture to harbor a pedophile.*

Facts & Evidence. One of the more incredible leaps in the Freeh report is to blame Joe Paterno because a temporary janitor witnessed apparent sexual misconduct in the Fall of 2000, but did not report it to the police, to Joe Paterno, or to any Penn State official. According to Mr. Freeh, Joe Paterno is culpable for creating a culture that led the janitor to believe he could lose his job if he reported the incident.¹¹⁹ It is undisputed, however, that Joe Paterno never had an inkling of this incident.

In Mr. Freeh's words, the reaction of this janitor, and a second janitor he told, was "extremely telling and critical in deciding" Mr. Freeh's recommendations to the Board of Trustees, and in his characterization of the "culture" of the football program that allowed a molester supposedly to operate under Joe Paterno's ultimate supervision.¹²⁰ According to Mr. Freeh, what the temporary janitor saw, but chose not to report, was "probably the most horrific rape."¹²¹

The temporary janitor and a second, permanent janitor with whom he shared the incident, apparently speculated that if they reported the incident *to the police*, the *football program* somehow would "close ranks" to protect the program "at all costs," and, the illogic goes, they could be fired because Paterno "has so much power" and "football runs [the] university."¹²²

- Former Attorney General Thornburgh disagrees with this assessment in the Freeh report, finding that the Freeh report's conclusion that Mr. Paterno wielded excessive influence at the University is "[n]ot [s]upported by the [i]nvestigative [r]ecord."¹²³
- Mr. Clemente likewise describes why the Freeh report erroneously reached this conclusion:

"It is only because the SIC report lacks an understanding of the dynamics of acquaintance child sexual victimization that it has misconstrued the behavior of the individuals involved and blamed Sandusky's ability to hide and continue his offending on the 'culture of reverence for the football program.' If the writers of the SIC report had fully understood those dynamics, they would not have been searching for reasons why Paterno and others did not recognize Sandusky's offending behavior for what it was."¹²⁴

Mr. Freeh's unfair interpretation of the facts is revealed further in his characterization of these janitors. He describes these janitors in a positive light, noting that one fought in the Korean War and had seen people "with their guts blown out."¹²⁵ Yet Mr. Freeh concludes that this janitor personally witnessed the "most horrific rape," did nothing to stop it, and declined to report it beyond his supervisor. Consider the irony. The janitor *does not report* to university police what he actually *saw*, and Mr. Freeh describes him compassionately, but Joe Paterno *does report* to his

superior(s) what he *heard second hand*, and Mr. Freeh vilifies him and treats him as a pedophile protector.

In Mr. Freeh's judgment, Joe Paterno — not the janitor himself or the two colleagues he told — is responsible for the janitor's decision not to report this incident. This opinion is an extreme non sequitur that is unsupported by any evidence or fact, and is quintessential innuendo based on Joe Paterno's position as a head coach. Mr. Freeh's inconsistent assessment of similar facts exposes his biased interpretation of the record against Joe Paterno.

If the janitors genuinely held the belief that they would be terminated for reporting Sandusky, they were simply wrong. First, no evidence at all links those assumptions to Joe Paterno. Second, and more importantly, Mr. McQueary, who was a graduate assistant at the time, did have the courage to report what he saw to Joe Paterno, and he was not fired. In fact, he was later promoted to an assistant coach, and even the Freeh report acknowledges that promotion was based on merit and not related to his reporting of the event.¹²⁶

Put simply, there is no evidence that Joe Paterno created any culture of retaliation generally, much less that he specifically created a climate to harbor a pedophile.

F. Error #6: *The Freeh report is neutral and free of bias.*

Facts & Evidence. The Freeh report relies heavily on its “independence,” but the reality is that it is filled with biased and unsubstantiated conclusions, and falls well short of a neutral, reliable assessment of the facts. The Freeh report obsessively focuses on Joe Paterno as “an integral part of this active decision to conceal,” with an appalling lack of evidence to support that assertion.¹²⁷ Again, like a prosecutor, albeit one without even the limited check and balance of a grand jury, Mr. Freeh wrote his charging document in the most provocative terms, rolling it out to the press and the public in a dramatic press conference. Those sensational atmospherics should not afford his conclusions any deference whatsoever.

Mr. Freeh claimed in his press conference that he did not single out Joe Paterno. In fact, he did exactly that. He included him as one of four people in a cover-up with no evidence for that allegation, and adopted a *unique* assumption that, given Joe Paterno's position as the head football coach, “he was in control of the football facilities and knew ‘everything that was going on.’”¹²⁸ Mr. Freeh's conclusions are no more than sweeping conjecture, which, given the massive and irreparable impact such a damning opinion would have on the Penn State community and the victims of these crimes, makes them so unreliable as to force questions about Mr. Freeh's neutrality as a supposed “fact-finder.”

- In the words of former Attorney General Thornburgh: “The lack of factual support for the SIC's inaccurate and unfounded findings related to Mr. Paterno and its numerous process-oriented deficiencies was a rush to injustice and calls into question the credibility of the entire Report.”¹²⁹
- Similarly, Mr. Clemente details multiple examples of “Report Bias” in the Freeh report,¹³⁰ including that the report “selectively quotes Paterno's testimony to cast Paterno in the worst light.”¹³¹

In truth, Mr. Freeh identified very few facts regarding Joe Paterno. While the many structural recommendations in his report are important, it seems readily apparent that Mr. Freeh has chosen to assert culpability under the unassailable banner of protecting children, regardless of what the evidence shows or fails to show regarding Joe Paterno. Mr. Freeh's approach of using the broadest brush possible to condemn, in reality and in effect, has concentrated the focus on Joe Paterno and unfairly branded him as the protector of a child molester. Mr. Freeh's take on an extremely thin factual record is an abuse of the power ceded to him by the Board of Trustees, it lacks any rational balance, and it would be rejected by any neutral fact-finder if a balanced presentation were made.

- As former Attorney General Thornburgh observed: "When the evidence relied upon in the Freeh Report is considered in an objective manner, it is clear that findings in the Report are not accurate, supportable or fair."¹³²
- Similarly, as Dr. Berlin writes in his report, in the critical "effort to protect innocent children, the fair treatment of adults should not become a collateral casualty."¹³³

At the same time he was formulating his subjective judgments, Mr. Freeh did not provide the Paterno family any opportunity to rebut or even provide context for any of his so-called conclusions prior to the release of his report, despite repeated requests for this due process. Accordingly, Mr. Freeh did not benefit from any perspectives on his opinions and personal conclusions about Joe Paterno outside the cloistered group of his own investigative team.^f Mr. Freeh's investigation is reminiscent of the independent counsel investigations of the past that were so heavily criticized for unfairly ruining reputations and for their unchecked and abusive power.

Mr. Freeh was under enormous pressure and scrutiny to vindicate the rights of the child victims of this tragedy, and we fully appreciate that legitimate goal. Nevertheless, that does not excuse the trampling of due process, or the finalizing of his conclusions without subjecting his views to outside scrutiny. Nor does it excuse intentionally placing a lightning rod directly over Joe Paterno, which was unjustified by the record but relished by some who delight in tearing down others.

Dr. Berlin, as an expert in pedophilia and related behaviors, offers his perspective on the unfairness of the Freeh report regarding Joe Paterno and the Penn State community:

- "In my judgment, rewriting the history of Joseph Paterno, in the context of unsubstantiated inferences about purported motives, and in the context of concerns about pedophilia and child sexual abuse (as legitimate as those concerns surely are), is neither fair, nor is it justifiable. . . . [I]t is my view that in this instance, Joe Paterno, his family, and the Penn State community had been deserving of a much better outcome."¹³⁴

^f In his prepared remarks at the press conference, Freeh noted that he "took the unusual step of not providing any draft of this report to the Board of Trustees or to the Task Force prior to the posting this morning. They are seeing it today for the first time, as all of you are." Louis Freeh, press conference, July 12, 2012.

Mr. Freeh's report also omits an important, negative fact about his client, the Board of Trustees, that creates doubt about its even-handedness. Despite critical findings about the Board during its self-described "full, fair, and completely independent investigation," the Freeh report mentions nothing about a now widely-reported decision by key trustees in November 2004 not to adopt measures that would have improved Board oversight and good-governance.^s These measures reportedly could have prevented a number of additional instances of child abuse by Jerry Sandusky, and the Board has since expressed significant regret they were not enacted.

The omission of key facts that cast his client in a critical light, and the substitution of rampant speculation for facts to "support" unwarranted conclusions about Joe Paterno, combine to raise serious questions about the Freeh report's objectivity.

G. Error #7: *The Freeh report adequately evaluated Joe Paterno's lifetime of integrity in reaching its conclusions.*

Facts and Evidence. Mr. Freeh's lack of objectivity is transparent from his cursory treatment of decades of integrity and character demonstrated by Joe Paterno. Experts in behavioral and psychological dynamics of child sexual victimization, whose full reports are attached, have cited Joe Paterno's long history of integrity and dealings with Jerry Sandusky as critical factors in explaining why Joe Paterno did not recognize Sandusky's child molestation and why Mr. Freeh's conclusions are unjustified.

In the context of the American judicial system and due process, at the end of a criminal trial judges instruct juries to weigh all the evidence in reaching a verdict. Mr. Freeh would have followed this practice as a judge. Evidence of good character, honesty, and integrity is admissible, not as a complete defense, but as a factor to be considered in determining a defendant's state of mind and whether actions were consistent with the life that the individual on trial has led.^t Particularly in a case that is based on circumstantial evidence, character evidence can be compelling and even dispositive of the defendant's guilt or innocence.

Judge Freeh's heavy reliance upon three email strings to draw the most damning conclusions about Joe Paterno's alleged conspiracy to conceal the acts of a pedophile was utterly irresponsible and inconsistent with the jury instructions federal judges routinely approve. He draws extreme inferences with no consideration for Joe Paterno's well-led life and his lifetime

^s One reporter observed, "The board's failure to improve its good-governance practices is a curious omission from the Freeh report, which made the trustees' governance failure a main focus of its findings." Don Van Natta, Jr., *Penn St. leaders passed on reform*, ESPN.COM, July 18, 2012. According to Maribeth Schmidt of the alumni group Penn Staters for Responsible Stewardship, "This new development certainly raises additional questions about the integrity of the Freeh report and further demonstrates that its objectivity is severely in question [A]ny missteps by the board — especially one this significant — which occurred in the years included in the Freeh investigation would have been documented and reported in its entirety." *Id.*

^t The following is one example of a jury instruction regarding character evidence that federal judges often use as a model: "The defendant has offered evidence of [his] [her] good general reputation for [truth and veracity] [honesty and integrity] [being a law-abiding citizen]. The jury should consider this evidence along with all the other evidence in the case in reaching its verdict. Evidence of a defendant's reputation, inconsistent with those traits of character ordinarily involved in the commission of the crime[s] charged, may give rise to a reasonable doubt since the jury may think it improbable or unlikely that a person of good character for [truth and veracity] [honesty or integrity] [being a law-abiding citizen] would commit such a crime or crimes." 1A Fed. Jury Prac. & Instr. § 15:15 (6th ed.).

dedication to educating and mentoring young people. That Mr. Freeh never analyzes these irrefutable facts only underscores his pre-judgment of the matter, and confirms that his preordained conclusions do not survive the scrutiny of a fair and balanced assessment of the facts.

Dr. Berlin observes that a person's history and character are important to understanding their subsequent behavior, their ability or inability to recognize child molestation, and their good or bad faith. He writes in his analysis:

- “In my professional opinion, there is absolutely nothing about the way in which Mr. Paterno had led his life, or about his characterological makeup, that would support the unsupported inference that ‘in order to avoid the consequences of bad publicity,’ he had been one of the ‘powerful leaders’ at Penn State who had ‘repeatedly concealed critical facts related to Sandusky’s child abuse from the authorities, the University’s Board of Trustees, the Penn State community, and the public at large.’”
- “Joe Paterno had known very little about the extent of the acts for which Mr. Sandusky had subsequently been convicted. In my judgment, given his history of a life well led, and of good character, and in light of the unsubstantiated nature of the inferences against him, to conclude that for any reason he would have been unconcerned about the wellbeing of children, would require turning a blind eye to the values that he had consistently demonstrated, and to the essence of what his life had been all about.”
- “Having read the ‘Freeh Report,’ and with the benefit of my extensive experience and knowledge about how difficult it can be for a community to recognize persons with pedophilia, I have not seen evidence supporting a conclusion that Joe Paterno acted in bad faith, nor have I seen evidence supporting a conclusion that he has ever been a man who lacked a genuine concern about the wellbeing of others — including the wellbeing of children.”¹³⁵

Consistent with Dr. Berlin's perspective, the evidence in Joe Paterno's lifetime of work, charity and community services establishes that he was not only honest when it suited him or his listeners, he was unconditionally honest. His words and his actions throughout a career of coaching and teaching leads to one inescapable conclusion: Paterno was a man of profound integrity with a consuming commitment to the intellectual, moral, and personal growth of young people.

For example, on November 9, 2011, according to one first-hand account, Joe Paterno was read a draft of the press release announcing his retirement after the full details of Sandusky's crimes had emerged.¹³⁶ Part of the release read: “I have come to work every day for the last sixty-one years with one clear goal in mind: To serve the best interests of this university and the young men who have been entrusted to my care.” Everyone in the room agreed the press release was the best they could do under the circumstances. Then Paterno spoke up: “There's one thing that bothers me about this statement.” Everybody looked at Paterno. “This part here that says, ‘I have come to work every day for the last sixty-one years with one clear goal in mind.’ Well, I didn't come to work every day for sixty-one years. I was sick a couple days, and there were

other things, like when David [Paterno's son] got hurt. I don't know if I'd say that's completely honest."¹³⁷

Joe Paterno was honest even in the final moments of his career — and indeed of his life — and Mr. Freeh ignores this and many other examples, such as his philanthropy, his success with honor philosophy, and the academic success of his program. We detail relevant facts in each of these categories that the Freeh report ignored.

Philanthropy and Commitment to Penn State. Joe Paterno gave much of his life and earnings to making Penn State a better institution.

In 1982, after Paterno's first national championship, he was invited to speak to the Penn State Board of Trustees. Instead of offering a few words of inspiration and accepting their congratulations, Paterno asked for a commitment from the trustees and challenged them to join him in an effort to elevate Penn State as a great academic institution.

One of Paterno's passions was the library. He told the trustees that "[w]ithout a great library, we can't be a great university."¹³⁸ Paterno then led by example. Joe and Sue Paterno established a book acquisition fund that is now Penn State Library's largest endowment. Later they established the Paterno Family Librarian for Literature chair and contributed funds for the Paterno Family Humanities Reading Room. Finally, Joe and Sue Paterno led the campaign to build the new library. They raised \$13.75 million in private donations and gave thousands more of their own money. In all, Joe and Sue Paterno gave the university more than \$5 million for scholarships, endowed faculty positions, and numerous building projects.

Paterno's commitment to academics ran deeper than donations; it animated his entire coaching philosophy. Offensive lineman Kevin Blanchard remembers when he first met Paterno. Paterno walked over to Blanchard and his family and said, "I would invite you to the house for dinner, but since this is an unofficial visit, the NCAA won't allow it." Paterno then turned to Blanchard and explained that he expected Blanchard would go to class, and that he would call his mother if he did not.¹³⁹ Blanchard was only one in a long list of Penn State players who received this life lesson. Paterno remained a college coach, in part, so he could continue to deliver that message.

In 1963, Paterno was offered the offensive coordinator position with the Oakland Raiders — he turned it down. In 1968, Paterno was offered the head coaching job with the Pittsburgh Steelers, and he turned it down. In 1973, he was offered the head coaching job for the New England Patriots including partial ownership of the team, and he turned it down. Later, Paterno's former Brown University coach, Weeb Weebank, called to see if Paterno was interested in replacing him as the head coach of the New York Jets. Paterno answered, "I'm staying here, Weeb. It's where I'm supposed to be."¹⁴⁰ Four times Paterno was offered the opportunity to leave Penn State for professional football, where he would have earned millions of dollars. Four times Paterno turned down the offer and stayed in a small college town.

Eventually, professional franchises stopped calling. When Paterno's salary was revealed in 2007, it showed that he not only earned far less than he would have as an NFL coach, but he earned far less than other top college coaches. He did not want the money or the fame. He

wanted the challenge of helping mold young men and creating a world-class university, and building a football program that achieved success with honor.

This track record is simply not consistent with the notion that he protected a child molester to avoid bad publicity.

Success with Honor. Joe Paterno spent 46 years as the head coach of Penn State, and during that time there was not a single NCAA major violation. One of the sport's longest serving and most successful coaches created one of the sport's cleanest programs.

It is easy to forget in the current college football environment that previous decades were equally characterized by corruption and cheating. Notwithstanding today's giant TV contracts, endless conference realignments for profit, scandals at USC and Ohio State, the growing concern about player exploitation, and even a recent Atlantic Monthly cover story from October 2011, entitled "The Shame of College Sports," previous decades of college football had similar incidents.

In 1980, Newsweek's cover story on college sports offered a laundry list of common practices: altered transcripts, credit for courses not taken, students paid to take athletes' exams, and athletes funneled into worthless classes to keep them eligible only to leave the university without an education. The story was entitled, like its more recent namesake, "The Shame of College Sports."¹⁴¹ In 1982, a large sample of NFL players showed that less than 32 percent had college degrees.¹⁴² The mounting public outcry reached critical mass in 1990, when Congress passed the Student Right-to-Know and Campus Security Act. The Act mandated, in part, that colleges and universities report graduation statistics annually to the Secretary of Education. In accordance with this act, the NCAA has published graduation rates for member institutions.

Yet from the day Paterno became head coach in 1966, these were never issues at Penn State. Paterno did not permit players to get away with missing a class, let alone cheating or taking worthless classes. Between 80 and 90 percent of Paterno's players graduated.¹⁴³ Two characteristics that differentiated Penn State from many other programs were Joe Paterno's commitment to academics and the absence of NCAA sanctions.

In an era when recruiting trips were indulgent and excessive affairs, Penn State players routinely reported being bored stiff on their trips to Penn State.¹⁴⁴ In an era when coaches grovel in prospects' living rooms, promising players playing time and NFL opportunities, Joe Paterno would say, "We would like to have you come to Penn State. But we don't *need* you."¹⁴⁵ He told them that they had to go to class and get an education, or they would not play.

Paterno did not hide his motivations and he did not hide the truth from parents, recruits, or his players. To suggest that Joe Paterno altered his life-long approach to honorable behavior in the Sandusky scandal and conspired to hide a pedophile simply ignores the reality of the man he was.

Academic Success. One of the greatest testaments to Penn State football's academic achievement may be the Academic Bowl Championship Series ("BCS") rankings created in 2007 by the New America Foundation's Higher Ed Watch.

The Academic BCS measures how well a team supports the “student” side of its student athletes by taking the final BCS standings (a football team’s top 25 national ranking based largely on wins/losses) and rearranging the rankings based on academic achievement.¹⁴⁶ Since 2007, Penn State has finished the season in the top 25 of the BCS standing three times, in 2008, 2009, and 2011, and thus received an Academic BCS ranking for those years.

In 2008, Penn State finished 8th in the BCS and 2nd in the Academic BCS. In 2009, Penn State finished 13th in the BCS and 1st in the Academic BCS. And, in 2011 — Paterno’s final season — Penn State finished 22nd in the BCS and 1st in the Academic BCS.

The respected organization, Higher Ed Watch, noted Penn State’s outstanding graduation rate in 2011 and highlighted that there was no black-white graduation gap among players on the football team. “It’s disappointing to say that is very rare for Division I football,” noted Higher Ed Watch.¹⁴⁷ The previous year’s first place team was Stanford. But in 2011, with Penn State back in the final BCS standings, Stanford fell behind Penn State in the Academic BCS rankings. Higher Ed Watch noted that Stanford had a 21 percent gap between black and white graduation rates for its players.

This type of academic success did not result from a few stellar students, but from years of the sustained and widespread commitment to academic achievement required by Joe Paterno. Countless players walked into his office expressing their interest in playing professional football only to be told that they had futures outside football, and they needed to focus in the classroom.

In a recent article discussing the challenges of NCAA academic reform, Professor Michael Oriard of Oregon State University, notes that the critical consensus from the media today is primarily concerned with the economic exploitation of young men who generate the revenues in football and basketball. Meanwhile, “[n]o such media-driven mandate is present — or even possible, history would tell us — regarding academic reform. Universities, as always, will be on their own here.”¹⁴⁸ Fortunately for Penn State, the University was not on its own. It had Joe Paterno as a coach and teacher focused on academics. He did not need the media, Congress, or academia to remind him that the student came before the athlete.

Through years of dedication, Joe Paterno built an honest and honorable football program, not just for his own sake or for football recognition, but to help build young men and a better university. When people asked Paterno how good his team was, he would say, “Ask me in twenty years.”¹⁴⁹

Paterno’s legacy is not just wins and losses, or national championships, or even promoting Penn State academics and building a new library. His legacy is the hundreds of players who came through his program, and the thousands of students who studied in the library, and lived in a university community enriched by the spirit of honest college athletics. His legacy is in every town in America where a proud Penn State graduate contributes to his or her community.

The life he led, the values he lived, and the character he demonstrated bear no resemblance to someone who would have protected a man who was molesting kids.

VII. Conclusion

Joe Paterno died on January 22, 2012, concerned for the victims in this tragedy, determined that the full truth should be revealed, and hopeful that these awful events could raise consciousness of child abuse detection more broadly and prevent its recurrence. Joe Paterno also died before the few emails on which the Freeh Group based its speculative opinions could be discussed with him. In the most significant ways, the Freeh report does little to advance the truth as to Joe Paterno, and leaves questions that may never be answered with Joe Paterno's death.

The evidence that does exist reflects a very different reality regarding Joe Paterno than the fiction invented by the Freeh report. It shows a man who never concealed, controlled, or knew of any details of sexual abuse in the 1998 investigation that cleared Sandusky; a man who reported promptly what he learned to his superior(s) in 2001; a man who told the truth to the best of his recollection when asked questions in 2011 about his memory of events a decade earlier; and a man who took responsibility for his actions publicly and privately and, with the benefit of hindsight, wished he had done more when learning the extent of Jerry Sandusky's deceptions in 2011.

Joe Paterno never mentioned the impact of this scandal on his "legacy," a term that has been overwrought and elevated to great prominence by others. Instead, he described these events as one of the great sorrows of his life, that as a father of 5 children with 17 grandchildren he was saddened and sickened to learn of these details, and that even at the end of his life he hoped he could still be helpful. None of these sentiments is consistent with the negative implication of cowardice and conspiracy ascribed to Joe Paterno in the Freeh report.

Joe Paterno's actions in this matter, and the balance of his life, repeatedly demonstrate that he tried his best to do the right thing with honor and integrity. Some may vilify the loyalty to the "Penn State way" as part of the cause of this tragedy, but that misimpression based on the flawed Freeh report cannot change the immutable fact that Joe Paterno and Penn State have stood for what is right and good in our society, even if part of that commitment means acknowledging and learning from mistakes and emerging stronger because of them.

Our deepest concern and sympathies remain with the victims of this tragedy, and the Paterno family is committed to supporting significant steps, and making more contributions financially and emotionally, to increase child sexual victimization awareness, detection, and education in this country.

* * * * *

ENDNOTES

¹ The Pennsylvania State University (“Penn State” or the “University”) formed a Task Force of its Board of Trustees in the wake of the allegations of child abuse by former Penn State assistant football coach Jerry Sandusky. Mr. Louis Freeh, as lead for his law firm at the time, Freeh Sporkin & Sullivan, LLP (“FSS” or “Freeh Group”), was appointed Special Investigative Counsel (“SIC”) to that Task Force, and issued a report on July 12, 2012, entitled “Report of the Special Investigative Counsel Regarding the Actions of The Pennsylvania State University Related to the Child Abuse Committed by Gerald A. Sandusky.” We generally refer to that report as the “Freeh report,” but Mr. Freeh’s report and investigation also have been referred to publicly as the “SIC” and/or “FSS” report and investigation.

² Dick Thornburgh, Review of the Freeh Report Concerning Joseph Paterno, Feb. 6, 2013, at 4-5 (“Thornburgh”).

³ *Id.* at 2.

⁴ *Id.* at 10-11.

⁵ *Id.* at 11.

⁶ *Id.* at 37.

⁷ James T. Clemente, Analysis of the Special Investigative Counsel Report and the Crimes of Gerald A. Sandusky & Education Guide to the Identification and Prevention of Child Sexual Victimization, Feb. 2013, at 6 (“Clemente”).

⁸ *Id.* at 66.

⁹ *Id.* at 65.

¹⁰ *Id.* at 65.

¹¹ *Id.* at 66.

¹² Fred S. Berlin, M.D., Report Regarding Joseph Paterno, Feb. 6, 2013, at 10-11 (“Berlin”).

¹³ *Id.* at 9-10.

¹⁴ *Id.* at 10.

¹⁵ Statement by a Group of Past Chairs of The Pennsylvania State University Faculty Senate Regarding the Freeh Report, the NCAA Consent Decree, and Their Academic Implications, Aug. 28, 2012, http://www.senate.psu.edu/agenda/2012-2013/aug2012/pastchairs_statement.pdf (“The NCAA Consent Decree, which substantially embellishes the initial Freeh findings in both tone and substance, claimed no standard of proof for its conclusions but nonetheless required Penn State to accept the Freeh Group’s assertions as fact.”); Statement by 182 Former Penn State Players, A Rush to Judgment, July 29, 2012 (“In short, we believe this report has irresponsibly impugned Paterno’s reputation without sufficient evidence.”); Penn Staters for Responsible Stewardship Identification of Key Failures of the Freeh Report, Sept. 13, 2012; *Trustee Myers: NCAA would fail ethics class at Penn State and is a petulant child gone wild*, STATECOLLEGE.COM, Aug. 25, 2012; Steve Eder, *Governor sues over penalties to Penn State*, N.Y. TIMES, Jan. 2, 2013; Brad Wolverton, *Freeh group member criticizes NCAA’s use of investigative report*, THE CHRON. OF HIGHER EDUCATION, July 27, 2012.

¹⁶ Freeh report at 9.

¹⁷ Mark Scolforo, *Sandusky gets at least 30 years, denies wrongdoing*, ASSOCIATED PRESS, Oct. 9, 2012.

¹⁸ Rick Freeman, *Paterno’s name keeps getting erased*, ASSOCIATED PRESS, July 25, 2012.

¹⁹ NCAA, “Binding Consent Decree Imposed by the National Collegiate Athletic Association and Accepted by the Pennsylvania State University,” July 23, 2012, <http://www.ncaa.com/content/penn-state-conclusions>; Don Van Natta Jr., *Penn State faced 4-year death penalty*, ESPN.COM, July 26, 2012.

²⁰ Two former NCAA presidents, Cedric Dempsey and Gene Corrigan, disagree with the NCAA’s actions. Megan Flood, *Panel: NCAA too heavy-handed with Penn State sanctions*, CENTREDAILY.COM, Oct. 3, 2012.

²¹ NCAA Constitution, Article 1.3.2 (2011-12 NCAA Division I Manual) (emphasis added).

²² NCAA Bylaw 19.02.2.2 (2011-12 NCAA Division I Manual).

²³ NCAA Consent Decree at 4.

²⁴ *Id.* at 2, 4.

²⁵ Press release, National Collegiate Athletic Association, NCAA launches external review of enforcement program, Jan. 23, 2013; *NCAA finds issue with investigation*, ESPN.COM, Jan. 24, 2013; Joe Nocera, *The N.C.A.A.'s ethics problem*, N.Y. TIMES, Jan. 25, 2013.

²⁶ *NCAA finds issue with investigation*, ESPN.COM, Jan. 24, 2013.

²⁷ Clemente at 3-4.

²⁸ *Id.* at 6.

²⁹ *Id.* at 66.

³⁰ Berlin at 8.

³¹ Clemente at 12 (emphasis added).

³² *Id.* at 12.

³³ *See id.* at 70-71.

³⁴ *Id.* at 65.

³⁵ *Id.* at 65.

³⁶ *Id.* at 66.

³⁷ Berlin at 8-9.

³⁸ *Id.* at 9.

³⁹ Sara Ganim, *Jerry Sandusky, adopted son had 'rocky' relationship*, THE PATRIOT-NEWS, Mar. 25, 2012.

⁴⁰ Sara Ganim, *Matt Sandusky says he, too, was abused by his adoptive father*, THE PATRIOT-NEWS, June 22, 2012; Michael Isikoff, *Matt Sandusky details alleged sex abuse by his father*, NBC NEWS, June 26, 2012.

⁴¹ Lisa Riordan-Seville and Hannah Rappleye, *Ghosts of Sandusky's dreams haunt empty home where his charity was born*, NBC NEWS, June 19, 2012.

⁴² *See, e.g.*, Clemente at 7-15, 70-71 & Appendix 3; Berlin 7-8.

⁴³ Clemente at 67.

⁴⁴ *Id.* at 71-72.

⁴⁵ *See, e.g.*, David Templeton, *TMI papers show Thornburgh as 'hero'*, PITTSBURGH POST-GAZETTE, Mar. 28, 2009.

⁴⁶ Steven V. Roberts, *Reagan selects Pennsylvanian for Justice job*, N.Y. TIMES, July 13, 1988 (“Mr. Thornburgh . . . made a reputation as a ‘Mr. Clean’ figure by prosecuting organized crime and political corruption.”); *Sound Legacy of Dick Thornburgh*, THE MORNING CALL, Jan. 19, 1987 (“[Thornburgh] has been, and remains, an oxymoronic creature — a popular politician. He came to the governor’s mansion with impeccable credentials, highly respected as a tough federal prosecutor, and he leaves with an impressive popularity. . . . His professional integrity, personal demeanor, demands for excellence and devotion to public service will serve as a fine example to the young people who will be under his charge.”).

⁴⁷ Thornburgh at 10.

⁴⁸ *Id.* at 11.

⁴⁹ *Id.* at 11, 13 (emphasis in original).

⁵⁰ *Id.* at 13-14 (citations omitted).

⁵¹ *Id.* at 2.

⁵² *Id.* at 37.

⁵³ Freeh report at Exs. 2A, 2E.

⁵⁴ *Id.* at Ex. 2A.

⁵⁵ *Id.*

⁵⁶ *Id.* at 48, Ex. 2J.

⁵⁷ *Id.* at Ex. 2J.

⁵⁸ *Id.* at 50, Ex. 2E.

⁵⁹ *Id.* at Ex. 2E.

⁶⁰ *Id.* at 49.

- ⁶¹ Thornburgh at 25-26 (citation omitted).
- ⁶² Freeh report at 47, 72.
- ⁶³ *Id.* at Ex. 2I.
- ⁶⁴ Thornburgh at 23.
- ⁶⁵ *Id.* at 2 (citation omitted).
- ⁶⁶ Clemente at 15.
- ⁶⁷ *Id.* (citation omitted).
- ⁶⁸ Freeh report at 55 (“The Special Investigative Counsel found no evidence to indicate that Sandusky’s retirement was related to the police investigation of him in 1998.”).
- ⁶⁹ *Id.* at Ex. 3D.
- ⁷⁰ *Id.* at 56 (Curley informed Spanier on February 9, 1998, “Joe tells me he made it clear to Jerry he will not be the next head coach.”).
- ⁷¹ *Id.* at Ex. 3D.
- ⁷² Transcript of Proceedings at 203-05, *Commonwealth v. Gerald A. Sandusky*, Nos. CP-14-CR-2421-2011 & CP-14-CR-2422-2011 (Pa. Commw. Ct. June 12, 2012) (“Sandusky trial transcript”).
- ⁷³ *Id.* at 205.
- ⁷⁴ Transcript of Proceedings at 57-58, *Commonwealth v. Timothy M. Curley & Gary Schultz*, Nos. CP-22-MD-1374-2011 & CP-22-MD-1375-2011 (Pa. Commw Ct. Dec. 16, 2011) (“Preliminary hearing”); Sandusky trial transcript, June 12, 2012, at 193.
- ⁷⁵ Preliminary hearing at 17; Sandusky trial transcript, June 12, 2012, at 193, 240.
- ⁷⁶ Preliminary hearing at 24 (“The rough positioning I would have described but not in very much detail.”); Sandusky trial transcript, June 12, 2012, at 205 (“I told him what I had seen, again, on the surface.”).
- ⁷⁷ Clemente at 17-32, 42-47.
- ⁷⁸ JOE POSNANSKI, PATERNO at 272 (2012) (“I tried to go through the Penn State guidelines to see what I was supposed to do. It said that I was supposed to call Tim [Curley]. So I called him.”).
- ⁷⁹ Freeh report at 62, 68. The Penn State University Police is governed by a state statute that gives the department and its officers the same authority as municipal police officers. Thus, the Penn State police provide the campus with all law enforcement and security services. *See* P.L. 177, No. 175 (Nov. 26, 1997); 42 Pa.C.S. Ch. 89, Subch. D.
- ⁸⁰ POSNANSKI at 277.
- ⁸¹ Clemente at 31 (citations omitted).
- ⁸² Transcript of Proceedings at 4-6, Commonwealth of Pennsylvania Thirtieth Statewide Investigating Grand Jury, *In re Notice No. 29* (Jan. 12, 2011) (“Grand jury transcript”).
- ⁸³ Grand jury transcript at 7.
- ⁸⁴ Freeh report at 70.
- ⁸⁵ POSNANSKI at 335-37.
- ⁸⁶ Sara Ganim, *Penn State football press conference canceled by university president*, THE PATRIOT-NEWS, Nov. 8, 2011.
- ⁸⁷ Freeh report at Ex. 5G.
- ⁸⁸ Louis Freeh, press conference, July 12, 2012.
- ⁸⁹ Thornburgh at 3 (citations omitted).
- ⁹⁰ Berlin at 6.
- ⁹¹ Clemente at 33.
- ⁹² *Id.* at 39.
- ⁹³ *Id.* at 41.
- ⁹⁴ *Id.* at 39.
- ⁹⁵ Thornburgh at 20-21 (citation omitted).

- ⁹⁶ Freeh report at Ex. 5G (emphasis added).
- ⁹⁷ *Id.* at 23, 62, 68; Louis Freeh press conference, June 12, 2012 (prepared remarks and question and answer) (emphasis added).
- ⁹⁸ Thornburgh at 36 (citations omitted) (emphasis in original).
- ⁹⁹ David Comer, *PSU mum on Casey arrest Nittany Lion coach silent, but the attorney for Rashard Casey says the Quarterback did not assault the police officer*, WILKES BARRE TIMES LEADER, May 16, 2000, at A1.
- ¹⁰⁰ Steve Strunsky, *Player pleads not guilty in assault*, N.Y. TIMES, May 16, 2000.
- ¹⁰¹ Press Release, Penn State, Statement by Coach Paterno Regarding Rashard Casey Incident (May 16, 2000).
- ¹⁰² POSNANSKI at 264.
- ¹⁰³ *Id.* at 264.
- ¹⁰⁴ Jerry Kellar, *Paterno still behind Casey*, WILKES-BARRE TIMES LEADER, July 27, 2000, at 1C.
- ¹⁰⁵ Mark Story, *Coaches face dilemma with players in trouble Paterno taking PR drubbing, but is he right?*, LEXINGTON HERALD LEADER, Sept. 3, 2000, at C2.
- ¹⁰⁶ Bill Livingston, *Paterno faces a bitter fall*, PLAIN DEALER, Sept. 6, 2000, at 1D.
- ¹⁰⁷ Bill Lyon, *Joe Paterno deserves benefit of the doubt, for now*, THE PHILADELPHIA INQUIRER, Aug. 27, 2000; *see also*, Joe Lapointe, *Paterno takes quest and critics in stride*, N.Y. Times, Aug. 27, 2000.
- ¹⁰⁸ Mark Story, *Coaches face dilemma with players in trouble Paterno taking PR drubbing, but is he right?*, LEXINGTON HERALD LEADER, Sept. 3, 2000, at C2.
- ¹⁰⁹ Ray Parrillo, *Casey Cleared by N.J. grand jury*, THE PHILADELPHIA INQUIRER, Nov. 1, 2000.
- ¹¹⁰ David Porter, *Former Penn State QB settles lawsuit against Hoboken police*, ASSOCIATED PRESS, Aug. 13, 2003.
- ¹¹¹ Jerry Kellar, *Paterno*, WILKES-BARRE TIMES LEADER, Aug. 3, 2003, at 1A.
- ¹¹² Michael Raphael, *Penn State's Enis suspended for Citrus Bowl*, ASSOCIATED PRESS, Dec. 23, 1997.
- ¹¹³ Thornburgh at 21 (citation omitted).
- ¹¹⁴ Freeh report at 57.
- ¹¹⁵ *Id.* at 55.
- ¹¹⁶ Interview with Paterno family member, Jan. 4, 2013.
- ¹¹⁷ POSNANSKI at 247-48.
- ¹¹⁸ *Id.* at 247-49.
- ¹¹⁹ Freeh report at 65; Louis Freeh press conference, July 12, 2012.
- ¹²⁰ Louis Freeh press conference, July 12, 2012.
- ¹²¹ *Id.*
- ¹²² Freeh report at 65.
- ¹²³ Thornburgh at 33.
- ¹²⁴ Clemente at 54.
- ¹²⁵ Freeh report at 65.
- ¹²⁶ *Id.* at 67, note y.
- ¹²⁷ Louis Freeh press conference, July 12, 2012.
- ¹²⁸ Freeh report at 51.
- ¹²⁹ Thornburgh at 4-5.
- ¹³⁰ Clemente at 49-52.
- ¹³¹ *Id.* at 50.
- ¹³² Thornburgh at 37.
- ¹³³ Berlin at 4.
- ¹³⁴ *Id.* at 11.

¹³⁵ *Id.* at 9-11.

¹³⁶ POSNANSKI at 319-21.

¹³⁷ *Id.*

¹³⁸ *Id.* at 205.

¹³⁹ *Id.* at 364-65.

¹⁴⁰ *Id.* at 143.

¹⁴¹ Pete Axthelm et al., *The Shame of College Sports*, NEWSWEEK, Sept. 22, 1980, at 54.

¹⁴² Michael Oriard, *NCAA Academic Reform: History, Context and Challenges*, 5 J. OF INTERCOLLEGIATE SPORT 4, 12 (2012).

¹⁴³ POSNANSKI at 106.

¹⁴⁴ *Id.* at 109.

¹⁴⁵ *Id.* at 110.

¹⁴⁶ Maggie Severns, Higher Ed Watch, *The 2011 Academic Bowl Championship Series* (Dec. 7, 2011).

¹⁴⁷ *Id.*

¹⁴⁸ Michael Oriard, *NCAA Academic Reform: History, Context and Challenges*, 5 J. OF INTERCOLLEGIATE SPORT 4, 17 (2012).

¹⁴⁹ POSNANSKI at 149.

APPENDIX A

Review of the Freeh Report Concerning Joseph Paterno

by Dick Thornburgh

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February 6, 2013

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I. Introduction and Executive Summary

I was asked by the family of former Pennsylvania State University (“Penn State” or the “University”) head football coach Joseph V. Paterno to perform an independent and objective review of the Freeh, Sporkin and Sullivan LLP (“FSS”) report (the “Freeh Report” or the “Report”). FSS was appointed Special Investigative Counsel (“SIC”) to a Task Force of the Board of Trustees of the University to conduct an investigation of the University’s response to the child abuse charges against former Penn State assistant football coach Jerry Sandusky. The Report was released on July 12, 2012.

At the outset, I believe that the conduct of Mr. Sandusky was reprehensible, and he has been dealt with appropriately by our justice system. The lives of the victims of Mr. Sandusky will never be the same, and I feel for them and their families. My review did not consider the conduct of Mr. Sandusky, but rather was focused solely on the findings of the Freeh Report concerning Mr. Paterno. I evaluated the Report to determine whether statements made by the SIC were accurate, fair and supported by the record. The Paterno family did not ask me to reach any particular conclusion, and I offer no opinion with respect to the findings in the Freeh Report related to any other person. In conducting my review, I drew upon my experience as a former prosecutor and Attorney General of the United States, as well as my expertise in conducting independent internal investigations. I was assisted in my review by my colleagues at K&L Gates LLP.

Perhaps the most significant finding of the Freeh Report was that Mr. Paterno knew about critical facts relating to the child abuse by Mr. Sandusky in 1998 and 2001, but repeatedly

concealed those facts.¹ Although the Freeh Report makes separate findings against Mr. Paterno and former Penn State President Dr. Graham B. Spanier, former Senior Vice President-Finance and Business Gary C. Schultz, and Athletic Director Timothy M. Curley, it combines these findings to make collective conclusions that the four of them conspired together to cover up Mr. Sandusky's crimes.

In my opinion, the Freeh Report is seriously flawed, both with respect to the process of the SIC's investigation and its findings related to Mr. Paterno. The most significant failures of the Freeh Report are as follows:

- The Freeh Report claims that Mr. Paterno knew about the 1998 incident involving Mr. Sandusky at or about the time that it occurred.² However, there is no credible support provided in the Freeh Report for what, if anything, Mr. Paterno was aware of concerning the 1998 incident prior to 2011. Indeed, the Freeh Report ignored contrary evidence that Mr. Paterno did not have such knowledge. Instead, the Report relies upon a vague 1998 e-mail chain that does not directly reference Mr. Paterno.³ The Report also claims that, since unnamed “[w]itnesses consistently told the [SIC] that Paterno was in control of the football facilities and knew ‘everything that was going on,’” he must have known about the 1998 incident.⁴ Mr. Paterno testified to the grand jury that he did not recall the incident.⁵ In press interviews, he also stated that he did not recall learning about the allegation.⁶ I am aware of no witness who has challenged the veracity of Mr. Paterno's statements.
- The Freeh Report concludes that Mr. Paterno must have conspired with Messrs. Curley and Schultz and Dr. Spanier to conceal the 2001 incident because: (1) Mr. Paterno wielded “excessive influence” at the University;⁷ (2) two documents, neither of which was sent or received by Mr. Paterno, refer to a meeting between

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*, 16 (July 12, 2012) [hereinafter Freeh Report], http://progress.psu.edu/assets/content/REPORT_FINAL_071212.pdf.

² *Id.* at 20.

³ *Id.* at Ex. 2A; *see also id.* at Ex. 2B.

⁴ *Id.* at 51.

⁵ *Pennsylvania v. Curley*, Preliminary Hearing Transcript of Proceedings, Dec. 16, 2011, at 177-78 [hereinafter Preliminary Hearing Transcript].

⁶ Sally Jenkins, *Joe Paterno's Last Interview*, WASHINGTON POST, Jan. 14, 2012.

⁷ Freeh Report at 65 n.w.

Mr. Curley and Mr. Paterno concerning the incident;⁸ and (3) Mr. Curley, whom “several” unidentified people interviewed during the SIC’s investigation described as Mr. Paterno’s “errand boy,” decided not to report the incident to the Pennsylvania Department of Public Welfare.⁹ This does not provide proper or sufficient evidence for such a bold claim.

- Numerous sworn witness statements and other accounts, some of which were referenced in the Freeh Report, describe the extent to which persons beyond Messrs. Curley, Schultz and Paterno and Dr. Spanier were aware of the 1998 and 2001 incidents.¹⁰ This is strong evidence that there was no cover-up.
- Mr. Freeh’s mischaracterization of an e-mail critical to his Report at his July 12, 2012 press conference announcing his findings is emblematic of the SIC’s unjustified inferences and the flaws in the Report. Mr. Freeh stated that an e-mail showed that it was Mr. Paterno who decided not to report to authorities the 2001 shower incident involving Mr. Sandusky and a young boy.¹¹ However, this is not what the e-mail states. The e-mail suggests that it was Mr. Curley’s decision not to report the 2001 incident to authorities and does not state that Mr. Paterno was involved in such a decision or that he was even aware of it.¹² Mr. Freeh did not supply any other evidence at the press conference to support the proposition that Mr. Paterno was involved in or aware of the decision.¹³ Indeed, the Report acknowledges that it was Mr. Curley’s decision and not Mr. Paterno’s in its “key findings” about the 2001 incident.¹⁴
- The Freeh Report claims that it conducted a “complete” investigation.¹⁵ This is not accurate because, despite the fact that it supposedly conducted 430 interviews,¹⁶ the SIC did not speak to virtually any of the persons who had the most important and relevant information. Three of the most crucial individuals—Messrs. Paterno, Schultz and Curley—were never interviewed.¹⁷ Michael McQueary, the sole witness to the 2001 incident, was also not interviewed.¹⁸

⁸ *Id.* at Exs. 5C, 5G.

⁹ *Id.* at 75.

¹⁰ *See, e.g., id.* at 67 n.x, 69, 78.

¹¹ Remarks of Louis Freeh in Conjunction with Announcement of Publication of Report Regarding the Pennsylvania State University (July 12, 2012), at 4 [hereinafter Freeh Remarks], http://progress.psu.edu/assets/content/Press_Release_07_12_12.pdf; *see also* Freeh Report at Ex. 5G.

¹² Freeh Report at Ex. 5G.

¹³ Freeh Remarks at 4.

¹⁴ Freeh Report at 63.

¹⁵ *Id.* at 8.

¹⁶ *Id.* at 9.

¹⁷ *Id.* at 12.

¹⁸ *Id.*

Another important individual, Dr. Spanier, was interviewed, but just days before the Freeh Report was issued.¹⁹ The usefulness of the Report is also restricted because many of the interviewees cited are not identified, limiting the reader's ability to weigh the witnesses' credibility and reliability.²⁰

- The failure to conduct key interviews is all the more consequential because of the lack of relevant documents. Although the SIC purported to review over 3.5 million documents, the Freeh Report references and relies upon only approximately 30 documents, including 17 e-mails. Significantly, the Freeh Report cites only four documents that purportedly reference Mr. Paterno, none of which were sent to him, and only three documents containing notes authored by him.²¹ Although not mentioned in the Report, Penn State reportedly did not retain most e-mails dated prior to 2004 because of a technology changeover, making it impossible to search and review the vast majority of e-mails that must have existed during the critical time periods of 1998 and 2001.²² Indeed, the only e-mails apparently available to the SIC prior to 2004 were those that were saved personally by Mr. Schultz.²³ Particularly in matters in which the relevant events took place more than ten years ago, contemporaneous e-mails are important sources of information. Mr. Freeh should have disclosed this serious shortcoming in his analysis.

In an interview with the media before his death, Mr. Paterno conceded that he wished he had done more with respect to the 2001 incident, particularly when viewed through the powerful lens of hindsight.²⁴ However, as discussed in more detail below, failing to do more does not translate into a conspiracy to cover up Mr. Sandusky's actions. The findings in the Freeh Report related to Mr. Paterno do not support such a conclusion. The lack of factual support for the SIC's inaccurate and unfounded findings related to Mr. Paterno and its numerous process-

¹⁹ Dr. Spanier was interviewed by the SIC on July 6, 2012. *Id.* at 145 n.4. The Freeh Report was published on July 12, 2012. *See generally id.*

²⁰ *See generally id.*

²¹ *See id.* at Exs. 3D, 3E, and 3F.

²² Paula Reed Ward, *Spanier Drops Lawsuit Against Penn State*, PITTSBURGH POST-GAZETTE, July 19, 2012 (quoting Dr. Spanier's attorney, who stated that e-mails for Dr. Spanier and other administrators dated prior to 2004 were not retained when the University's computer system was overhauled).

²³ Freeh Report at 72-74.

²⁴ Jenkins, *supra* note 6.

oriented deficiencies was a rush to injustice and calls into question the credibility of the entire Report.

II. Background

A. Sandusky Conviction and Charges Against Messrs. Curley, Schultz and Dr. Spanier

On November 4, 2011, following a two-year grand jury investigation, the Pennsylvania State Attorney General (“Attorney General”) filed criminal charges in Dauphin County Court against Mr. Sandusky, a retired assistant Penn State football coach, for numerous counts of child sexual abuse between 1994 and 2009.²⁵ The Attorney General’s office issued a grand jury presentment concerning Mr. Sandusky’s actions the following day, which described the grand jury testimony of various witnesses, including Mr. Paterno, and summarized in detail the grand jury’s findings of fact and recommendations of charges concerning Mr. Sandusky.²⁶ Also on November 4, 2011, the Attorney General filed criminal charges against Messrs. Curley and Schultz for failing to report allegations of child abuse by Mr. Sandusky and for committing perjury during grand jury testimony.²⁷

Although the Attorney General stated publicly on November 7, 2011 that Mr. Paterno was not the target of any investigation,²⁸ pressure was building at the University and among the public to assess responsibility for Mr. Sandusky’s actions at Penn State.²⁹ The Board of Trustees released a statement on November 8, 2011 that said: “We cannot begin to express the

²⁵ Criminal Docket, *Pennsylvania v. Gerald A. Sandusky*, Docket No. MJ-49201-CR-0000636-2011 (Nov. 4, 2011).

²⁶ Grand Jury Presentment (Nov. 4, 2011) [hereinafter Grand Jury Presentment], available at <http://www.attorneygeneral.gov/uploadedfiles/press/sandusky-grand-jury-presentment.pdf>.

²⁷ *Id.*

²⁸ Pa. Attorney General Press Release (Nov. 7, 2011), available at <http://www.attorneygeneral.gov/press.aspx?id=6277>.

²⁹ See, e.g., Dan Le Batard, *How could Paterno not have done more to stop Penn State Scandal?*, MIAMI HERALD, November 8, 2011; Scott Ostler, *Paterno Should be Fired by Penn State*, SAN FRANCISCO CHRONICLE, November 8, 2011.

combination of sorrow and anger that we feel about the allegations surrounding Jerry Sandusky. We hear those of you who feel betrayed and we want to assure all of you that the Board will take swift, decisive action.”³⁰ As a result of this mounting pressure, Mr. Paterno was fired by Penn State on November 9, 2011.³¹ Then, on November 11, 2011, the University’s Board of Trustees formed the Task Force and appointed Board of Trustees members, Kenneth Frazier, who is the Chief Executive Officer and President of Merck & Co., Inc., and Ronald J. Tomalis, the Secretary of the Pennsylvania Department of Education, to lead the Task Force.³² On November 21, 2011, the Task Force engaged FSS as the SIC to conduct an “independent, full and complete” investigation of the “alleged failure of [Penn State] personnel to respond to and report to the appropriate authorities” sexual abuse of children by former Penn State assistant football coach Gerald A. Sandusky and the “circumstances under which such abuse could occur in University facilities or under the auspices of University programs for youth.”³³ Mr. Paterno died on January 22, 2012 before having the opportunity to participate in the SIC’s investigation.³⁴

After a jury trial beginning on June 11, 2012, Mr. Sandusky was found guilty of child sexual abuse charges on June 22, 2012, and later sentenced to 30 to 60 years in prison on October 9, 2012.³⁵ On July 12, 2012, the SIC released the Freeh Report.³⁶

³⁰ Statement by The Pennsylvania State University Board of Trustees, *Penn State Live*, <http://live.psu.edu/story/56285> (Nov. 8, 2011).

³¹ Report of the Board of Trustees Concerning Nov. 9 Decisions, *Penn State Live*, <http://live.psu.edu/story/58341> (Nov. 9, 2011).

³² Freeh Report at 13-14.

³³ *Id.* at 8.

³⁴ *Id.* at 53; Ron Musselman, *Penn State legendary coach Joe Paterno has died*, PITTSBURGH POST-GAZETTE, Jan. 22, 2012.

³⁵ *Pennsylvania v. Sandusky*, No. CP-14-CR-2421-2011, No. CP-14-CR-2422-2011, Verdict Slips (June 22, 2012); *id.*, Sentencing Order (Oct. 9, 2012).

³⁶ *See* Freeh Remarks at 1.

Messrs. Curley and Schultz were scheduled to stand trial in January 2013,³⁷ but, on November 1, 2012, additional child endangerment charges were filed against them.³⁸ The Attorney General also filed charges on November 1, 2012 against Dr. Spanier for perjury, obstruction, endangering the welfare of children, failure to properly report suspected abuse and conspiracy for his actions in response to complaints about Mr. Sandusky.³⁹ At the same time, a new grand jury presentment was released summarizing new findings of fact and the grand jury's recommendations of charges against the three men.⁴⁰ In light of the new charges against Messrs. Curley and Schultz and a pending motion to dismiss the charges, their January 2013 trial date was postponed.⁴¹

B. Freeh Report Process

To execute its mandate to perform an independent, full, and complete investigation, the SIC purported to conduct “over 430 interviews” of a “cross-section of individuals including current and former University faculty and staff members, Trustees, and student-athletes” and to review “over 3.5 million pieces of pertinent electronic data and documents.”⁴² The SIC established a toll-free hotline and dedicated e-mail address to receive any relevant information.⁴³ The SIC also reviewed applicable University policies, guidelines, practices and procedures and compared them to other large universities.⁴⁴

³⁷ *Pennsylvania v. Curley*, No. CP-22-CR-5165-2011, *Pennsylvania v. Schultz*, CP-22-CR-5164-2011, Scheduling Order (Aug. 17, 2012).

³⁸ *Id.*, Criminal Docket (Nov. 1, 2012).

³⁹ *Pennsylvania v. Spanier*, No. MJ-12303-CR-0419-2012, Criminal Docket (Nov. 1, 2012).

⁴⁰ Grand Jury Presentment (Nov. 1, 2012) [hereinafter 2012 Grand Jury Presentment], available at http://www.attorneygeneral.gov/uploadedFiles/Press/spanier-schultz-curley_presentment-11-1-12.pdf.

⁴¹ See *Pennsylvania v. Curley*, No. CP-22-CR-5165-2011, *Pennsylvania v. Schultz*, CP-22-CR-5164-2011, Order Postponing Trial Date, Dec. 5, 2012.

⁴² Freeh Report at 9, 12.

⁴³ *Id.* at 7.

⁴⁴ *Id.*

III. Process of My Review

I conducted my review of the Freeh Report in a completely independent manner. Mr. Paterno's family did not influence the scope of the review or my findings in any way.

In conducting my review, I analyzed thoroughly the Freeh Report and the evidence cited in support of it. However, because the Freeh Report did not identify specifically all of the documents it reviewed or witnesses it interviewed in support of its findings, I also reviewed various other documents and information to evaluate the Report's findings and to discover other potentially relevant information. These documents and information included:

- Various court filings and transcripts, including the grand jury presentment concerning Mr. Sandusky; Mr. Paterno's grand jury testimony; the grand jury presentments with respect to Messrs. Schultz and Curley and Dr. Spanier; witness testimony from the preliminary hearing with regard to the case filed against Messrs. Schultz and Curley; filings and exhibits from the case against Messrs. Schultz and Curley; and trial testimony and documents from the trial of Mr. Sandusky;
- Public statements by and on behalf of Mr. Paterno and members of his family;
- Public statements by Mr. Freeh;
- Public statements by counsel for Messrs. Schultz and Curley and Dr. Spanier;
- Public statements and news reports concerning Penn State and the Board of Trustees;
- News reports, internet postings, and other statements about Mr. Paterno;
- Various statements and news reports analyzing the Freeh Report;
- Documents and correspondence provided to the U.S. Department of Justice by counsel for Mr. Paterno and his family, which included notes by Mr. Paterno and several of his files; and
- A summary of an interview of Mr. Paterno by the Attorney General's office.

I also spoke to counsel for Messrs. Curley and Schultz to gather information relevant to my review.

IV. The Freeh Report's Findings with Respect to Mr. Paterno Are Flawed

A. The Goals of a Proper Internal Investigation

As Mr. Freeh stated at his press conference releasing the Report, a proper internal investigation and its findings must be accurate, thorough, fair, and credible.⁴⁵ An accurate report of an investigation is one in which the conclusions are supported with sufficient and specific facts and investigators consider all of the relevant information. An accurate report should also avoid mistakes, typographical errors and mischaracterizations, as they are the characteristics of a negligent investigative report.⁴⁶

A meaningful internal investigation must be thorough. The investigators should interview all significant witnesses, conduct an extensive review of all pertinent documents, and pursue all possible theories or potential conclusions. In *Mott v. Anheuser-Busch, Inc.*, the court determined that the internal investigation at issue was conducted in a thorough and responsible manner because “the investigation included interviews with *all* relevant parties,” including the target of the investigation.⁴⁷ Omitting an important witness or failing to follow a meaningful lead can raise serious questions as to the thoroughness of the investigation. Indeed, as Mr. Freeh himself stated recently during his “keynote address” to the Annual Pharmaceutical Regulatory and Compliance Congress:

The basic skills and tools for conducting credible investigations require more than data review, more than numbers crunching, more than comparative data analysis. It really requires going out, speaking to people,

⁴⁵ See Freeh Remarks at 2.

⁴⁶ See, e.g., *Pearce v. E.F. Hutton Group, Inc.*, 664 F. Supp. 1490, 1510 (D.D.C. 1987) (noting that characteristics of a negligent investigative report include “errors in note-taking and quotation of sources” as well as “mechanical or typographical errors”).

⁴⁷ 910 F. Supp. 868, 876 (N.D.N.Y. 1995) (emphasis added).

interviewing them, and using all the lawful techniques that we use and companies are allowed to use to conduct business.⁴⁸

As Mr. Freeh stated, interviewing witnesses “will make the critical difference between a competent and fulsome investigation or not.”⁴⁹

Such an investigation must be fair to all parties involved. This is not to say that liability and determinations should not be assessed, but rather that the investigators have a duty to consider both incriminating and exculpatory evidence. When drafting a report, key facts can often be ambiguous and/or conflicting. Fairness requires that an investigation identify such situations and evaluate them when an objective reader could reasonably reach different conclusions. Leaving out any possible exculpatory evidence and ignoring other reasonable alternatives presents the reader with a biased and unfair version of the facts.⁵⁰

Finally, an investigative report must be credible. Inadequate evidence, unreasonable reliance on sources, and the unjustified formulation of conclusions and inferences are all signs of a report that lacks credibility.⁵¹ All potential conflicts of interest or appearances of a lack of independence that could compromise an investigation or its findings’ integrity must be identified and vetted in the report.

B. Deficiencies in the Freeh Report

When considered in the context of investigation “best practices,” it is evident that the Freeh Report and many of its findings as they relate to Mr. Paterno are not accurate, thorough, fair or credible. Moreover, Mr. Paterno never had the opportunity to speak to the SIC and

⁴⁸ Louis Freeh, Keynote Address at the 13th Annual Pharmaceutical Regulatory and Compliance Congress 20 (Nov. 7, 2012).

⁴⁹ *Id.* at 19.

⁵⁰ *See, e.g., In re John Doe Corp.*, 675 F.2d 482, 489-92 (2d Cir. 1982) (holding that an internal investigation that excludes crucial information could be perceived as biased and possibly creating a misleading report).

⁵¹ *See Pearce*, 664 F. Supp. at 1510-17.

explain his involvement before his death. The process of the SIC's investigation was deficient in numerous ways, including the failure to interview virtually all of the key witnesses and the reliance upon limited, ambiguous documents. Perhaps most significantly, the findings in the Freeh Report about Mr. Paterno concerning his alleged knowledge of the 1998 incident and purported concealment of the 2001 incident were not properly supported. Instead, the SIC attempted to construct an unsubstantiated "collective guilt" among Messrs. Paterno, Curley and Schultz and Dr. Spanier to maintain its conclusions.

1. Defects in the Process of the SIC's Investigation

a. *Failure to Identify Witnesses Interviewed or to Interview Key Witnesses*

The SIC described in the Freeh Report that it investigated the events in question by "conducting over 430 interviews of key University personnel and other knowledgeable individuals" including current and former Trustees; current and former administrators, faculty and staff, including coaches and student-athletes; law enforcement officials; and members of the State College community.⁵² The SIC stated that it had "unfettered access" in conducting interviews and that it covered in the interviews 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."⁵³ Although the Freeh Report's description of its interview process sounds impressive, the SIC did not interview the most significant witnesses.

First, other than offering generalizations in the summary of its process, and occasionally specifically identifying witnesses within the text or footnotes, the Freeh Report fails to provide identifying information for the vast majority of the witnesses it interviewed. As a result,

⁵² Freeh Report at 9.

⁵³ *Id.* at 11, 12.

anonymous sources are often set forth as evidence for critical conclusions in the Report. Without an understanding of who actually made the statements set forth in the Freeh Report, there is no way for the reader to weigh the credibility or reliability of witnesses or the consistency of statements among witnesses. There also is no description in the Report of any such credibility or consistency analysis performed by the SIC. Further, the Freeh Report also does not describe how many witnesses the SIC interviewed during the investigation, and instead discusses the number of interviews it conducted. As a result, it is unclear whether some witnesses were interviewed once or many times.

In at least one instance, the anonymous source for some of the Freeh Report's assertions has been revealed through subsequent press interviews. During those interviews, information was revealed that raises questions as to the source's credibility. Specifically, the Freeh Report describes an incident involving Mr. Sandusky that was witnessed by a temporary Penn State janitor and his decision not to inform Penn State officials about it because he feared retaliation.⁵⁴ A footnote in support of the assertion that the janitor was justified in fearing retaliation cites to an anonymous source's account of an April 2007 disciplinary action involving several Penn State football players in which Mr. Paterno intervened in the discipline.⁵⁵ Subsequent press interviews revealed that the anonymous source cited in the footnote was Dr. Vicky Triponey, former Penn State Vice President of Student Affairs.⁵⁶ Several subsequent commentators and news articles have raised questions as to Dr. Triponey's biased agenda or possible misrepresentation of the

⁵⁴ *Id.* at 65.

⁵⁵ *Id.* at 65 n.w.

⁵⁶ Mike Jensen, *Vicky Triponey, the Woman Who Took on JoePa*, PHILADELPHIA INQUIRER, July 22, 2012.

facts.⁵⁷ Without knowing Dr. Triponey's identity, it would have been impossible to evaluate properly the credibility and reliability of any statements made by her.

Second, in addition to failing to identify whom the SIC *did* interview, the Freeh Report also provides virtually no information about whom the SIC *did not*, or *could not*, speak to and why. The Freeh Report acknowledges that some witnesses declined to be interviewed on the advice of counsel and identifies as examples Messrs. Sandusky, Schultz, and Curley and former University outside legal counsel, Wendell Courtney.⁵⁸ Although the Freeh Report states that the Attorney General requested that the SIC not interview former University Director of Public Safety Thomas Harmon and former assistant coach Michael McQueary, it alludes to the fact that the Attorney General asked the SIC not to talk to others, without identifying them.⁵⁹ The Freeh Report also describes that, generally, witnesses were cooperative and forthright, but also states, without specifically naming them, that there were a "few exceptions" who were not.⁶⁰

Third, the Freeh Report fails to acknowledge that, as a result of the above-described limitations, it lacked access to the most *critical* witnesses, which severely limits the reliability and usefulness of the Report. Indeed, the SIC interviewed only one witness (Dr. Spanier) who had direct knowledge about the most important incidents discussed in the Freeh Report. Despite this fact, the Freeh Report states that, while the information unavailable witnesses "could have provided would have been pertinent to the investigation, the findings contained in this report

⁵⁷ See, e.g., Anne Danahy, *Penn State Athletics Study Counters Triponey Claims*, CENTRE DAILY TIMES, Sept. 2, 2012 (questioning the claims made by Dr. Triponey regarding the PSU athletic program); Joe Posnanski, *Paterno 312-15* (2012) (discussing the controversy surrounding Vicky Triponey during her time at Penn State and the incident that eventually led to her resignation); The Vicky Triponey Timeline of Terror, Safeguard Old State, <http://safeguardoldstate.org/the-vicky-triponey-timeline-of-terror> (last visited Dec. 4, 2012) (Safeguard Old State is a student run advocacy group that posted this timeline back in 2007, documenting the supposed wrongdoings of Dr. Triponey while at PSU).

⁵⁸ Freeh Report at 12.

⁵⁹ *Id.*

⁶⁰ *Id.*

represent a fair, objective and comprehensive analysis of the facts.”⁶¹ Incredibly, considering the findings in the Freeh Report are supported substantially by less than 30 contemporaneous documents, the Report goes further, stating that “the extensive contemporaneous documentation that the Special Investigative Counsel collected provided important insights, even into the actions of those who declined to be interviewed.”⁶² In light of the broad and damning conclusions in the Freeh Report, such statements by the SIC are irresponsible and self-serving. It is virtually impossible to provide a full account of incidents, and more importantly to make judgments related to them, without the benefit of talking to the individuals who were involved at the time they occurred. Perhaps most critically, it is unfair to make findings about credibility and intent without interviewing witnesses necessary to make those conclusions.

Fourth, the SIC apparently gave short shrift to the information important witnesses provided that was contrary to the Freeh Report’s findings. As discussed above (and in greater detail below), Dr. Spanier was the only witness interviewed by the SIC with direct knowledge about the alleged cover-up involving the 2001 incident. However, as has been widely reported, the SIC did not interview Dr. Spanier until just six days prior to the Freeh Report’s publication on July 12, 2012.⁶³ According to his counsel, Dr. Spanier vehemently denied the SIC’s findings, including the Freeh Report’s allegations of a cover-up relating to the 2001 incident to prevent bad publicity for the University.⁶⁴ As anyone who has drafted a long report knows, the Freeh Report was likely in near final draft at the time of Dr. Spanier’s interview. For the SIC to consider properly Dr. Spanier’s statements, and to perform any necessary follow-up, it should

⁶¹ *Id.*

⁶² *Id.*

⁶³ *See supra* note 19.

⁶⁴ Elizabeth K. Ainslie, *Two Investigations: A News Release From Attorneys For Dr. Graham Spanier* (July 16, 2012).

have conducted his interview well in advance of the date the Freeh Report was released. Even more critically, the Freeh Report should have considered and addressed what Dr. Spanier stated in his interview.⁶⁵

The SIC's lack of access to these most significant witnesses, and the Report's other weaknesses about witnesses described above, calls into question the fairness, completeness, thoroughness, and credibility of the findings in the Freeh Report as they relate to Mr. Paterno.

b. *Failure to Adequately Address Documentation Issues*

The Freeh Report touts the fact that the SIC analyzed “over 3.5 million pieces of pertinent electronic data and documents”⁶⁶ and states that “extensive contemporaneous documentation . . . provided important insights . . .”⁶⁷ The Freeh Report's description of the documentary evidence supposedly supporting its findings is of concern.

First, despite the SIC purporting to review millions of documents, the Freeh Report specifically identifies only 30 exhibits as relevant to support its findings.⁶⁸ Some of these exhibits subsume portions of other attached exhibits, which gives the appearance of more documented support for the Report's findings than actually exists.⁶⁹

Second, the Freeh Report fails to acknowledge the crucial fact that, due to a University-wide computer system change in 2004, the vast majority of Penn State e-mails dated prior to that

⁶⁵ It has also been widely reported that Dr. Spanier told the SIC that federal investigators reviewed his involvement in the 1998 and 2001 incidents as part of a federal clearance procedure and still determined him to be cleared. *See, e.g., Critique of the 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* at 16, available at http://espn.go.com/photo/preview!/pdfs/120822/espn_pennst_critique_of_report.pdf; Timothy K. Lewis, *Press Conference Remarks on Behalf of Dr. Graham B. Spanier*, at 4 (Aug. 22, 2012). The Freeh Report fails to mention this fact, nor does it describe that it made any effort to collect this information.

⁶⁶ Freeh Report at 9.

⁶⁷ *Id.* at 12.

⁶⁸ *See generally id.*

⁶⁹ *See, e.g., id.* at Exs. 2B, 2C, 2E.

year are no longer available.⁷⁰ As a result, most of the potentially relevant documents created prior to 2004, including those concerning the 1998 and 2001 incidents that serve as the primary bases for the Report, could not be reviewed. Although the Freeh Report does not discuss it, I understand that the only relevant pre-2004 e-mails discovered and reviewed by FSS were e-mails retained voluntarily by Mr. Schultz, who directed the University's information technology personnel to migrate the historic messages he had saved at the time of the change to Penn State's new e-mail system. Because deleted messages or messages sent or received prior to 2004 by University personnel other than Mr. Schultz apparently were not available for review, it is impossible to know what other e-mails may have provided insight into these matters. The Freeh Report also does not disclose the total number of documents it reviewed from the 1998 and 2001 time period, instead providing only a total number of documents reviewed without reference to the e-mail system change.

c. *Inappropriate Reliance upon Grand Jury Testimony and Presentment*

Throughout the Freeh Report, the SIC references the grand jury proceeding, including the grand jury presentment of November 4, 2011 and testimony thereof from the Centre County investigation of Mr. Sandusky.⁷¹ The Freeh Report's reliance on the grand jury presentment and proceedings is misplaced and overstated.

Grand jury proceedings and any related presentments are used to determine whether there is sufficient evidence to pursue criminal charges against a suspect.⁷² The burden of proof on the prosecution in grand jury proceedings is not the higher burden of "beyond a reasonable doubt" used during criminal trials, but rather whether the person "appears to have committed" an

⁷⁰ See *supra* note 22.

⁷¹ See, e.g., Freeh Report at 14, 66-69.

⁷² See 42 Pa. Code § 4548.

offense.⁷³ The Freeh Report fails to address this important issue regarding burden and instead treats the November 4, 2011 grand jury presentment as fact. A grand jury presentment, however, is neither evidence nor is it a transcription of testimony. Rather, it is a document drafted by a prosecutor to obtain majority approval by the grand jury.⁷⁴ Further, a presentment is not typically admissible in judicial proceedings as it constitutes inadmissible hearsay.⁷⁵ The Freeh Report fails to address these important evidentiary issues in relying upon the November 4, 2011 grand jury presentment.

The Freeh Report, in citing to the grand jury testimony of witnesses (*e.g.*, Messrs. McQueary, Paterno, Schultz, and Curley, and Dr. Spanier), fails to discuss the two main evidentiary problems with grand jury testimony generally. First, although a grand jury witness may be represented by counsel, his counsel is not permitted to object to improper or misleading questions, which has the potential to create a one-sided record.⁷⁶ Second, there is no cross-examination of witnesses permitted in grand jury proceedings.⁷⁷ A thorough cross-examination is always of paramount importance in eliciting accurate and balanced testimony and in evaluating whether certain testimony may be inaccurate. By failing to address these fundamental issues with grand jury testimony, the Freeh Report allows readers to make unfounded inferences about the accuracy of certain statements it relies upon to render its conclusions.

Further, the Freeh Report fails to address substantive discrepancies between the November 4, 2011 grand jury presentment and other witness statements. The grand jury

⁷³ *Id.*

⁷⁴ *Id.* § 4551(a).

⁷⁵ See, *e.g.*, *Jack Martinez, Surviving Partner t/a M & S Tool & Mach. Co. & M & S Tool Mach. Co., Inc. v. Redevelopment Auth. of the City of Philadelphia*, No. 6608, 1992 WL 1071394 (Pa. Com. Pl. Apr. 1, 1992).

⁷⁶ 42 Pa. Code § 4549(c).

⁷⁷ *Id.*

presentment asserts through Mr. McQueary's testimony that the 2001 incident in the Lasch Building shower with Victim 2 actually occurred in March 2002.⁷⁸ Although the Freeh Report briefly acknowledges this fact,⁷⁹ it fails to address the fact that such a discrepancy could raise credibility issues regarding Mr. McQueary's testimony. In addition, the grand jury presentment describes the testimony of Mr. McQueary relating to the 2001 incident as Mr. Sandusky subjecting Victim 2 to "anal intercourse."⁸⁰ However, at the December 16, 2011 preliminary hearing concerning Messrs. Curley and Schultz ("Preliminary Hearing"), Mr. McQueary testified, "I have never used the word anal or rape in this – since day one."⁸¹ The November 4, 2011 grand jury presentment also states that Mr. McQueary went to Mr. Paterno's home "where he reported what he had seen."⁸² Again, at the Preliminary Hearing, Mr. McQueary repeatedly testified that he never told Mr. Paterno any of the specifics of what he saw.⁸³ For these reasons, the Freeh Report's heavy reliance on the November 4, 2011 grand jury presentment and proceedings is misplaced. This problem is further compounded given Mr. McQueary was not interviewed as a part of the SIC's investigation.

2. **There Is No Credible Evidence to Support the Finding That Mr. Paterno Conspired with Others to Cover Up Mr. Sandusky's Actions**

The Freeh Report claims that Mr. Paterno conspired with Messrs. Schultz and Curley and Dr. Spanier to cover up the incidents involving Mr. Sandusky in order to avoid bad publicity.⁸⁴ The Report, however, fails to offer any credible evidence to support such an assertion.

⁷⁸ Grand Jury Presentment at 6.

⁷⁹ Freeh Report at 66.

⁸⁰ Grand Jury Presentment at 6-7.

⁸¹ Preliminary Hearing Transcript at 72.

⁸² Grand Jury Presentment at 7.

⁸³ See, e.g., Preliminary Hearing Transcript at 24, 74, 102.

⁸⁴ Freeh Report at 16.

First, as discussed in greater detail below, the Report fails to acknowledge that there is no credible evidence of what, if anything, Mr. Paterno knew of the 1998 incident or about Mr. Paterno's involvement in the 2001 incident after he learned of it from Mr. McQueary and reported it to Messrs. Curley and/or Schultz.

Second, the SIC's conclusion that a conspiracy existed to "conceal" the actions of Mr. Sandusky in order to avoid bad publicity is also undermined by the very facts the Report describes. "Concealment" is "[t]he act of refraining from disclosure; especially, an act by which one prevents or hinders the discovery of something; a cover-up."⁸⁵ A fair and credible report by the SIC should have addressed why the SIC believed the record supported the finding of a cover-up, despite the fact that so many people were told of the incidents. Had Mr. Paterno wanted to conceal the facts from authorities for the betterment of his football program, it is difficult to understand why he would have disclosed the accusations to Messrs. Curley and/or Schultz. Moreover, Mr. McQueary confirmed that no one, including Mr. Paterno, Mr. Curley, or Mr. Schultz, ever asked him to refrain from disclosing the 2001 incident.⁸⁶

Mr. Paterno was not the only alleged "co-conspirator" to act in ways inconsistent with a purported attempt to "conceal" the actions of Mr. Sandusky. In his grand jury testimony, Mr. Curley testified repeatedly that he spoke in person with Dr. Jack Raykovitz, Director of The Second Mile, about Mr. Sandusky's actions relating to the 2001 incident.⁸⁷ Mr. Freeh acknowledges this in the Report, and states further that Dr. Raykovitz told two people affiliated with The Second Mile.⁸⁸ Also, during the Preliminary Hearing, John McQueary, Michael

⁸⁵ *Black's Law Dictionary* 306 (8th ed. 2004).

⁸⁶ Preliminary Hearing Transcript at 38.

⁸⁷ *Id.* at 182, 195-96.

⁸⁸ Freeh Report at 78.

McQueary's father, testified that he, along with Dr. Jonathan Dranov, a McQueary family friend and the elder McQueary's boss, spoke with Mr. Schultz about the 2001 incident after a business meeting in John McQueary's office sometime after Michael McQueary initially came to him.⁸⁹ In addition, John McQueary testified that Mr. Schultz indicated that there had been other allegations against Mr. Sandusky and that they had "never been able to really unearth anything or sink our teeth into something that we had that was substantial."⁹⁰ This is most likely a reference to the 1998 incident. Although the Freeh Report cites to the testimony by John McQueary during the Preliminary Hearing about his conversation with Mr. Schultz,⁹¹ the Report completely ignores the fact that his description of this encounter weighs against the Report's conclusion of an alleged conspiracy to conceal Mr. Sandusky's actions. Moreover, Mr. Schultz reached out to Wendell Courtney, outside counsel for Penn State, about the situation.⁹² This is further evidence that there was no intent to limit the number of people who knew of this matter, much less engage in a cover-up. Without any evidence and without speaking to any of the key parties involved with the initial reporting, the Report falls glaringly short of suggesting, let alone proving, any concealment by Mr. Paterno.⁹³

Third, the Freeh Report asserts:

Taking into account the available witness statements and evidence, the [SIC] 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

⁸⁹ Preliminary Hearing Transcript at 135-39.

⁹⁰ *Id.* at 139.

⁹¹ Freeh Report at 67 n.x.

⁹² *Id.* at 69.

⁹³ In addition, and significantly, the Freeh Report notes that there is no evidence of interference by Mr. Paterno or any University administrator with the 1998 investigation. *Id.* at 52. That does not prevent the Freeh Report, however, from drawing the conclusion of a cover-up of Mr. Sandusky's actions. *Id.* at 16.

University's Board of Trustees, the Penn State community, and the public at large.⁹⁴ (emphasis added).

However, the Freeh Report fails to support this broad finding about motive with any actual evidence, including identifying any specific witness statement or document. Without any evidence, it is wrong to make the overarching conclusion that Mr. Paterno chose not to report the 2001 incident for fear of bad publicity.

Moreover, there is contrary evidence that Mr. Paterno in fact did *not* fear bad publicity for his football program. Not even a year prior to the 2001 incident, Mr. Paterno was criticized by the media for keeping star quarterback Rashard Casey on the Penn State football team after he was charged with aggravated assault of an off-duty police officer.⁹⁵ Those charges were later dropped, and Mr. Casey eventually settled his lawsuit against the police department for malicious prosecution.⁹⁶ Throughout this tumultuous period, Mr. Paterno stood by Mr. Casey, whom he believed had been falsely charged with a serious crime despite receiving harsh criticism from the media. These facts raise the question of why Mr. Paterno would be willing to withstand bad publicity for a current player, yet supposedly be unwilling to endure bad publicity for the actions of a former coach, whom he reportedly did not like much.⁹⁷ When taken in context with what was occurring at the University in 2001 with a current football player, the Freeh Report's conclusion of an alleged cover-up to avoid the consequences of bad publicity becomes even more tenuous.

⁹⁴ *Id.* at 16.

⁹⁵ Ray Fittipaldo, *Testy Paterno Backs Casey*, PITTSBURGH POST-GAZETTE, July 27, 2000.

⁹⁶ David Porter, *Rashard Casey Settles Suit With Hoboken Police Department*, ASSOCIATED PRESS, Aug. 13, 2003.

⁹⁷ *See, e.g.*, Posnanski, *supra* note 57, at 213.

3. **The Freeh Report's Conclusions About Mr. Paterno Are Not Appropriately Supported**

a. *The Report's Findings Concerning Mr. Paterno's Knowledge of the 1998 Incident Are Unfounded*

In the Freeh Report, the SIC describes that, on May 3, 1998, an incident occurred between Mr. Sandusky and a young boy that included physical contact in the showers of the Lasch Building on the campus of the University.⁹⁸ The following day, after noticing her son was upset, the boy's mother contacted a psychologist who encouraged her to contact the local authorities, who then began an investigation into the matter in coordination with child protective services organizations.⁹⁹ As the Freeh Report describes in great detail, the 1998 incident was investigated exhaustively by the full spectrum of Pennsylvania authorities, the officials of which were all educated, trained and experienced in dealing with child sexual abuse. These authorities included: (1) the University Police Department; (2) the Centre County Children and Youth Services ("CYS"); (3) the State College Borough Police Department; (4) the Centre County District Attorney; and (5) the Pennsylvania Department of Public Welfare ("DPW").¹⁰⁰ After the investigation about the 1998 investigation was complete, the District Attorney's office declined to file charges against Mr. Sandusky.¹⁰¹

The Freeh Report's findings regarding Mr. Paterno's knowledge of or involvement in the 1998 incident suffer from the same deficiencies of process and lack of evidentiary support identified above. At the outset, the Freeh Report refers generally to "the record" when making certain assertions regarding the 1998 incident and investigation without ever describing what the

⁹⁸ Freeh Report at 41-42.

⁹⁹ *Id.* at 42.

¹⁰⁰ *Id.* at 42-47.

¹⁰¹ *Id.* at 46.

alleged “record” is based upon.¹⁰² It is apparent, however, that “the record” is lacking because the SIC apparently failed to interview virtually all of the key witnesses from the 1998 incident and investigation including: (1) Mr. Sandusky; (2) Mr. Schultz; (3) Mr. Curley; (4) Mr. Paterno; (5) the 1998 victim; (6) the mother of the 1998 victim; (7) the second 1998 victim, interviewed by police during the 1998 investigation regarding a similar shower incident with Mr. Sandusky; (8) Mr. Harmon, former University Director of Public Safety; (9) Ray Gricar, former Centre County District Attorney; (10) Karen Arnold, former Centre County Assistant District Attorney; (11) Alycia Chambers, psychologist of the 1998 victim; (12) John Seasock, the CYS counselor who evaluated the 1998 victim; (13) John Miller, the CYS caseworker involved; and (14) Mr. Courtney, outside counsel to the University during the relevant time. It is also unclear whether the SIC interviewed Jerry Lauro, the DPW representative who handled the case, or Detective Ron Schreffler from the University Police Department—two of the individuals most intimately involved in the investigation of the 1998 incident. Any report of these events that excludes the primary witnesses is dramatically deficient and incomplete and should not form the basis for findings of the nature of those in the Freeh Report.

Despite the Freeh Report’s findings to the contrary, there is no credible evidence of what, if anything, Mr. Paterno was aware of concerning the 1998 incident or the investigation that followed. Mr. Paterno died without the opportunity to talk to the SIC about its allegations. However, in his testimony to the grand jury in January 2011 regarding the 1998 incident, Mr. 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?” He responded:

¹⁰² *Id.* at 51.

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.¹⁰³

Similarly, in his final news interview with Sally Jenkins of the *Washington Post*, Mr. Paterno was asked about his awareness of the 1998 incident and investigation. Mr. Paterno reiterated his lack of knowledge: “You know [the 1998 incident and investigation] wasn't like it was something everybody in the [football] building knew about. Nobody knew about it.”¹⁰⁴

The scant evidence that is discussed in the Freeh Report does not contradict Mr. Paterno's testimony or interview that he was unaware of the 1998 incident or investigation. The SIC relies primarily on two e-mails to support its findings that Mr. Paterno had knowledge of the events in 1998. However, these e-mails, attached as Exhibits 2A and 2B to the Report, are ambiguous at best. First, as with the other e-mails appended to the Freeh Report as evidence concerning the 1998 and 2001 incidents, these e-mails were located in Mr. Schultz's files, which he retained as part of his own voluntary practice. Because all other e-mail from this time period apparently was not saved by the University when it migrated to a new e-mail system in 2004, it is impossible to know what other or related e-mails may have once existed regarding these matters. Second, because the SIC failed to interview the authors or recipients of Exhibits 2A and 2B, the contents and the context in which they were drafted and sent could not be verified.

In addition, when these e-mails are examined closely, it becomes even more clear that they do not support the SIC's findings with respect to Mr. Paterno. Exhibit 2A includes a May 5, 1998 e-mail from Mr. Curley to Mr. Schultz with the subject line, “Joe Paterno,” and states, “I

¹⁰³ Preliminary Hearing Transcript at 177-78.

¹⁰⁴ Jenkins, *supra* note 6.

have touched base with the coach. Keep us posted. Thanks.”¹⁰⁵ There are a number of issues with this document that the Freeh Report wholly ignores in using it as support for its conclusions about Mr. Paterno’s knowledge of the 1998 incident. First, it is unclear what Mr. Curley was referring to when he said he “touched base with the coach.”¹⁰⁶ Second, it is also unclear who “the coach” referenced in the e-mail is. Other than the subject line, there is no specific mention of Mr. Paterno.¹⁰⁷ The Freeh Report, however, assumes without any supporting evidence, particularly given that the SIC did not speak to the author or recipient, that “the coach” is Mr. Paterno.¹⁰⁸ Third, there is no evidence cited in the Report to support the proposition that this initial e-mail relates to the 1998 investigation at all. Even assuming that the e-mail does relate to the 1998 investigation, there is no evidence of the level of information regarding the 1998 incident, if any, that Mr. Curley provided to “the coach.”

Exhibit 2B contains a May 13, 1998 e-mail from Mr. Curley to Mr. Schultz with a subject line, “Jerry,” and states, “Anything new in this department? Coach is anxious to know where it stands.” Exhibit 2B also cannot withstand the type of close scrutiny the Freeh Report chose not to give it. First, as with Exhibit 2A, from the face of the document, it is unclear who the “Coach” referenced in the e-mail is. The subject line, “Jerry,” suggests that the “Coach” could just as likely be Mr. Sandusky as Mr. Paterno. Unfortunately, neither the recipient nor the sender was interviewed and the Report offers no other direct evidence regarding it. Second, similar to Exhibit 2A, there is no evidence to support that this initial e-mail relates to the 1998 incident and could just as easily concern other topics. Around this time, for example, Mr. Sandusky had

¹⁰⁵ Freeh Report at 48; *see also id.* at Ex. 2A.

¹⁰⁶ *Id.* at 48; *see also id.* at Ex. 2A.

¹⁰⁷ *Id.*

¹⁰⁸ *Id.* at 51.

proposed to the University administration the possibility of starting a football team at the University's Altoona campus where he could be the head coach.¹⁰⁹ Ultimately, the administration chose not to move forward with this proposal.¹¹⁰ The Freeh Report, however, does not discuss this possible reading of the e-mail. Third, there is no indication in the later e-mails that Mr. Curley intended to or in fact did communicate any information regarding the 1998 investigation from Mr. Schultz to the "Coach."

For all these reasons, it is wrong for the Freeh Report to draw the conclusion that this e-mail somehow confirms that Mr. Paterno was "kept informed"¹¹¹ of the 1998 investigation without simultaneously acknowledging its deficiencies and other equally reasonable explanations. Because the vast majority of key witnesses, including the authors and recipients of these e-mails, were unavailable for interviews, there was no way for the SIC to confirm the documents' contents or context.

The Freeh Report makes further unsupported inferences and assumptions regarding the level of detailed knowledge that Mr. Paterno possessed relating to the 1998 incident and investigation. Even assuming that Mr. Paterno generally was aware of the 1998 incident, the Freeh Report presumes that Mr. Paterno was intimately aware of all the details of the investigation that followed. For example, the Freeh Report assumes and implies that Mr. Paterno was informed of the conclusion and result of the 1998 investigation. The Freeh Report states, "[T]he available record is not clear as to how the conclusion of the Sandusky investigation was conveyed to Paterno."¹¹² Embedded in that sentence is the implication that Mr. Paterno knew

¹⁰⁹ *Id.* at 56.

¹¹⁰ *Id.* at 57.

¹¹¹ *Id.* at 39.

¹¹² *Id.* at 51.

about the 1998 investigation and was made aware of the conclusion of the 1998 investigation by the Report's use of the word "how" instead of "whether." The "evidence" on which the Freeh Report relies to make such a conclusion is that "[w]itnesses consistently told the [SIC] that Paterno was in control of the football facilities and knew 'everything that was going on.'"¹¹³ The Freeh Report does not explain which witnesses made these conclusory statements or upon what information the witnesses based their statements. Without more, such statements made during a supposed independent investigation should be given little-to-no credibility as it relates to Mr. Paterno's specific knowledge of the investigation of the 1998 incident or its conclusion.

The Freeh Report draws additional strained inferences regarding Mr. Paterno's knowledge of the 1998 incident.¹¹⁴ The Freeh Report discusses Exhibit 2G, which is a handwritten note allegedly maintained by Mr. Paterno relating to Mr. Sandusky's proposed involvement with the University after his 1999 retirement, including "[a]ccess to training and workout facilities."¹¹⁵ The handwritten note then states, "Is this for personal use or 2nd Mile kids. No to 2nd Mile. Liability problems."¹¹⁶ The most obvious conclusion to be drawn from the note is Mr. Paterno's concern regarding the potential insurance liability associated with bodily injury to young children using University workout facilities. However, the Report does not make that logical conclusion and instead jumps to an extreme and unsupported finding that Mr. Paterno was referring to potential liability associated with Mr. Sandusky's abuse of children in the Lasch Building. Such inappropriate inferences once again call into question the accuracy, fairness and credibility of the Freeh Report's findings.

¹¹³ *Id.*

¹¹⁴ *See id.* at 51 n.m.

¹¹⁵ *Id.*

¹¹⁶ *Id.*

The Freeh Report also wholly disregards then-current Pennsylvania law regarding the confidential nature of an investigation into child abuse allegations. Under these laws, it would have been illegal for the investigators to reveal details about the 1998 incident or investigation.¹¹⁷ The existence of these laws weighs against the Report's inference that Mr. Paterno would have been aware of the 1998 investigation. Significantly, Mr. Sandusky was not charged with any crimes after the 1998 investigation.¹¹⁸ It is wrong to claim that one should treat another as a suspected criminal even after he has not been charged with any crime subsequent to an investigation by multiple Pennsylvania law enforcement and child protective services agencies.

b. The Report's Conclusions About Mr. Paterno's Actions with Respect to the 2001 Incident Suffer from Numerous Deficiencies and Are Not Supported by the Record

As with many other parts of the Freeh Report, the SIC relies on sparse documents and few facts to draw wide-reaching conclusions with respect to child sexual abuse by Mr. Sandusky on February 9, 2001. The facts, as stated by the Freeh Report, are that Mr. McQueary observed and/or heard some sort of sexual activity occurring between Mr. Sandusky and a young boy in the showers at the Penn State Lasch Building, a facility used by the football program. Mr. McQueary then told his father, John McQueary, and Dr. Dranov. John McQueary and Dr. Dranov suggested to Michael McQueary that he report what he saw and/or heard to Mr. Paterno, rather than go directly to the police. Reportedly, Michael McQueary called Mr. Paterno the next

¹¹⁷ See, e.g., 55 Pa. Code § 3490.91, which reads: "(a) Reports, report summaries and other accompanying information obtained under the CPSL, Child Protective Service Law, and this chapter in the possession of the department, a county agency and a CPS, Child Protective Service, are confidential." Further, 23 Pa. Code § 6339 states:

[R]eports made pursuant to this chapter, including, but not limited to, report summaries of child abuse and written reports made pursuant to section 6313(b) and (c) (relating to report procedure) as well as any other information obtained . . . concerning alleged instances of child abuse in the possession of the department, a county children and youth social service agency or a child protective service shall be confidential.

See also *McClary v. Smalls*, No. 95-12600, 1996 WL 614630 (Pa. Com. Pl. Jan. 3, 1996).

¹¹⁸ Freeh Report at 39.

day (Saturday, February 10, 2001) and arranged to visit Mr. Paterno at his home to inform him of the 2001 incident. Mr. Paterno then reported Mr. McQueary's disclosure about the 2001 incident to Mr. Curley and/or Mr. Schultz¹¹⁹ on Sunday, February 11.

Similar to the 1998 incident, most of the key witnesses who were first made aware of the 2001 incident—Messrs. Sandusky, McQueary, Paterno, Curley, and Schultz—were not interviewed by the SIC.¹²⁰ In addition, the SIC reportedly did not interview Dr. Dranov or John McQueary, the first individuals to meet with Michael McQueary, to better understand what Michael McQueary saw and heard or to gather facts concerning whom Dr. Dranov or John McQueary spoke about the incident.¹²¹ Instead, the SIC relied upon the grand jury testimony of the relevant witnesses involved.¹²² As discussed above, such grand jury testimony is a poor substitute for actual interviews, especially when the Report draws such strong conclusions based upon the perceived credibility of particular witnesses.¹²³

After reporting Mr. McQueary's observations to Mr. Curley and/or Mr. Schultz, there is no evidence that Mr. Paterno participated in determining Penn State's response to the 2001 incident. Mr. Paterno told the Attorney General he was not further involved during an interview concerning these matters in October 2011:

Q: And do you know what happened after that [reporting to Mr. Curley] with regards to Mr. McQueary and/or Mr. Curley?

A: Nope.

¹¹⁹ There is conflicting testimony as to precisely when, where, and whom Mr. Paterno informed. Certain testimony states that Mr. Paterno spoke with Mr. Curley over the phone, while other accounts indicate that Mr. Paterno met with both Mr. Curley and Mr. Schultz at his home on Sunday. *Id.* at 68. Due to the lack of clarity, this review and the Freeh Report use the phrase "Mr. Curley and/or Mr. Schultz" to avoid any ambiguity. *See, e.g., id.* at 63.

¹²⁰ The SIC did interview Dr. Spanier, *see id.* at 16, but there is no evidence that he was directly involved with the initial reporting. As a result, he would not likely offer much, if any, insight into these initial events.

¹²¹ *Id.* at 67 n.x.

¹²² *See generally id.*

¹²³ *See supra* at 16-18.

Q: Did Mr. Curley get back to you at some point in time after that to advise you what actions were taken . . .

A: No, no, I didn't, I had other things to do, we had . . . As I said, Jerry was not working for me.

. . .

Q: Subsequent, [sic] to that you're saying Mr. Curley never got back to you, correct, to advise you?

A: There was no need to get back.

Q: Did any police department ever get ahold of you about this?

A: Nope.

Q: Did anybody from the University, well, anybody from the University Police Department contact you?

A: Well, not till ten years later.¹²⁴

Despite this assertion by Mr. Paterno that he had no further involvement, the SIC goes to great lengths in the Report to insert Mr. Paterno into the chronology and groups Messrs. Paterno, Curley and Schultz and Dr. Spanier into one collective unit to conclude that the four men conspired to cover up the incident to avoid bad press. To support these allegations about Mr. Paterno, the SIC relies upon two ambiguous documents.

First, Exhibit 5C is a page from Mr. Schultz's notes dated February 12, 2001, the first business day after Mr. Paterno reported the incident to Mr. Curley and/or Mr. Schultz.¹²⁵ The notes state in part, "agreed TMC will discuss w JVP and advise we think TMC should meet w JS on Friday." As the Report presumes, TMC likely stands for Timothy M. Curley, JVP likely stands for Joseph V. Paterno, and JS likely stands for Jerry Sandusky.¹²⁶ However, the SIC did not interview Mr. Schultz to obtain further confirmation or explanation about these notes. Nor did the SIC question Mr. Curley to determine whether he actually followed-up with Mr. Paterno.

¹²⁴ Interview of Joseph V. Paterno, Commonwealth of Pennsylvania – Office of Attorney General (Oct. 24, 2011).

¹²⁵ See Freeh Report at Ex. 5C.

¹²⁶ See *id.* at 70.

This one page of unclear notes, without any explanation from the author or information as to subsequent follow-up from the participants, is not a reliable source in support of the Freeh Report's far-reaching conclusions.

The Freeh Report's findings with respect to Mr. Paterno also rest upon Exhibit 5G, which is an e-mail from Mr. Curley dated February 27, 2001. In the e-mail, Mr. Curley writes, "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. . . ." As with Exhibits 2B and 2C supporting the SIC's findings about Mr. Paterno's knowledge of the 1998 incident, Exhibit 5G was part of the e-mail retained voluntarily by Mr. Schultz. Other e-mails prior to 2004 apparently are no longer available for review because of the University's system conversion. For the reasons discussed above, these e-mails are ambiguous and unfortunately cannot be put into context by related messages or explained by the persons who drafted or received them. As a result, it is neither fair nor appropriate to draw any conclusions from them.

The Report characterizes Exhibit 5G as a damning piece of evidence proving Mr. Paterno conspired with Messrs. Curley and Schultz and Dr. Spanier to conceal the 2001 incident.¹²⁷ As further support for this finding, the SIC makes the extremely general statement that "several people" said that Mr. Curley was "Paterno's 'errand boy,'"¹²⁸ and thus Mr. Curley's knowledge or actions should be attributed to Mr. Paterno. The SIC never provided the identity of these people, nor any information to assess their credibility. Significantly, the Report also provides no evidence that Mr. Curley's decision was either known or agreed to by Mr. Paterno. The Report

¹²⁷ *See id.* at 75.

¹²⁸ *Id.*

also contains no evidence that Mr. Paterno ever attended a meeting with Mr. Schultz or Dr. Spanier about the 2001 incident; that either Mr. Schultz or Dr. Spanier ever mentioned a conversation with Mr. Paterno on this matter; or that the files of either Mr. Paterno or Mr. Schultz¹²⁹ contained any instructions or questions posed by Mr. Paterno to the group.

The actual language in Exhibit 5G also does not support the SIC's contention that Mr. Paterno was part of any "decision" not to report the incident to a law enforcement or child protection authority. Exhibit 5G reads, "After giving it more thought and talking it over with Joe yesterday-- *I am uncomfortable* with what we agreed" ¹³⁰ Mr. Curley uses the singular when discussing his proposed change in direction. If, as the SIC contends, Mr. Curley was so heavily influenced by Mr. Paterno then it would seem more likely that he would use the plural to demonstrate the fact that Mr. Paterno supported his proposal. Furthermore, there is no mention of what Messrs. Curley and Paterno discussed. The SIC's failure to interview any of the parties to the e-mail creates a gaping hole in its analysis. The Freeh Report fails to recognize or discuss this gap.

c. *The Freeh Report's General Conclusions About Mr. Paterno Lack Support*

In addition to the specific allegations discussed above regarding the 1998 and 2001 incidents, several more general findings about Mr. Paterno permeate the entire Report. Unfortunately, many of the general conclusions made by the SIC regarding Mr. Paterno lack support and, as a result, raise significant questions as to their accuracy and credibility.

¹²⁹ Mr. Schultz appears to have kept a rather extensive file labeled "Sandusky." See 2012 Grand Jury Presentment at 21-24. Many of the notes referenced in the Report appear to have come from that file. Freeh Report at 47, 70. One question raised by this file is, if Mr. Paterno was as involved in the collective group discussion as alleged in the Report, why would none of Mr. Schultz's notes reference Mr. Paterno's position or opinions. The Report never addresses this concern.

¹³⁰ Freeh Report at Ex. 5G (emphasis added).

i. The Freeh Report’s Conclusion That Mr. Paterno Wielded Excessive Influence at the University Is Not Supported by the Investigation Record

The Freeh Report states without any credible evidence that Mr. Paterno wielded “excessive influence at the University.”¹³¹ In support of this assertion, the Freeh Report replays an incident that occurred in the fall of 2000, where a temporary member of the Penn State janitorial staff allegedly witnessed Mr. Sandusky performing oral sex on a young boy.¹³² This janitor, referred to in the Report as “Janitor A,” was a temporary employee and, though other janitors seem to have encouraged him to report the incident to authorities, Janitor A refused, saying, “No, they’ll get rid of all of us.”¹³³

While fear of reprisal may be the reason why Janitor A did not report the incident to others at Penn State or state authorities, the Report makes the mistake of assuming that this impression of a temporary employee was an accurate assessment of what would have happened had the janitor reported the incident. The SIC offers no concrete evidence to support the Report’s contention that the janitor would have been fired. In actuality, the very facts reported by the SIC demonstrate the inaccuracy of Janitor A’s assessment. Mr. McQueary did report what he claimed he saw one year later and not only was he not fired, but he later received a full-time position as a coach for the Penn State football team.

The Freeh Report also relies on a University official’s perceived pressure from the Athletics Department during the discipline of certain football players in 2007. Again, the Freeh Report offers no specific evidence that Mr. Paterno was ever involved in actually reducing the discipline of any of his players, nor does the Report provide the identities of its sources. Other

¹³¹ *Id.* at 65 n.w.

¹³² *Id.* at 65.

¹³³ *Id.*

than citing to generalized views of select, anonymous individuals who may or may not have had interactions with Mr. Paterno, the Freeh Report fails to support an overly broad conclusion about Mr. Paterno's influence at Penn State.

To the contrary, it is well known that Mr. Paterno was demanding of his players personally and academically and did not tolerate poor behavior.¹³⁴ This is best illustrated by the mantra he instilled over his many decades at the University of "Success with Honor."¹³⁵ This view of his football program was designed to shape young men into true student-athletes. During his tenure, Penn State annually had one of the highest graduation rates for its football players of any university in the country.¹³⁶

ii. The Freeh Report's Conclusion That Mr. Paterno Lacked Empathy for the Victims of Mr. Sandusky's Abuse Is Unfounded and Offensive

The Freeh Report accuses Mr. Paterno and the other Penn State administrators of failing to demonstrate concern for the victims and placing the football program above all else.¹³⁷ The assertion that Mr. Paterno lacked empathy for children and/or victims of child abuse is contradicted by his long history of charitable work and dedication to the development of young men. Mr. Paterno dedicated his life to training student-athletes, and he spent his career trying to instill strong values and moral traits in those that went through his football program. He had a reputation for being dedicated to his players, even when it constrained the potential success of

¹³⁴ Posnanski, *supra* note 57, at 107.

¹³⁵ Joe Paterno, Penn State Commencement Speech (June 16, 1973), *available at* <http://www.la.psu.edu/documents/Paterno1973CommencementSpeech.pdf>.

¹³⁶ Kayla Webley, *Paterno's Payback? Penn State Football is No. 1 in Academic Bowl*, TIME, Dec. 7, 2011.

¹³⁷ Freeh Report at 16; *see also* Freeh Remarks at 4 ("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.").

his football team.¹³⁸ Mr. Paterno also committed himself to charitable activities, with a primary focus on children and young adults.¹³⁹ He gave more than \$4 million to charitable causes and helped raise an additional \$13.5 million to expand the Penn State library.¹⁴⁰ He made sure to participate in and support the Penn State dance marathon charity that raised money for children with cancer and his family remains active supporters of the Special Olympics program.¹⁴¹ These examples do not point to a person who lacked any concern for children or who would simply choose to ignore the suffering of children. Instead, his professional dedication and charitable giving demonstrate that Mr. Paterno was deeply concerned with the welfare of children.

4. Substantive Errors in the Freeh Report Call Into Question the Report's Accuracy and Credibility

The Freeh Report's accuracy was further undermined by the SIC's issuance of an extensive errata report less than two weeks after the report was issued.¹⁴² The errata sheet corrected not only several typographical errors, but also a substantive error that, in two instances, dramatically mischaracterized the meaning of an e-mail.¹⁴³ As originally written, the Freeh Report cited an e-mail to support the SIC's contention that Mr. Schultz was lying when he allegedly denied knowledge of the 1998 incidents in writing to Wendell Courtney, an outside lawyer to the University.¹⁴⁴ In fact, the SIC misquoted the e-mail: the document actually reflects

¹³⁸ See Posnanski, *supra* note 57, at 103.

¹³⁹ *Id.* at 150, 204-05.

¹⁴⁰ *Id.* at 372.

¹⁴¹ ESPN.com, *PSU Event Kicks Off Without Joe Paterno*, Feb. 21, 2012, available at http://espn.go.com/college-football/story/_/id/7588755/penn-state-nittany-lions-dance-marathon-goes-joe-paterno.

¹⁴² See Freeh, Sporkin & Sullivan LLP, *Errata Sheet* (July 24, 2012) [hereinafter *Errata Sheet*], available at <http://progress.psu.edu/assets/content/Louis-Freeh-Report-on-Penn-State-ERRATA-SHEET.pdf>.

¹⁴³ *Id.*

¹⁴⁴ *Id.*

Mr. Courtney denying knowledge of the incident in an e-mail to Mr. Schultz.¹⁴⁵ Such significant substantive errors are indicative of a defective report.

5. A Public Statement Made by Mr. Freeh Is Not Supported by His Report

At the press conference releasing his Report, Mr. Freeh mischaracterized the content of a critical e-mail from February 2001.¹⁴⁶ This e-mail, as described by the Report, was one of the most important documents discovered during the investigation. As explained in more detail above,¹⁴⁷ Mr. Curley explains in the e-mail the plan regarding the possibility of reporting the 2001 shower incident.¹⁴⁸ At his press conference, however, Mr. Freeh uses the plural to join Mr. Paterno with Mr. Curley's actions: "After Mr. Curley consulted with Mr. Paterno, however, *they* changed the plan and decided not to make a report to authorities."¹⁴⁹ In actuality, the e-mail very explicitly uses the singular when referring to Mr. Curley's plan and does not state that Mr. Paterno joined in Mr. Curley's decision or that he was even aware of the decision.¹⁵⁰ The distinction is important because, without this connection, Mr. Freeh and his investigation fail to offer any evidence connecting Mr. Paterno to the decision not to report Mr. McQueary's observations to the authorities. Such a misstatement and use of "collective guilt" without foundation raise very serious concerns as to the credibility of the Report.

¹⁴⁵ *Id.*; Freeh Report at 28, 52.

¹⁴⁶ Freeh Remarks at 4.

¹⁴⁷ *See supra* at 31-32.

¹⁴⁸ Freeh Report at Ex. 5G.

¹⁴⁹ Freeh Remarks at 4 (emphasis added).

¹⁵⁰ The e-mail states in part, ". . . I am uncomfortable with what we agreed were the next steps. I am having trouble with going to everyone, but the person involved. . ." Freeh Report, Ex. 5G. Unlike other errors made by Mr. Freeh at the press conference, this one was not corrected in the subsequent Errata Sheet. *See generally* Errata Sheet.

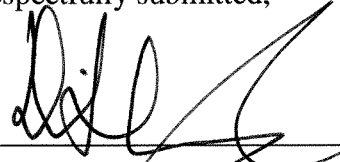
V. Conclusion

When the evidence relied upon in the Freeh Report is considered in an objective manner, it is clear that findings in the Report are not accurate, supportable or fair. There is no direct evidence that Mr. Paterno was aware of the 1998 incident or the investigation that followed. Furthermore, there are no credible facts in the Freeh Report to support its principal finding against Mr. Paterno that he conspired with others to cover up the 2001 incident. A review of a chronology of relevant events shows this lack of support:

- Mr. McQueary witnessed a young boy and Mr. Sandusky in the shower in the locker room of the Lasch Building on the night of February 9, 2001. The SIC never interviewed Mr. McQueary.
- Mr. McQueary then described what he witnessed that night to his father, John McQueary, and McQueary family friend, Dr. Dranov. Neither was interviewed by the SIC. Both men testified that Mr. McQueary never told them that what he saw and heard in the locker room was sexual in nature. Both men also testified that they told Mr. McQueary to report the incident to Mr. Paterno.
- Pursuant to the elder McQueary and Dr. Dranov's suggestion, Mr. McQueary informed Mr. Paterno about the incident the next day. The SIC never interviewed Mr. Paterno.
- Mr. Paterno reported the matter to Messrs. Curley and/or Schultz, who both then spoke to Mr. McQueary. The SIC never interviewed either Mr. Curley or Mr. Schultz.
- Mr. Schultz then spoke to Mr. Courtney, an outside lawyer for the University, about the 2001 incident. The SIC did not interview Mr. Courtney.
- Mr. Schultz also spoke to Dr. Raykovitz at the Second Mile, who reportedly spoke to at least two other people affiliated with the charity. The SIC did not interview Dr. Raykovitz and there is no indication that the SIC interviewed the other two people he informed.

The fact that there is also no evidence that Mr. Paterno or anyone else ever instructed these individuals or others not to discuss the incident further undermines the finding that Mr. Paterno conspired with others to cover up the 2001 incident. This lack of evidence supporting the Report's most scathing findings and the serious flaws with respect to the process of the SIC's investigation cause me to conclude that the Report's findings concerning Mr. Paterno are unjust and wrong.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Dick", written over a horizontal line.

Dick Thornburgh

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APPENDIX B

**Analysis of the Special Investigative Counsel Report and the
Crimes of Gerald A. Sandusky**

&

**Education Guide to the Identification and Prevention of
Child Sexual Victimization**

**James T. Clemente
February 2013**

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INTRODUCTION

When I was asked by representatives of the Paterno family to conduct an independent review and assessment of the findings and conclusions in the SIC report,¹ I was reluctant to do so. I have tremendous respect for my former boss and FBI director, Louis Freeh, and I thought I knew everything I needed to know about the case by reading various news accounts.

Nonetheless, I was told that the Paterno family wanted to find out the truth, whether it condemned or exonerated Joe Paterno. I decided to read any additional news accounts I could find. In one, it was recounted that immediately after Joe Paterno was fired by phone late at night, his wife called back and said, “After 61 years, he deserved better.” I also read that he died less than three months later and one of his dying wishes was that the public would learn the truth about what actually happened at Penn State. People may disagree as to whether Joe Paterno did deserve better, but there is no question that the public deserves to know the truth. That is why I agreed to read the full SIC report. After reading the report, it was clear to me that a number of the SIC’s conclusions were not supported by the evidence presented and many of the findings were based on common, yet erroneous, stereotypes of child sex offenders. I therefore decided to undertake a full analysis of the SIC investigation.

My analysis is based on my review of the SIC report, grand jury testimony, preliminary hearing testimony, the Sandusky trial transcripts, as well as articles, books, investigative reports, interviews, documents, and my education, training, experience, and expertise in the field of child sexual victimization. That expertise was developed over three decades of work and study in the field; first as a prosecutor for the New York City Law Department in the Bronx Family Court, then as a Federal Bureau of Investigation (FBI) Special Agent on the Joint FBI/NYPD Sexual Exploitation of Children Task Force, then on the MPD Cold Case and Major Crimes Task Force, followed by more than a decade as a Supervisory Special Agent on the Behavioral Analysis Unit, Crimes Against Children section in the FBI’s National Center for the Analysis for Violent Crime (NCAVC), and as an expert witness in the field of child sexual victimization.

In my private and professional life, I have worked with child advocacy groups, government organizations and non-government organizations concerned with the protection of children from sexual victimization. I have also worked with mental health professionals and organizations that treat, counsel, and monitor child sex offenders. In addition, I have lectured extensively on child sexual victimization and spoken publicly across the United States and around the world, sharing my story as a survivor of childhood sexual victimization. For a more complete record of my background and qualifications, please see my qualifications and curriculum vitae in appendices 1 and 2.

When the crimes of a prolific child sex offender are fully uncovered, people often think that a “monster predator” like that can not get away with such wicked acts for so long without detection or a cover up. I am here to tell everyone who reads my analysis, acquaintance molesters like Jerry Sandusky get away with their hidden crimes without any help every single

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 (2012) (also known as the “SIC report” or “Freeh report”) [hereinafter SIC report].

day; they spend a lifetime honing their grooming skills and, through thousands of individual benevolent acts, they convince the rest of us that they are the opposite of a molester, despite warning signs that are obvious only in hindsight. Understanding, detecting, and investigating acquaintance child sex crimes require us to think counter-intuitively and throw out everything we thought we knew about offender and victim behavior. Above all, it requires us to be educated and to have open dialogue about this difficult and complicated subject. My hope is that this analysis will serve as an educational tool so that every community, organization, and family can be better equipped to identify and prevent every type of child sexual victimization.

The SIC report makes a number of errors and draws incorrect conclusions, but above all, the report ignores everything we know about how acquaintance child molestation cases differ from child abuse,² and stranger and abduction-related child sex crimes. This case, therefore, is not just about Penn State football, or State College, Pennsylvania, or Joe Paterno; this case is about preferential, nice-guy, acquaintance child sex offenders and how they groom, deceive, and defraud all of us right under our noses. This case is about compliant victimization and the shame, embarrassment, and guilt that drive victim behavior. It also is about the exacerbating circumstances involved in male on male acquaintance child sex crimes.

I was told the Paterno family wanted to know how Sandusky got away with it. They wanted to understand what actually happened at Penn State, so they could help prevent child sexual victimization in the future. I have dedicated my career and a good part of my life to studying, investigating, and attempting to eradicate child sexual victimization. So, I seized this opportunity to educate the public in furtherance of that goal.

² Although the SIC report employs the often misused moniker of “sexual abuse” to describe the victimization crimes committed by Jerry Sandusky, this report will use the more accurate and generic description of “sexual victimization.” Sexual abuse is the term used by professionals in the field to describe sexual victimization of a child within the ring of care and custody, and is more applicable to intra-familial victimization, as opposed to the acquaintance molestation that is demonstrated in the majority of Sandusky’s known victims. However, in instances in which Sandusky victimized his foster or adoptive children, those cases are properly categorized as “sexual abuse.”

STARTING POINTS

First, Jerry Sandusky is a rightfully convicted preferential child sex offender (PSO)³ who is guilty of numerous serious and repeated sex crimes against a number of boys.⁴ As I will explain, Sandusky is a skilled and masterful manipulator, and in my expert opinion, he is in the top one percent of effective “groomers.”⁵

Second, as a career federal investigator, former prosecutor and former child sex crimes expert for the FBI, an expert witness in the field of child sexual victimization, and as a survivor of child sexual victimization myself,⁶ I am first and foremost concerned about the health, safety, and welfare of the children who were victimized by Sandusky and other offenders. It is my hope that my efforts documented herein will help educate the public about acquaintance child sexual victimization in general, and male sexual victimization in particular.

Third, I hope that those victimized by Sandusky and other offenders will be encouraged by this opportunity for open dialogue and discussion to come forward into an environment that is both more understanding and supportive of their plight, as well as helpful and restorative to their futures, so they can heal, find justice, and go on with their lives. I stand as a living example that being victimized does not mean you are less of a person, or your life is ruined. With the help and support of family, friends, the community and mental health professionals, children who are victimized can and do grow up to lead happy, healthy, and productive lives.

Fourth, I have no interest in or connection with Penn State football, I had no personal or professional interaction with Joe Paterno, and I have not followed his career in any way or seen any game that he coached.⁷ I do not follow college or professional football. Though I am being paid for my time to research and write this report, I have maintained independence while conducting my review of the SIC investigation and supplementing it with my own investigation.

³ Though the SIC report uses the term “pedophile,” this term actually denotes a clinical diagnosis regarding those who have recurring and intense fantasies, urges, or behaviors aimed at prepubescent children. Instead, law enforcement uses the descriptive term preferential child sex offender for offenders who have not been clinically diagnosed as pedophiles but exhibit a long-term and persistent pattern of sexual attraction to children of any age.

⁴ Based on my expertise in this area, I believe there are likely far more prior victims, similar to Matt Sandusky, who have not yet come forward. See Sara Ganim, *Matt Sandusky says he, too, was abused by his adoptive father*, The Patriot-News, June 22, 2012; Michael Isikoff, *Matt Sandusky details alleged sex abuse by his father*, NBC News, June 26, 2012.

⁵ Some of the terminology and phraseology will be repeated at times in this analysis due to the relevance of those terms to various concepts and the fact that they are necessary to explain those various concepts.

⁶ I was victimized as a teen by the director of a CYO camp, who was also my basketball coach. I did not disclose my victimization until about a decade later when I found out there were other victims. I then went to the FBI/NYPD SEOC Task Force and worked with them to investigate and prosecute the offender. In the end, it was determined that he had victimized several dozen boys in fourteen different schools and camps where he had taught and coached. When the case was concluded, the FBI agent who had worked the case recruited me into the FBI and I began my FBI career working on that same task force.

⁷ The only time I have been to State College, Pennsylvania was in 2005 for the funeral of a friend and colleague of mine who had attended Penn State. Former FBI director Louis Freeh graciously travelled to State College to give the eulogy at his funeral. It was a heartfelt and moving gesture on the part of Director Freeh, which gave much comfort and support to the bereaved.

Fifth, I hold former FBI Director Louis Freeh in the highest regard both personally and professionally. It was an honor to have served under him in the Bureau. He has been a great leader and a kind man to my colleagues and me. Therefore, when I was asked shortly after the SIC report was issued, and before I read the report, to contact Louis Freeh on behalf of a child sex crimes prevention group, I was happy to do so and thank him on their behalf for conducting the investigation. I too was very glad that his investigation was evoking an open dialogue about child sexual victimization. However, after reading the SIC report in its entirety, I now know that the SIC investigation made a number of errors, including its failure to properly consider the behavioral dynamics of the offender, the victims, and witnesses within the context of acquaintance child sexual victimization.

Sixth, investigating this type of crime is markedly counter-intuitive and investigators and the public need to have a deep understanding of these behavioral dynamics before they can understand and properly interpret the information and behavior presented in this case. It is precisely because this information is not within the general knowledge of the average person/juror, that local, state, and federal courts admit the testimony of expert witnesses, like myself, to explain to jurors the complicated behavioral dynamics of “preferential child sex offenders,” “nice-guy” acquaintance offenders, “grooming,” and “compliant victimization.” In fact, the SIC report does not once mention “preferential child sex offenders,” “nice-guy” acquaintance offenders, or “compliant victimization,” and uses the term “grooming” only once without applying this critical behavioral reality to their analysis. By not factoring in these dynamics, the SIC report got it wrong.

Seventh, while I authored this report at the behest of the representatives of the Paterno family, it is not just about Joe Paterno. This report is about finding the truth and educating the public about acquaintance child sexual victimization in the real world. This report does not take the focus away from the victims; it restores that focus. As an expert in this field, and as a former victim, I can attest that one of the worst things professionals, the media, and the public can do in the aftermath of the discovery of nice-guy offenders, like Sandusky, is to perpetuate the myth that his victims must have been frightened, threatened, or physically forced into sexual behavior with him.⁸ This practice, though well-meaning, hurts those children who became compliant in their victimization⁹ because this type of offender actually takes the opposite approach and treats them well, is kind to them, pays attention to them, shows them affection, makes them feel special, and/or gives them gifts.¹⁰ Another hurtful practice is talking about how horrendous, horrific, or life-changing these crimes were to the victims. The more we amplify what happened to the victims with emotional rhetoric, the more they and other victims in the general public feel damaged by what they have endured. They feel a sense of futility about ever being whole again. They feel the obstacles to leading happy and healthy lives are insurmountable. And most unfortunately, as a result of both of these practices, they and other victims are less likely to come forward.

⁸ Although a percentage of child sex crimes are committed by female offenders, I use the male pronoun here for simplicity. However, child sex crimes committed by females are just as illegal as those committed by male offenders and female offenders should be prosecuted with the same vigor as male offenders.

⁹ See Part III.D and appendix 3 for detailed information regarding compliant victimization.

¹⁰ As discussed below, this type of non-violent grooming behavior was testified to by all of Sandusky’s victims.

Eighth, revealing the truth, educating the public on the real dynamics of acquaintance child sexual victimization cases, and discerning the truth about Joe Paterno's actions and inactions in the process, should help the victims understand that they are not alone in what they experienced. It should assure them that the rest of us are gaining a better understanding of how to prevent this from happening again. Most victims will acknowledge that one of the things that haunts them the most about not feeling safe enough to come forward sooner is that they might have prevented other children from being victimized. The problem is that the general public's views and expectations about victim behavior are so skewed and unrealistic that it discourages real victims from coming forward. By describing the behavior exhibited by real victims who are groomed into compliance, this analysis will hopefully encourage victims to come forward and prevent other children from being victimized.

Finally, the sad truth is that as you read this analysis, there are thousands of acquaintance offenders similar to Sandusky sexually victimizing children in communities across this country. These "nice-guy" offenders are getting away with it because they appear to be good people who genuinely care about children. These "nice-guy" offenders escape detection even by those who are vigilant because they are on the look out for evil predators, not pillars of the community. Unless everyone in the public takes on the responsibility to educate themselves about the dynamics of acquaintance child sexual victimization, "nice-guy" offenders will continue victimizing children undetected and undeterred. For that reason, paying attention to the details of this analysis, sharing its contents with everyone you know, engaging in an age-appropriate open dialogue with children, however difficult, and investigating those who exhibit red flag warning signs, will go a long way towards eliminating this type of offending behavior.

I. The SIC Mandate and Conclusions

The special investigative counsel, Freeh Sporkin & Sullivan, LLP was hired 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’); and “The circumstances under which such abuse could occur in University facilities or under the auspices of University programs for youth.”¹¹

The SIC report reached three main conclusions regarding Paterno: (1) Paterno and others “concealed Sandusky’s activities from the authorities, the University’s Board of Trustees, the Penn State community, and the public at large.” And, according to Louis Freeh, Paterno “was an integral part of this “active agreement to conceal” in 2001; (2) Paterno and others “repeatedly concealed critical facts relating to Sandusky’s child abuse from authorities . . . in order to avoid the consequences of bad publicity”; and, (3) as a result of these actions, Paterno and others “failed to protect against a child sexual predator harming children for over a decade,” “empowered Sandusky to attract potential victims to the campus,” and “exposed [a] child to additional harm.”

This report will do two things. First, it will explain in detail why each one of these conclusions is wrong due to a failure to consider the behavior, facts and circumstances within the context of acquaintance child sexual victimization, a lack of evidence, a failure to consider additional evidence, and/or direct contradiction by the evidence contained in the SIC report itself. Second, it will give the reader enough background to understand what really happened, and how we can all work toward discovering other similar situations that are occurring right now in communities across this country, and preventing still others from happening in the future.

Before going any further it is critical to note that Freeh based his report on “reasonable” conclusions. This is not a standard of proof in any legal proceeding. It is tantamount to saying that it “could” have happened that way. It is not anywhere near the standard of proof in criminal cases, which is beyond a reasonable doubt. It is not sufficient proof to meet the minimum standard necessary to win a civil lawsuit, preponderance of the evidence. It is not even based on the weakest level of proof necessary to qualify for a search or arrest warrant, probable cause, which means that it is more likely to have occurred than not. Conclusions can be “reasonable” and at the very same time they can be 100 percent wrong. This is the case in many of the most important conclusions drawn in the SIC report. In many instances, the conclusions that are drawn are not even “reasonable” in light of the evidence.

II. How the SIC Got It Wrong

The SIC failed to properly factor the dynamics of acquaintance child sexual victimization into their investigation. Consequently, the SIC misinterpreted evidence and behavior and reached erroneous conclusions. Any investigation will reach the wrong result by using the wrong approach and by interpreting the facts through the wrong filter. There are a number of

¹¹ SIC report at 8. Although the SIC also provided recommendations regarding university governance, oversight, and administrative policies and procedures to help prevent and respond to sexual victimization of children in the future, this report will not opine on those narrow, university-specific recommendations.

complicated dynamics to this case, but ultimately it is about one core concept that the SIC missed: an insidious “nice-guy” acquaintance child sex offender who effectively groomed compliant victims and the community in and around Penn State University in order to sexually offend against boys for decades.

I and a number of my colleagues have spent our careers investigating, interviewing offenders and victims, writing reports, researching, lecturing, and testifying, all in an effort to explain how challenging these cases are and why “nice-guy” acquaintance offenders consistently get away with their criminal behavior for so long undetected. If you do not approach these cases and their facts with an understanding of the unique nature of acquaintance child sex crimes, then you will never reach the right conclusions, and you will never comprehend how the offender got away with it. And, you will never be able to stop the next “nice-guy” offender from victimizing children.

Indeed, without understanding these behavioral dynamics, we will repeatedly discover other offenders, like Sandusky, who got away with it for decades, and no amount of compliance monitoring and NCAA sanctions will make a difference. That’s what the SIC report does: it ignores decades worth of research and analysis we have done trying to understand the unique behavioral dynamics of these cases. The SIC treated this case as if it were investigating a “stranger danger” or “monster predator” offender,¹² instead of the very different and insidious “nice-guy” acquaintance offender. Simply put, in addition to the limitations of SIC’s mandate and the dearth of available facts, the SIC got it wrong because they investigated the case in the wrong way. It is a common mistake to think that all child sex offenders operate in the same way and present as horrible, evil people, but that is absolutely not true and it caused the SIC to draw erroneous conclusions. This report, applying my expertise developed over the past thirty years in the specialized field of acquaintance child sexual victimization is the first step toward correcting the record.

III. Behavioral Dynamics of Acquaintance Child Sex Offenders

In order to understand what happened at Penn State, the public first needs a basic understanding of who “nice-guy” acquaintance child molesters are, how they operate, and how they evade detection. The following background is the product of decades of work on the part of the members of the FBI’s National Center for the Analysis of Violent Crime, the Behavioral Analysis Unit, and other law enforcement and child care professionals in the field of child sexual victimization. As difficult as these concepts are to talk about, let alone read about, they should be read and discussed in detail by all adults who have any contact with or responsibility for children.¹³

¹² Stranger offenders typically use a ruse or lure to gain access to children and often control their victims through threats, force, or physical violence.

¹³ Although child sex crimes are not occurring in every school, organization, and community, every youth serving organization (YSO) is at risk for attracting child sex offenders. Therefore, every YSO has a responsibility to set up a program to educate, train, and monitor its employees and volunteers in an effort to prevent child sexual victimization.

A. Preferential Child Sex Offenders¹⁴

With respect to their victims, child sex offenders typically fall into three general categories: strangers, acquaintances, and family. Their motivations for offending are evaluated on a continuum. The two ends of that spectrum are represented by situational and preferential offenders. Situational offenders are those who victimize children but who do not have a definitive sexual attraction to children. As a result, their sexual offenses against children tend to result from circumstantial access to children rather than a methodical effort to pursue sexual encounters with children. Their offenses can generally be described as opportunistic and/or impulsive in nature; however, their sexual desires and fantasies typically involve adults.

Preferential child sex offenders (PSO), on the other hand, have a definitive sexual attraction to children, usually of a particular age range, gender, body type, personality, vulnerability, other set of characteristics, or any combination of the above. Despite their specific sexual interest in these particulars, preferential offenders may at times offend outside of their preference due to availability or circumstances. Acquaintance PSOs typically gain access, authority, and/or control over their intended victims through a process known as “grooming.” Sandusky is a preferential child sex offender. Sandusky also personifies a common and insidious subcategory of the PSO: the “nice-guy” acquaintance offender.

B. “Nice-Guy” Acquaintance Offenders

“Nice-guy” child sex offenders are much more prevalent, effective, and prolific than the stereotypical “stranger danger” type offender. In fact, the vast majority of children who are sexually victimized are offended against by someone they know. We call those offenders “acquaintance offenders.” The category of “acquaintance offenders” includes any non-stranger and any non-biological relative. One particularly insidious sub-category of acquaintance offenders is “nice-guy” offenders (sometimes referred to as the “pillar of the community” or “man of the year” offenders).

These are offenders who are friendly, normal, helpful, giving, loving people who no one would suspect are harboring sexual attractions to children. These cases are very difficult to investigate because a number of these offenders have high social status or are authority figures, such as: “teachers, camp counselors, coaches, clergy members, law-enforcement officers, doctors, judges Such offenders are in a better position to seduce and manipulate victims and escape responsibility.” And, equally important, “they are usually believed when they deny any allegations.”¹⁵ Both their status in the community and their affable personalities make it difficult to make a case against them for sexual victimization of children. “Convicting an acquaintance child molester who is a ‘pillar of the community’ is almost impossible based only on the testimony of one confused 5-year-old girl or one delinquent adolescent boy.”¹⁶

The above passages underscore the fact that even when it comes to trained law enforcement officers, it is very difficult to determine whether a person, who everyone in the

¹⁴ See appendix 3 for a full discussion of these topics.

¹⁵ Kenneth V. Lanning, *Child Molesters: A Behavioral Analysis* 77 (5th ed. 2010).

¹⁶ *Id.* at 140.

community knows and respects, is a child sex offender. Sandusky is a textbook preferential child sex offender, as well as being a textbook example of a “nice-guy” offender. However, I would put him in the top one percent of effective groomers in this country. This is based on the fact that he was so bold in his high-profile “altruistic” public persona, he founded a youth serving organization, and he was caught in the act — though cleared at the time — of what turned out to be grooming and sexually assaulting children in the showers in 1998, yet he still did the same thing in the same place again in 2001.¹⁷ Sandusky was able to deceive his way out of it. He built his reputation both professionally and interpersonally over many years of hard work and sacrifice. Drive, determination, selflessness, and altruism were his calling cards. He motivated others to give millions to needy children at The Second Mile. Sandusky was lauded and celebrated for his work. He effectively groomed most of the people who came in contact with him, including child care experts, psychologists, professionals, celebrities, athletes, coaches, friends, and family. And most notably, he was approved numerous times over thirty years as both a foster parent and an adoptive parent by child care professionals.

C. Grooming

In the context of child sexual victimization, grooming is a dynamic process utilizing a constellation of seemingly innocent behaviors aimed at gaining the cooperation of the child to achieve sexual gratification for the offender. In other words, it is a pattern of activity employed by preferential child sex offenders to gain access, authority, and control over children for sexual purposes, to ensure their silence, and to keep them in a position in which they can be repeatedly victimized. This dynamic process is aimed at potential child victims, their parents or guardians, and the community that surrounds them. Those who are closest to the child victims or the offender are precisely the ones who are most affected by grooming practices.

Offenders who “groom” typically seek out needy, isolated, or disadvantaged children and provide both emotional and tangible things to fill the needs of those children. They do this by providing: attention, recognition, affection, kindness, romance, gifts, money, trips, jewelry, clothing, food, shelter, drugs, alcohol, privileges, driving, and/or smoking. They also break down the boundaries that usually exist between adults and children by lowering inhibitions, by being overly physical and playful with them, by talking about or encouraging masturbation and/or sex, by giving sexual instructions, or by supplying pornography. They are very careful to do only those things that will be viewed in a positive light in public, and typically reserve the sexual behavior for one-on-one private encounters.

D. Compliant Victimization

One of the most counter-intuitive aspects of child sexual victimization investigations is embodied in the concept of compliant victimization.¹⁸ Children who are groomed into sexual

¹⁷ In my experience, because people do not want to talk about the topic of male on male child sexual victimization these types of “close calls” happen regularly with “nice-guy” offenders, but witnesses either do not believe what they see, do not know how to handle it, misinterpret what they see, or do not think anyone will believe them if they told.

¹⁸ Compliant victimization is such a difficult concept for people to understand and accept that when my colleague Ken Lanning first attempted to add the concept to his monograph (*see supra* note 15), the National Center for Missing & Exploited Children (NCMEC) repeatedly asked Lanning not to use it in his publication because they

victimization typically do not call out to be rescued or disclose when questioned about possible victimization because of a complex set of social and psychological factors, including the fact that they don't want anyone to know what has been done to them or what acts they had to do with the offender. For some, this is because they have finally found someone (the offender) who treats them well or tells them they are special; someone who grants them entrée into a world they never had a hope of entering before. Typically, this creates a feeling of intense ambivalence on the part of the victims. On one hand, they love the offender for the things he has done for them. On the other hand, they hate the offender for the things he has done to them. That's why the boy in the shower in 2001 kept silent even though McQueary witnessed him being groomed and assaulted by Sandusky. That's why the nine other victims who testified, or were testified about in Sandusky's trial, never made an immediate outcry. Even when investigators first came to some of these boys and asked them direct questions, most of them remained silent or denied anything sexual occurred. They claimed that they had not been victimized, when in fact they had. Eventually, most of them made partial or incremental disclosures, and then over time gave a full account of their victimization. It's called the "conspiracy of silence" that surrounds child sexual victimization. It is the opposite of an "active agreement to conceal."

E. "Conspiracy of Silence" Surrounding Child Sexual Victimization

The "conspiracy of silence" by victims, their families, and their communities that surround them is the result of multiple factors. On one level, people are horrified by the idea of child sexual victimization and don't want to talk about it or hear about it. Therefore, they do not discuss it with their children. Though they may be trying to keep their children sheltered from such knowledge, they in effect, make their children easier targets for sex offenders because the children don't see it coming from a nice guy and don't understand what is happening to them. People also tend to demonize the offenders to an extreme, calling them "evil," "monsters," and "predators," such that they don't want to believe that anyone they know could possibly be that evil, especially a nice guy who seems to love and selflessly help so many children. Consequently, victims and witnesses are reluctant to speak out against "nice-guy" offenders.

On another level, the victims feel isolated, damaged, guilty, shameful, and helpless. For the most part, they are unprepared to emotionally process what the offender has done to them or why. They don't know who to turn to or how to tell them what they have endured. In fact, typically, the last thing they want is anyone to ever know what was done to them and/or what they were made to do with the offender. So, they too remain silent.

A perfect, yet extreme, example of this occurred in a case that I worked on with my colleagues while in the FBI's Behavioral Analysis Unit (BAU). On January 8, 2007, Ben Owenby, a 13-year-old boy, was abducted on his way home from school in Missouri. Four days later, he was rescued from the apartment of Michael Devlin, who had abducted and sexually assaulted him. But the startling thing about this case was 15-year-old Sean Hornbeck also was recovered from the same location. Sean was an 11-year-old when Devlin abducted him in 2002. Devlin eventually plead guilty to abducting and sexually assaulting Ben over four days and Sean over four years. The indignities suffered by male child victims of an adult male offender are so

believed it would sound like he was blaming the victims. This concept does not blame the victims; it explains their behavior.

confusing and destructive to their personalities that they become compliant in their own victimization. That is what kept Sean Hornbeck from crying out or running away from Devlin for over four years. Within months after he had been abducted and repeatedly victimized, he had become so compliant that Devlin granted Sean more and more freedom. During that time he spoke to police officers, rode his bike around in public, and had the freedom to come and go as he pleased. After he was victimized, he had trouble with the thought of facing his family and friends knowing that they would discover the horrors and indignities that he had suffered. He knew that rescue meant revelation and he did not want to face that fact.

Abductors typically use force and violence to gain compliance in their victims. Groomers do the opposite and use attention, affection, gifts, freedom, access, and love to build a debt of gratitude in their victims.¹⁹ They fill a void in the lives of their victims and at the same time they ingratiate themselves into the family and/or community in which the victim lives. As mentioned above, disadvantaged youth have the greatest vulnerability to such offenders because their needs are so great and their assets are so meager. However, children of all walks of life and all familial situations are vulnerable to grooming simply because they are human beings. It is very easy for an adult offender who has the means and access to exciting adventures and activities to lure and control children by giving them things they never dreamed they would have or experience. It also is very easy for an adult offender to win a child over with the simple gift of attention. It is obvious in the trial testimony of certain boys victimized by Sandusky that they did not want the best thing that ever happened to them to stop, so they “put up with” the victimization and remained silent.

F. How Offenders Use These Complicated Dynamics to Their Advantage

The combination of nice-guy acquaintance offending, coupled with the “conspiracy of silence” by victims and “compliant victimization,” is why Paterno did not know that Sandusky was really a child molester. It is why the entire State College community did not know. One astute mother, however, saw a behavioral change in her son and recognized it as a possible sign of victimization and reported Sandusky in 1998. She might have initially bought into Sandusky’s grooming, giving him access to her child hoping the relationship would help her son have a better life. But the behavioral changes her son exhibited after spending an evening with Sandusky triggered her intuition and she fought for her son’s protection. She is a hero. Unfortunately, the system failed her, and her son. We all want to search for the culprit who caused the system to fail. In my professional opinion, the culprit is ignorance of “nice-guy” offending.

One psychologist, trained in the art of deciphering offender behavior, Alycia Chambers, evaluated the boy, saw and recognized all the red flags presented by Sandusky’s behavior, but her report apparently did not receive the attention it deserved. Centre County Children and Youth

¹⁹ The distinction between sexually motivated child abductors and acquaintance child molesters is that the former typically do not have the skills to groom their victims and they therefore resort to abduction to gain access to children for sex. Their methodologies differ to such an extreme that an expertise in one typology does not necessarily guarantee an expertise in the other.

Services (CYS) referred the case to counselor John Seasock,²⁰ who, without reading Chamber's report, evaluated the boy for one hour and then wrote a report concluding nothing improper took place.²¹ That is why no one at Penn State did anything to sanction Sandusky. The University Police Department, the Department of Public Welfare (DPW), and the District Attorney all closed their cases based in large part on Seasock's report.²² For those who worked closely with Sandusky and knew about the 1998 incident, the closing of this investigation as unfounded was confirmation of Sandusky's outstanding reputation and their belief that he was a devoted advocate for children.

Though a trained child sex crimes investigator should have known to keep a close watch on Sandusky from that point forward, civilians generally revert back to the thousands of positive interactions they have had with him and validate the belief in their own minds that they knew Sandusky couldn't have been a "monster predator." If he had been, they tell themselves, they would have known. They would have been able to tell the difference between that kind of evil person and the affable Sandusky they knew, whom they viewed as a dedicated husband and father, who fostered and adopted dozens of children, an altruist, who founded a children's charity, and a professional, who worked for decades as assistant football coach of one of the most successful college teams in the country.

Depending on the experience of the offender, his skill at grooming, and the reaction of the victim to the sexualization of their interactions, offenders learn from their interactions with victims and those around the victims. They use their knowledge of child and adolescent psychology to manipulate children into sexual activity and rely on the fact that the child will be too embarrassed, shameful, and needy to say anything about it. Offenders also use their knowledge of adult psychology and social norms to manipulate those around their intended child victims into allowing them continued access to children. Offenders know that the worst crime anyone can accuse another of is a child sex crime. They therefore take advantage of the tremendous insult that making a false accusation against someone would be and push the limits of social interactions and norms. Even when allegations are made against them, they often react by feigning outrage or hurt at being so maligned. This reaction reduces the chances that anyone will further pursue allegations against them.

In 1998, Sandusky cleverly showed remorse and sorrow at the possibility that his actions could have harmed the boy in any way. This reaction apparently appeased the CYS and DPW, convincing them that there was no sexual intent on the part of Sandusky. In fact, Sandusky was very likely actually saddened that he had caused the boy any harm. Sandusky is what is referred

²⁰ Seasock is listed in the UPD police report as a psychologist. However, according to state records it appears that Seasock was not a licensed psychologist in 1998. Mike Dawson, *Man who evaluated alleged victim was not psychologist*, Centre Daily Times, Mar. 28, 2012.

²¹ Seasock claims to have never seen Chambers' report. According to Seasock's report, "[n]o other information was provided to the interviewer prior to the initial meeting . . ." A partial and redacted version of John Seasock's May 8, 1998 report is available here, http://msnbcmedia.msn.com/i/msnbc/sections/news/Seasock_Sandusky_Report_Redacted1.pdf. Seasock's flawed methodology will be discussed in greater detail in Part VIII.B.2.

²² According to the SIC, Seasock told Detective Schreffler that "Sandusky 'didn't fit the profile of a pedophile,' and that he couldn't find any indication of child abuse." SIC report at 45. Caseworker Jerry Lauro told the SIC that "it wasn't until Schreffler told me that there wasn't anything to the case that I closed mine." *Id.* 46-47. According to the SIC, Schreffler's file notes state that Lauro agreed that no sexual assault occurred." *Id.* at 47.

to as a “boy lover.”²³ He actually falls in “love” with his boy victims and sees his sexual activity with them as natural extensions of that love. This is the type of rationalization he employs in his own mind to convince himself that his offending behavior is okay, because he would never “hurt” a child. This is the reason that even after being convicted on 45 counts, and facing life in prison, Sandusky proclaimed his innocence on the radio and to the sentencing judge. Sandusky knows that he committed sex crimes against many boys,²⁴ but in his twisted mind he attempts to continue his grooming of the community by trying to validate those crimes as an expression of love. This is why Sandusky says “they can make me out to be a monster . . . I know I did not do these alleged, disgusting acts.”²⁵ In his mind, molesting is not monstrous, and what he did with the boys was not disgusting because he actually “loved” the boys.

Because of the private and one-on-one nature of the vast majority of child sex crimes, adult offenders know that in most circumstances, if the child makes an allegation against them, they have a higher likelihood of being believed than a troubled youth. And, as the inaction by McQueary and the janitor exhibit, even if adults witness this behavior, they are reticent to get involved or make a detailed report because it is just too difficult to comprehend or believe or talk about what they witnessed.

As I will develop in much greater detail below, these complicated dynamics, which so few people understand (and most find completely counter-intuitive) explain why McQueary behaved as he did. They explain why he did not rescue the boy in 2001, and instead, left the scene as quickly as possible. They explain why McQueary had such difficulty recounting what he saw to his father and Dr. Dranov, and even more difficulty speaking about it to Paterno. McQueary likely was relieved when Curley and Schultz did not ask him detailed questions about what he had witnessed. At the time, he was not certain of what he saw because it was so abjectly counter to what he knew about Sandusky and how he expected a child victim to behave. They also explain why McQueary gave Paterno such a watered down and, ultimately, unhelpful version of events.

These complicated dynamics explain why Paterno did not conclude that Sandusky was a child molester, and why Paterno did what he did and nothing more. Paterno did not witness a child being sexually assaulted. Paterno did not have the opportunity that McQueary had to rescue that child while he was being sexually assaulted. Paterno did not have the opportunity to catch Sandusky in the act and restrain him while calling the police. As I’ll discuss in more detail below, Paterno only heard the sketchiest version of what happened from a confused, embarrassed, and reticent McQueary. Paterno could not read McQueary’s mind. He did not know what McQueary actually witnessed, but sensing that McQueary was having so much trouble talking about it and wanting to minimize his distress, Paterno told McQueary that he did not have to speak the details to Paterno, that he did the right thing coming to Paterno, and that Paterno

²³ The term “boy lover” is used by groups such as the North American Man Boy Love Association (NAMBLA) to rationalize their desires to have sex with boys. This in no way condones or justifies the criminal actions of Sandusky or offenders like him. It is meant to help the public understand the nature of his sexual attraction to boys as his motivation for sexually assaulting them.

²⁴ It is clear that Sandusky knew he was committing sex crimes against children because he consistently hid his behavior over decades.

²⁵ Amy McConnell Schaarsmith, *Jerry Sandusky issues statement blasting ‘false accusations’*, Pittsburgh Post-Gazette, Oct. 8, 2012.

would find the right people for McQueary to report it.²⁶ Paterno was not an investigator. Paterno had no authority over Sandusky, who had retired two years earlier. Paterno ran into Sandusky infrequently and did not socialize with him. Paterno did his best to address the situation by informing the people at the university who were in a position to deal with Sandusky, and, in fact, who had dealt with Sandusky's retirement and continued to deal with Sandusky about administrative details.

G. The Case of Richard Taus

One of the most disturbing cases of my career best illustrates many of the topics I have described above and will hopefully give the reader greater insight into how challenging it is for people to identify "nice-guy" acquaintance child sex offenders, especially for those who know and are close to the molester.

At the time, I was on the FBI/NYPD Joint Sexual Exploitation of Children Task Force and we were investigating allegations against a veteran FBI Agent named Richard Taus. Like Sandusky, Taus had a high-profile job and enjoyed a great reputation in the community. He was a highly decorated chopper pilot in Vietnam; he was lauded for adopting a son from Vietnam. He even founded a junior soccer league in Long Island, New York, that catered to hundreds of young boys, many of whom he molested over a number of years. And like Sandusky, there are friends and colleagues who to this day believe he was wrongfully convicted.

One of the many potential victims whom I interviewed during the investigation had a very interesting story to tell. First, I spoke with the boy's mother. She assured me that she had already asked her approximately 6-year-old son whether Taus had molested him. He said no, so she believed there was no reason for me to talk to her son. I told her I would just like to ask a few questions and it would not take long. She reluctantly agreed. I interviewed the boy while he sat beside his mother and asked the boy a number of questions before I inquired whether Taus played any games with him. He answered that yes, they played the tickle game. I asked how the game was played. At that point, I recall the boy turning to his mother and saying, "You remember Mom, when I was sitting on his lap last time he was here talking to you. He had his hand up my shorts tickling my privates. He tickles me and I have to try not to laugh." I looked at the mother and all the color had drained from her face. She could not believe that Taus had molested her son right in front of her very eyes and she had no idea that it had happened. She trusted Taus so much based on his profession, his reputation, and her repeated positive interactions with him that she never even questioned the fact that he liked to have her son sit on his lap.²⁷

²⁶ See Parts IV.B.9 and IV.D and accompanying footnotes for a complete analysis of Paterno's response to McQueary.

²⁷ Child sexual victimization investigators are trained to elicit information in an objective, age-appropriate, and non-judgmental way so that the child feels comfortable talking about events that may have occurred, and does not misunderstand questions that are asked of him. In this case, the mother had asked her son if Mr. Taus had touched him in a bad way. Her son didn't understand the "tickle game" as a bad touch, especially since it had occurred right in front of her. Thus, Taus had made the mother an unwitting accomplice in her son's grooming. Because this activity went on right in front of her, the boy assumed that she tacitly approved.

This is a perfect example of the boldness and invisibility of offenders who are charismatically smiling in our faces while they are molesting children literally and figuratively in front of our eyes. If Taus was able to molest a 6-year-old boy right in front of the boy's mother without her having the least bit of suspicion about it, and his mother even assured me that it could not have happened, then it is reasonable to conclude that an equally sophisticated offender like Sandusky could effectively pull the wool over the eyes of Paterno and others in the Penn State community. I urge all readers of this report to avoid using the information that is now known about Sandusky to judge people like Paterno who were legitimately fooled by Sandusky at the time. If you judge Paterno based on what we now know instead of what he knew at the time, then you will miss a valuable opportunity to educate yourself about the dynamics of child sexual victimization and "nice-guy" offenders. You will continue putting children at risk by thinking it could not happen to you, to your child, or in your community. But it can. If that boy's own mother can be groomed and fooled, then anyone can be fooled by a master manipulator like Sandusky.

IV. Analysis of the SIC Findings

A. Analysis of 1998 Incident

As it relates to Paterno, there is very little to be said about the 1998 incident.²⁸ As far as Paterno knew, if he knew anything, it was fully investigated and Sandusky was fully cleared. Had Paterno or anyone else taken any action against Sandusky, as far as they knew, they would be exposing themselves and the university to a lawsuit from Sandusky. Nonetheless, I will discuss the 1998 incident in some detail for two reasons. First, if Paterno did know about the 1998 incident and the fact that Sandusky was investigated and cleared, this likely would have affected Paterno's understanding of the 2001 incident. Upon hearing the report from McQueary, Paterno could have reasonably believed that Sandusky was simply horsing around with the boy — just like he was determined to have been doing in 1998 — despite the fact that McQueary perceived it as "over the line." Second, the SIC report spends significant time discussing the 1998 incident and reaches several misleading and erroneous conclusions that demonstrate the SIC report's rush to judgment against Paterno.

Though there are references that imply Joe Paterno had been informed of some unspecified information regarding Sandusky during or after the investigation in 1998, there is no direct evidence to corroborate that he ever knew about this investigation. Paterno testified before the grand jury on January 12, 2011, that he did not remember ever hearing anything about this incident. This lack of memory, though, may have been an artifact of his advanced age, his as yet undiagnosed cancer, and/or the fact that more than a decade had elapsed between the events in 1998 and his testimony. Irrespective of this lack of direct evidence or memory, the allegations of sexual misconduct were fully investigated by the University Police and Public Safety ("University Police Department" or "UPD"), DPW, CYS, and the District Attorney's Office. The "victim" and Sandusky were repeatedly interviewed at the time and it was determined that Sandusky had no sexual intent and did not commit any crimes. The investigators had even

²⁸ The allegations against Sandusky in 1998 were made by the mother of an 11-year-old boy whom Sandusky had bear-hugged in the shower after working out, wrestling, and kissing him on the head and telling the boy that he loved him.

identified another boy who recounted virtually the same story as the first boy and they still did not find sexual or criminal intent.²⁹ Thus, even if the 1998 accusations had been communicated to Paterno, there would simply have been no way for Paterno to know that Sandusky was actually sexually attracted to boys and that he had been sexually victimizing a number of them in secrecy for years.

Following the closing of this investigation, UPD Detective Schreffler instructed Sandusky not to shower again with any child.³⁰ This explicit advice coming from the law enforcement body responsible for policing Penn State — and not simply the head coach — should have put Sandusky on notice that his actions were being scrutinized and dissuaded him from showering with any more boys at Penn State or anywhere else. UPD apparently did nothing else with respect to Sandusky beyond issuing this “advice.” Curiously, while admonishing Paterno, Curley, Schultz, and Spanier for not doing anything after the 1998 incident, for not limiting Sandusky’s access to Penn State facilities, and for failing to protect children from sexual victimization on campus, the SIC report makes no mention at all of the UPD never following up on whether Sandusky was adhering to Detective Schreffler’s admonition not to shower again with any child, never warning the community, never warning The Second Mile, and never doing anything to monitor or limit his access to children.

Certainly, the members of this approximately 50-man police department were better trained in the area of sex crimes and investigations than Paterno. Certainly UPD had the ultimate responsibility to police and secure all facilities on Penn State’s campus. And certainly, UPD had the ultimate responsibility to protect all persons, including children who were guests on campus. Paterno is blamed by the SIC for not instituting his own prevention program, when the very police agency that was charged with conducting, and actually conducted, the 1998 investigation, did absolutely nothing to investigate Sandusky further, to prevent him from bringing children into the showers, or to inform university staff and students about the allegations against Sandusky. That’s because Sandusky was cleared.

Paterno didn’t know about or have access to the 98-page report that the UPD had compiled on the 1998 incident. Paterno didn’t have a team of detectives who presumably were trained to recognize sex offender behavior. Paterno’s profession had nothing at all to do with children, or sex offenders, or investigations, or recognizing the red flags of child sexual victimization. It is incorrect to assert that Paterno, even as head coach and football icon, was in a better position to keep an investigative eye on Sandusky and prevent him from offending on campus than was the UPD.³¹

²⁹ This conclusion demonstrates that even these investigators and DPW caseworkers and counselors did not fully understand grooming, compliant victimization, or “nice-guy” acquaintance offending. If they had, they would likely not have made this erroneous conclusion.

³⁰ Transcript of Proceedings at 66-68, *Commonwealth v. Gerald A. Sandusky*, Nos. CP-14-CR-2421-2011 & CP-14-CR-2422-2011 (Pa. Commw. Ct. June 14, 2012) (“Sandusky trial transcript”); SIC report at 46.

³¹ The SIC report highlights the fact that Sandusky had an office just steps away from Paterno’s office. However, there are no allegations that Sandusky ever groomed or sexually victimized any children in or around that office. And, in 1999 when Sandusky retired, he moved to another office in another building.

Additionally, there is no mention in the SIC report of why DPW or CYS didn't warn The Second Mile about the 1998 allegations and investigation at the time.³² Nor did either of these public agencies, whose mandates include the protection of children from sexual victimization, make any effort to limit Sandusky's access to children or to re-evaluate Sandusky's status as a foster or adoptive parent. There is no doubt that the government agencies charged with investigating and protecting children from child sexual victimization are in a better position to decide whether to implement these types of protective measures than a football coach.

Finally, the SIC report did not mention why the District Attorney's office, which declined prosecution of Sandusky, did not direct its investigators to take any of the steps that Paterno is accused of not taking to prevent Sandusky from victimizing children. The SIC report cannot have it both ways: either the UPD, DPW, CYS, and the DA's office also should be accused of "callous and shocking" "total disregard for the safety and welfare of Sandusky's child victims,"³³ or the accusations against Paterno related to the 1998 incident are biased and wrong.

B. Analysis of 2001 Incident

1. A note about memory and testimony

The entire case against Paterno regarding the 2001 Sandusky shower incident hinges on the words of Mike McQueary. Paterno was not an eyewitness. His only basis of knowledge about what Sandusky did in the shower with a boy in February 2001 was the words McQueary chose to tell Paterno at that time. Clearly, those were not the detailed and explicit words McQueary used a decade later when talking to investigators and during his testimony.³⁴ What is most critical in analyzing Paterno's subsequent behavior is what McQueary actually *communicated* to Paterno during that five to ten minute conversation on the morning of Saturday, February 10, 2001.

There are no contemporaneous recordings, notes, or confirmatory emails from this meeting, and the documentation that was made closest in time to the actual events was a statement made by McQueary to attorney general investigators, Trooper Rossman and Agent Sassano, almost a decade later on November 22, 2010. Because of the lapse of time between the actual conversation and the documentation thereof, the probability that particular details of this conversation are reliably recalled from memory is very low. In other words, as an educated and experienced law enforcement officer, I am reticent to believe that McQueary, or anyone else for that matter, could accurately recount the specific language he actually used during a particular conversation that he remembers having over nine years earlier. Therefore, though generalities from the conversation might be recalled with some degree of reliability, particular words and details should not be relied upon to any great extent.

³² This omission means that in 2001, when Curley did in fact notify The Second Mile about the Sandusky shower incident, Curley actually took a protective step that the UPD, CYS, and DPW did not take in 1998.

³³ Louis Freeh, press conference, July 12, 2012 (Freeh's delivered remarks).

³⁴ McQueary repeatedly acknowledged in his testimony that he did not give Paterno "very much detail," only described what he saw "on the surface," and did not use any graphic language. Transcript of Proceedings at 24, *Commonwealth v. Timothy M. Curley & Gary Schultz*, Nos. CP-22-MD-1374-2011 & CP-22-MD-1375-2011 (Pa. Commw Ct. Dec. 16, 2011) ("Preliminary hearing"); Sandusky trial transcript, June 12, 2012, at 205.

Additionally, another factor to consider is that when a layman, like Paterno, hears ambiguous information about an incident that might involve male on male child sexual victimization and “considers” but rejects the possibility of it actually being true, it does not mean that it is an act of deliberate or willful denial or an attempt to conceal. This is especially true when the accused “offender” does not act like a heinous criminal and the alleged “victims” don’t act like he did anything wrong to them at all. What is actually going on with the untrained layman is a common and fundamental misunderstanding of offender and victim behavior and honest disbelief.

2. The events of February 9-10, 2001

As a behavioral analyst, I have spent most of my professional life evaluating and analyzing the criminal behavior of human beings: how people react in certain situations, what their behavior tells us about what they say and do, and how the best predictor of future behavior is a past pattern of behavior. Based on all my education, training and experience, and based on a reading of all the available testimony and evidence, the following is my expert opinion regarding how the events in February 2001 are best understood.

Based on Mike McQueary’s own testimony, we know the following: McQueary walked into the coaches’ locker room between 9:30 and 10:00 on a Friday night. After McQueary passed through the first of two privacy doors to the locker room, he heard the showers running. He then heard what he has variously described as “two or three”³⁵ “slapping noises,”³⁶ “smacking sounds,”³⁷ and “rhythmic slapping sounds”³⁸ over the course of a second or two. In McQueary’s words, he “immediately became alerted and kind of — I don’t know — embarrassed that I was walking in on something that I didn’t want to see or walk in on.”³⁹

At that moment McQueary “thought maybe one of the other people had someone with him in the showers.”⁴⁰ McQueary got to his locker and glanced over his right shoulder and, using the reflection of a mirror, looked into the shower.⁴¹ His first glance lasted one to two seconds. In McQueary’s words, “I immediately turned back to my locker, trying to digest what I just saw and making sure I saw what I just saw. . . . I thought maybe I wasn’t seeing what I was seeing.”⁴²

McQueary then stepped to the side and looked directly into the shower.⁴³ According to his testimony, McQueary saw Sandusky in the shower with a young boy. The boy was standing up with his hands up against the wall at shoulder height, and Sandusky’s arms were wrapped around the boy’s midsection. In some of his testimony, McQueary had said that Sandusky’s

³⁵ Preliminary hearing at 95.

³⁶ Mike McQueary statement to Trooper Rossman and Agent Sassano, Nov. 22, 2010.

³⁷ Sandusky trial transcript, June 12, 2012, at 192.

³⁸ McQueary’s handwritten account on Nov. 23, 2010; Preliminary hearing at 10.

³⁹ Sandusky trial transcript, June 12, 2012, at 192.

⁴⁰ *Id.*

⁴¹ *Id.* at 193.

⁴² *Id.*

⁴³ Preliminary hearing at 12; Sandusky trial transcript, June 12, 2012, at 193.

midsection was making some subtle movement.⁴⁴ Taking into account all of McQueary's testimony, that's all the detail he has given about what he actually saw as opposed to what he thought was happening or what he thought he heard, or what he told Paterno.⁴⁵ McQueary also testified to what he did not see or hear. He did not see the front of Sandusky or the boy until the two of them were standing three to five feet apart and were facing him.⁴⁶ He did not see any genitalia, erection, or insertion. He did not see any fondling. He did not see any sex act. He did not hear any "protests or any verbiage."⁴⁷

McQueary says he was "extremely alarmed, extremely flustered, extremely shocked, all of those things."⁴⁸ He went back to his locker and "tried to think . . . I accentuate the word 'try.'"⁴⁹ McQueary explained, "this is a Penn State football building . . . you don't register that. . . I'm used to pressure situations, and I can tell you that's — that's more than my brain could handle at that time."⁵⁰ McQueary was so overwhelmed that he described what he had seen as "ridiculous" as opposed to criminal.⁵¹

McQueary's testimony has varied regarding what he did next. In the handwritten account McQueary gave the attorney general investigators in 2010, he wrote, "In a hurried/hastened state, I finished at my locker. I proceeded out of the locker room. . . . I was hastened and a bit flustered." When interviewed by the investigators that same week he told them that after looking into the shower he then "turned around and started to leave because he just wanted to get out of there as fast as he could . . ."⁵² At the preliminary hearing for Curley and Schultz and at

⁴⁴ At the preliminary hearing for Curley and Schultz, McQueary testified that there was "[v]ery little . . . I would say slow movement, certainly not hard or fast movement but a little movement." Preliminary hearing at 15. At Sandusky's trial, McQueary testified that "[t]here was not much movement on my glances, very slow, slow, subtle movement." Sandusky trial transcript, June 12, 2012, at 196.

⁴⁵ McQueary has been inconsistent about the following: how many times he looked into the shower, what he was doing when he looked into the shower, whether the boy and Sandusky were looking at McQueary, whether they made eye contact with McQueary, and whether McQueary stopped what was happening by slamming his locker closed.

⁴⁶ Preliminary hearing at 18; Sandusky trial transcript, June 12, 2012, at 194.

⁴⁷ At trial, McQueary said that he saw the boy and Sandusky three times. First, he saw them through a mirror. Second, he moved around the locker and saw the boy and Sandusky directly, without the aid of the mirror. Neither time did the boy or Sandusky see McQueary. Finally, after slamming his locker shut, McQueary moved around his locker again and saw the boy and Sandusky but this time they were standing apart and looking back at McQueary. According to Sandusky's attorney during cross examination, McQueary told the grand jury that the second time he looked at the boy and Sandusky, Sandusky still had his arms wrapped around the boy from behind but the boy looked back at McQueary. Sandusky trial transcript, June 12, 2012, at 273. Interestingly, McQueary's grand jury testimony has more in common with Dr. Dranov's trial testimony. Dr. Dranov remembered McQueary saying that he and the boy made eye contact before McQueary eventually saw Sandusky come out of the shower. Sandusky trial transcript, June 20, 2012, at 11.

⁴⁸ Sandusky trial transcript, June 12, 2012, at 194.

⁴⁹ *Id.*

⁵⁰ *Id.* at 198.

⁵¹ *Id.* at 200.

⁵² Mike McQueary statement to Agent Sassano and Trooper Rossman on Nov. 22, 2010.

Sandusky's trial, McQueary testified that he slammed his locker door shut.⁵³ McQueary explained that he slammed his locker "to say, 'Okay. Someone is here. Break it up. Please.'"⁵⁴

Possibly hearing the noise of the locker, when McQueary looked back into the shower, Sandusky and the boy had separated and both were looking directly at McQueary. McQueary claims that he never saw any genitalia or erections. Even if you believe his later account that he slammed his locker shut, and that is what separated Sandusky and the boy, McQueary did nothing more. He ran away.

This is a remarkable admission by McQueary; and, it is one of the facts that gives us the most insight into McQueary's behavior and his subsequent actions and inactions. Consider for a moment what we know about McQueary.

In 1997, less than four years prior, Mike McQueary started as quarterback in all 12 games for Penn State. He was a team captain. In Penn State's six home games, McQueary played in front of an average crowd of 96,000 while hundreds of thousands more watched the games on national television. As a quarterback, McQueary was responsible for not only knowing his own assignments and his different options, but the assignments and options of his ten other teammates. Furthermore, during every play, McQueary had to read and anticipate the movements of all eleven defenders, many of whom were McQueary's size or larger and some were faster and stronger. Most of the time these defenders were trying to confuse McQueary and force him into mistakes or crush him. In the two to four seconds between the snap of the ball and the need for decisive action, McQueary had to assess the positions of all other players and avoid the rush of the defenders determined to take McQueary to the turf. McQueary repeated this exercise thousands of times in practice and games throughout his high school and college career.

So, what would cause a 26-year-old man, who was 6'4", over two hundred pounds, and had excelled in one of the most pressurized, scrutinized, action-oriented positions on the field to not act? Some believe that he wanted to save the name of Penn State football and so he decided to forget what he saw and walk away rather than to act to save the boy or restrain Sandusky. However, if this were true, he would not have attempted to tell five other people about what he saw and he would not have been so upset while he was trying to do so.

In my experience the reasonable conclusion is that he was so overwhelmed by what he saw that he was paralyzed with confusion and disbelief. He did not understand how a man he knew and respected could possibly be doing something like that to a boy. He could not understand why the boy was not screaming out in pain or protest, or fighting to free himself. He could not understand why, when faced with a potential rescuer (McQueary), the boy did not even ask for help. He could not understand how Sandusky could just stare at him with a blank expression only seconds after he was apparently sexually assaulting a boy. And he did not understand how any of this could have happened in his own football locker room. Quite simply, in McQueary's mind, it did not compute.

⁵³ Preliminary hearing at 17, 60; Sandusky trial transcript, June 12, 2012, at 194, 199.

⁵⁴ Sandusky trial transcript, June 12, 2012, at 198.

In a few short seconds, McQueary was forced to reconcile three things in his mind that he did not know how to reconcile: (1) when he heard the slapping sounds, he expected to see “normal” sexual activity, but what he saw was shocking, (2) he had always known Sandusky as a nice guy, professional, altruistic person, but now he was confronted with the sight of Sandusky apparently sexually assaulting a boy, and (3) the young boy was not fighting, screaming, or attempting to get away — all the things he would expect the victim of a sexual assault to do.

At the time, and in the subsequent days, McQueary could not reconcile these things. He knew nothing about preferential sex offenders, grooming, “nice-guy” acquaintance offenders, and compliant victimization. Consequently, he did not rescue the boy. He ran away. He did not go to the campus police, he went to his office and called his dad. McQueary lived on his own, but he did not go home. He went straight to his parents’ house. While McQueary’s actions are confusing to many, in my experience they are typical of someone who is completely baffled and confused by what he saw and consequently he did not have the confidence to report it in detail.

3. What McQueary did and did not witness

a) Background

In order to better understand what McQueary actually witnessed, it is necessary that the reader have some additional background regarding the behavior of child molesters in general and Jerry Sandusky in particular. Child molesters’ grooming and offending behavior can be broken down into M.O. (method of operation) and ritual. While their M.O. can develop and evolve over time and will typically be tailored and responsive to the vulnerabilities and reactions of each individual child victim, offenders also engage in repeated, almost identical, patterns of ritualistic behavior. Experience tells offenders which patterns of behavior most successfully groom and seduce targeted children and help them get away with their crimes. Their inner fantasies, needs and desires dictate their ritualistic behavior.

The trial testimony of Sandusky’s victims offers a very detailed picture of the types of M.O. and ritual Sandusky utilized to groom his victims. One of Sandusky’s primary grooming and offending techniques was showering with boys as a way to get the boys into a naked and vulnerable position. Once in the shower, Sandusky typically engaged in a pattern of activity that allowed him to have physical contact with the boys. Though Sandusky also showered with boys while other coaches and players were around in part to normalize the behavior with his victims, he was careful not to have any physical contact with boys while anyone else was around. At times he had soap fights or wrestled with the boys, or washed their bodies, and then grabbed them in a bear hug from behind and lifted them up purportedly to rinse them off under the shower. These techniques allowed Sandusky to disguise his sexual advances as games and horsing around and afforded him the ability to deny any sexual intent if the child protested or later disclosed. They also allowed him to test the waters and see how far he could go with a particular boy at a particular time.

Of the six victims that testified to taking showers with Sandusky, four of them testified that while in the shower Sandusky would bear hug them from behind. Or, Sandusky would claim that he needed to lift them up to the showerhead to rinse them off. However, out of the eight victims that testified at Sandusky’s trial, not one of them said that Sandusky sodomized them

while standing in the shower. One victim did testify that while Sandusky was laying on top of him on the shower floor, he attempted to sodomize him, but there was no penetration.⁵⁵

b) What McQueary actually witnessed

Considering the highly ritualistic and predictable behavior of child molesters, the testimony of the eight victims at trial, the difference in stature between Sandusky and the boy McQueary saw with him,⁵⁶ and the fact that the jury did not find that Sandusky committed involuntary deviate sexual intercourse against Victim 2, McQueary did not actually witness Sandusky sodomizing the boy in the shower. What McQueary witnessed was no doubt a grooming incident and a sexual assault, however, McQueary admitted he did not actually see anal sodomy.

When McQueary passed through the outer door before he entered the locker room and heard two or three “slapping sounds,” he admittedly had already formed a visualization in his mind of what he expected to see. When he looked into the mirror only seconds later, he was expecting to see “normal” sexual activity. When he saw Sandusky standing behind the boy, he assumed that the sounds he had just heard meant Sandusky was having sex with the boy. However, based on what McQueary actually saw, and Sandusky’s known past pattern of behavior, it is much more likely that Sandusky had been rubbing his genitals against the boy’s back,⁵⁷ or “bear hugging” the boy at the time. Or he may have just finished wrestling around or soap fighting with the boy. Or the boy may have been making the slapping sounds some other way. But Sandusky was not sodomizing the boy.⁵⁸

None of this is to say that Sandusky is not a serial child molester or that McQueary did not witness Sandusky engaging in sexual behavior with the boy. However, using the available evidence to determine what McQueary actually witnessed is important because the SIC and some in the general public believe, as McQueary believed, that he may have witnessed anal sodomy. Since McQueary’s stated belief at the time was reported in the Sandusky grand jury presentment, it was assumed that McQueary had communicated this belief, or something close to it, to Paterno. However, when McQueary finally testified, he admitted that he never actually saw anal penetration, intercourse, or any other type of sexual act. And McQueary has consistently testified that he did not tell Paterno any graphic details, so it is highly probable that McQueary did not tell

⁵⁵ Sandusky trial transcript, June 11, 2012, at 135.

⁵⁶ Because of the height difference — McQueary testified that the boy stood only as tall as the lower part of Sandusky’s chest — the anatomical parts necessary to commit this crime simply do not line up. Preliminary hearing at 94-95; Sandusky trial transcript, June 12, 2012, at 195.

⁵⁷ According to the audiotape of Matt Sandusky’s statement to the police department made during the Sandusky trial, Sandusky would rub his genitals against Matt in the shower. “Matt Sandusky told police he was molested . . . saying that his father would become sexually aroused by rubbing against him in the shower, during wrestling sessions and in bed.” Michael Isikoff, *Matt Sandusky details alleged sex abuse by his father*, NBC News, June 26, 2012.

⁵⁸ John McQueary’s testimony is corroborative of the fact that McQueary did not witness sodomy: John McQueary testified, “I asked him if he seen [sic] anal sex or — and I got more descriptive. I said, do you — did you see anything that you could verify, penetration, or I might have used the word sodomy. He said, no, I did not actually see that. I said, so you did not actually witness penetration or anything that you could be more descriptive. He said, no.” Sandusky trial transcript, June 13, 2012, at 12.

Paterno anything that would have led Paterno to believe that Sandusky was sexually assaulting the boy in the shower.

4. McQueary's report to Paterno

The following day, McQueary went to Paterno's house. According to McQueary, he told Paterno that he "saw Jerry with a young boy in the shower and that it was way over the line,"⁵⁹ "[t]he rough positioning I would have described but not in very much detail,"⁶⁰ "I told him what I had seen, again, on the surface."⁶¹ However, McQueary has been clear that he did not use the terms "anal," "intercourse," "sodomy," or "rape."⁶² McQueary explains he did not give these details "[o]ut of respect and just not getting into detail with someone like Coach Paterno,"⁶³ "in my mind I don't go to Coach Paterno and go into great detail of sexual acts. I would have never done that with him ever."⁶⁴

Though this was out of respect, McQueary could not have done Paterno more of a disservice. In fact, the reason McQueary didn't want to use sexual terms with Paterno was the very reason why he needed to. Paterno was known as a prude who was uncomfortable talking about sex.⁶⁵ Implying a sex act was not enough to undermine Paterno's years of interactions with Sandusky and Sandusky's image as a pillar of the community. McQueary needed to be direct, explicit, and comprehensive in his description. If McQueary had simply said to Paterno, "I saw Sandusky having sex with a boy," then at least Paterno would have known what McQueary meant. Paterno may still have had trouble believing McQueary, but he would at least have been aware of what McQueary was saying. Instead, McQueary used general terms about the rough positioning of Sandusky and the boy, using implications, which were easily misinterpreted.

McQueary, at various times testified that when communicating to Paterno he used the phrases "extremely sexual," "sexual in nature"⁶⁶ and "way over the line." These are examples of the kind of specific language that should not be taken as exact when recounted a decade later. Nonetheless, even if McQueary did use phrases like, "extremely sexual," "sexual in nature," and "way over the line," or some other variation on this theme, the inclusion of these phrases, while at first may appear to raise the severity of the allegation, actually detract from the probability that

⁵⁹ Preliminary hearing at 24.

⁶⁰ *Id.*

⁶¹ Sandusky trial transcript, June 12, 2012, at 205.

⁶² Preliminary hearing at 25; Sandusky trial transcript, June 12, 2012, at 205-06.

⁶³ Preliminary hearing at 25.

⁶⁴ *Id.* at 74. McQueary also did not share the details with his father. At Sandusky's trial, McQueary testified that "The first time I talked to [my dad] at the house, it was him alone in his bedroom." Sandusky trial transcript, June 12, 2012, at 201. "I . . . did not get overly, unbelievably into detail, but made sure he knew it was extremely, extremely wrong, extremely sexual." *Id.* at 202. John McQueary's testimony is corroborative: According to John McQueary, "I asked him if he seen [sic] anal sex or — and I got more descriptive. I said, do you — did you see anything that you could verify, penetration, or I might have used the word sodomy. He said, no, I did not actually see that. I said, so you did not actually witness penetration or anything that you could be more descriptive. He said, no." Sandusky trial transcript, June 13, 2012, at 12.

⁶⁵ Interview of Paterno family member, Jan. 4, 2013.

⁶⁶ In his preliminary hearing testimony, McQueary stated on cross examination that he was uncertain whether he used the words, "in nature." Preliminary hearing at 75.

McQueary had effectively communicated what he believed he saw. That is, Sandusky having sex with a boy. These phrases would be unnecessary if McQueary had said or even effectively insinuated that Sandusky was having sex with the boy. If you tell someone you witnessed sex, you do not need to add that sex is “extremely sexual” or “sexual in nature.” If you tell someone you witnessed a 57-year-old man having sex with a 12-year-old boy, there is no reason to add that it was “way over the line.” However, if you are generally conveying an incident that is equivocal in nature, then you might add those modifiers in an attempt to convey that it appeared sexual to you, or to emphasize that while what you had just said did not sound sexual, you believe it may have been.

McQueary’s repeated testimony that he did not go into detail with Paterno and only told him what he saw “on the surface,” begs the question what details McQueary would have left out. As described above, the complete detail of what McQueary now says he witnessed is brief. If that’s the most detail he saw, and he told Paterno only general positioning information and no detail, then consider how little information he actually could have given to Paterno.

Respect for Paterno likely is not the only reason McQueary did not give Paterno more details. Sexual behavior is typically very private; criminal sexual behavior is extremely private. McQueary was understandably embarrassed by what he witnessed, and he acted like someone who had never had to talk about this difficult topic before in his life. It apparently was particularly difficult for McQueary to talk to an elder and iconic figure whom he looked up to about the details of sexual activity. In my opinion, it was even more difficult to do because the sexual activity was by a male offender on a male child.

Paterno’s own recollection was that McQueary was uncertain about what he had seen, and Paterno believed that McQueary wasn’t sure if he actually saw anything in particular.⁶⁷ Paterno remembers that the whole thing made McQueary very uncomfortable. So, uncomfortable, in fact, that talking about it was difficult for McQueary. In response, Paterno, trying to spare McQueary from any further distress, told McQueary that he didn’t have to tell Paterno anything else, that McQueary did the right thing bringing it to Paterno, and that it was Paterno’s job to get McQueary together with the right people for McQueary to report it.⁶⁸

At his press conference, Louis Freeh seized on the fact that Paterno supposedly told McQueary, “It’s my job now to figure out what we want to do.” In reality, Paterno has given three versions of what he said to McQueary. On January 11, 2011, Paterno told the grand jury the following: “I did tell Mike, Mike, you did what was right; you told me. . . . I would refer his concerns to the right people.”⁶⁹ In November 2011, Paterno told his biographer the following: “I told him he didn’t have to tell me anything else. I told him he did the right thing bringing it to me, and that now it was my job to get him together with the right people for him to report it.”⁷⁰

⁶⁷ Joe Posnanski, *Paterno 272* (2012) (“Posnanski”).

⁶⁸ *Id.* Although there are three different versions of what Paterno says he told McQueary that day, I quote this one because it describes what we know Paterno in fact did. By all accounts he called Curley, reported what McQueary had told him to Curley and Schultz, and put them in touch with McQueary so McQueary could report to them.

⁶⁹ Transcript of Proceedings at 6, Commonwealth of Pennsylvania Thirtieth Statewide Investigating Grand Jury, In re Notice No. 29 (Jan. 12, 2011) (“Grand jury transcript”).

⁷⁰ Posnanski at 272.

In early January 2012, Paterno told a reporter the following: “I said you did what you had to do. It’s my job now to figure out what we want to do.”⁷¹ And McQueary’s testimony regarding what Paterno told him was: “He said, you’ve done the right thing. He said, I know it’s probably tough for you to come here and tell me this, but you’ve done the absolute right thing.”⁷² The fact that the two people involved in the conversation a decade earlier could not agree on the specific language used during the conversation underscores the relative unreliability of any particular words being accurately recounted. The SIC report should not have assigned a high degree of reliability to the specific words in any one version. Instead, they should have generally taken all of the versions given by Paterno and McQueary, and garnered the general meaning behind their combined recollections. After that, they could have accurately measured that evidence against what is known about what was actually done by Paterno.

What we do know from Paterno’s recounting of events and his later shock and surprise when he finally read McQueary’s statements in the presentment the week of November 7, 2011,⁷³ was that Paterno did not have any idea that McQueary was trying to tell him that Sandusky was sodomizing the boy or even sexually assaulting the boy. When asked by an investigator if McQueary said there was a sexual act, Paterno responded, “He never said that.”⁷⁴ When Paterno finally read the presentment, he asked his son what the word “sodomy” meant.⁷⁵ After his son explained it to him, Paterno asked, “Can a man even do that to a boy?”⁷⁶ Nonetheless, as Paterno explained, if he had been told that Sandusky was raping a boy, or having sex with a boy in the shower, he “would have gone to the police right then and there, no questions asked.”⁷⁷

Is it reasonable to believe that five responsible adult men to whom McQueary reported the 2001 Sandusky shower incident, understood what McQueary was implying, and still did not feel the need to call the police? Is it reasonable to believe that they all turned a blind eye to the sexual victimization of a child? In my opinion, based on investigating, consulting on, and studying thousands of similar cases, it is more reasonable to conclude that these five men did not understand the true nature of Sandusky’s actions because McQueary did not convey what he thought he had conveyed to them. That’s because McQueary relied on implication, and deliberately did not use explicit or graphic terms in describing what he thought he witnessed in the shower.

Of those five men, the one who was most prepared for such a situation arguably would be Dr. Dranov. As a medical doctor, he is a mandated reporter, and he acted like one. He asked all the right questions aimed at determining whether McQueary had seen any specific sexual acts.⁷⁸

⁷¹ Sally Jenkins, *Joe Paterno’s last interview*, Wash. Post, Jan. 14, 2012.

⁷² Preliminary hearing at 27.

⁷³ Posnanski at 333-34.

⁷⁴ Joe Paterno statement to Randy Feathers and Agent Sassano, Oct. 24, 2011, at 1-2.

⁷⁵ Posnanski at 334.

⁷⁶ *Id.* Interview with Paterno family member, Jan. 4, 2012.

⁷⁷ Posnanski at 277.

⁷⁸ At Sandusky’s trial, Dr. Dranov testified to the following: “[W]hen he came in [to the locker room], he heard what he described as sexual sounds. . . . I asked him what he meant and said, Mike, what do you mean? He said, well, sexual sounds, you know what they are. I said, no, Mike, you know, what do you mean? And he couldn’t

McQueary repeatedly said no and got more upset when Dr. Dranov attempted to get more details out of him. Dr. Dranov then advised McQueary to tell Coach Paterno and did nothing more. Dr. Dranov did not tell McQueary to call the police, he did not call the police himself, and he did not call the Department of Public Welfare. This behavior is consistent with Dr. Dranov deducing at the time that what McQueary had actually witnessed was non-sexual in nature.

The fact that none of the people to whom McQueary reported his observations took any steps to notify the police, is a strong behavioral indicator that none of them believed at the time that such action was called for based on what McQueary had told them. All of them also knew that McQueary himself did not call the police. McQueary did not convey to John McQueary, Dr. Dranov, Paterno, Curley, or Schultz what he thought he had conveyed. Hence, the people to whom he reported the incident responded to what they gleaned from his disclosure, not to what was hidden in his mind.⁷⁹ The fact that the accounts of all of these men are fairly consistent with each other on the non-sexual nature of what McQueary actually reported to them, is strong corroboration for the accuracy of their accounts and that assessment.

What is clear is that McQueary, emboldened by age, maturity, and the fact of a police investigation into Sandusky's offending behavior gave a more detailed account of what he had witnessed in his testimony in 2010, 2011, and 2012, than he had been able to do initially in February 2001. The problem is there was no contemporaneous documentation of his initial reports. Also, memory is not a perfect record of events that one witnesses or words that one has spoken. Memory is an even worse keeper of accurate details after the passage of time. Thus, we do not have any record or any reliably accurate testimony as to the exact words that McQueary said. All we have is the memories of those to whom he spoke. These men recount very different versions of what McQueary told them and even McQueary has been remarkably inconsistent about what he saw and what he said and what he did. The one consistency, however, which McQueary has repeatedly testified to, is that he told everyone else, particularly Paterno, far less than what he thinks saw and what he now says he saw.

go on. He just seemed to get a little bit more upset. So I kind of left that. And then he said he looked toward the locker or the shower and a young boy looked around. He made eye contact with the boy. I asked him — to the best of my recollection, I asked him if the boy seemed upset or frightened. He said no. An arm reached out and pulled the boy back.” Sandusky trial transcript, June 20, 2012, at 11-12. After returning to his locker, “he turned around and faced the shower room and a man came out and it was Jerry Sandusky.” *Id.* at 12. Sandusky's counsel asked, “Did [Mike McQueary] describe seeing any particular sex act?” Dr. Dranov responded, “No he did not. He implied it had gone on with what he talked about with sexual sounds. But did he give me any kind of graphic description? No.” *Id.* at 13. On redirect, Sandusky's counsel said “[Y]ou asked [Mike McQueary] three times if he saw a sexual act?” Dr. Dranov responded, “In the conversation, yes. I didn't use the term did you see a sexual act. I kept saying what did you see and each time he would come back to the sounds. I kept saying but what did you see. And it just seemed to make him more upset. So I backed off that.” *Id.* at 15-16.

⁷⁹ This seems to be corroborated by the fact that Curley, in the email dated February 27, 2001, tells Spanier that he, “would plan to tell him [Sandusky] that we are aware of the first situation.” This implies that the 2001 situation was the same as the one in 1998. Not an escalation, but a recurrence of what they feel “is a problem” and they “want to assist the individual [Sandusky] to get professional help.” They are discussing this as if they were referring to a boundary issue problem that Sandusky should get professional help for, not as if they saw it as a child rape. Though denial may have played a significant role in their decisions, there is nothing in this email that even suggests that Paterno ever knew or believed that Sandusky had raped a boy and attempted to cover it up. *See* SIC report at Ex. 5G.

5. McQueary's subsequent silence

It is clear from McQueary's behavior, reporting, and testimony that he was very embarrassed, confused, baffled, and upset by what he witnessed. McQueary's subsequent decade-long silence is understandable because for most people male sexual victimization is a noxious topic that they find disgusting and abhorrent. They don't want to think about it, they don't want to hear about it, they don't want to read about it, and they don't want to talk about it, much less discuss it in detail. Often times, they do not understand it when they do hear about it. Because of this, most people remain ignorant of, and unwittingly contribute to, the behavioral dynamics that keep sexual victimization of children hidden. These very dynamics, in conjunction with "nice-guy" acquaintance offending, effective "grooming," and "compliant victimization" allow offenders like Sandusky to hide their offending behavior for decades. This is one of the reasons that McQueary found it so difficult to recount details to Paterno in February, 2001. This is also what kept McQueary silent over the years after 2001.

During those years, McQueary had to endure face-to-face meetings with Sandusky at Penn State and The Second Mile events. For McQueary, it was years of having to deal with the potential demons of self-doubt and second-guessing. They were years of possible self-recrimination about not having acted more forcefully to subdue Sandusky and rescue the child. McQueary had many opportunities to ask Curley, Schultz, or Paterno why Sandusky was still allowed on Penn State's campus and why he was not in jail. But he remained silent. Did McQueary remain silent for all those years because he didn't care about child sex victims? Or, was he so confused by what he had seen that he had doubts about what he saw, and he didn't know how to deal with it? Also, since no child had come forward to say that they had been sexually assaulted by Sandusky, and everything seemed to go on like nothing had happened, this must have reinforced the doubts in McQueary's mind about the nature of what he had witnessed.

6. Sandusky's sterling reputation in 2001

It is only in retrospect, when everyone knows Sandusky is now a convicted child sex offender, that it is so easy to believe that Paterno must have known that Sandusky was a child sex offender back in 1998 and 2001.⁸⁰ In fact, this is not true. Back in 1998 and 2001, things were very different.

When Jerry Sandusky retired after the 1999 season, what Paterno knew about him is the exact opposite of what we now know. He was the founder of The Second Mile, an organization he named after a quote from Jesus' sermon on the mount.⁸¹ The Second Mile claimed to have reached out to more than 100,000 Pennsylvania children. The "success" of The Second Mile was largely built on the special rapport Sandusky had established with its well-respected benefactors. Sandusky's many contributions and achievements had been publicly acknowledged. Sandusky had been named an Alumni Fellow in the College of Health and Human Development. Sandusky had been inducted into the Pennsylvania Sports Hall of Fame. Sandusky had been selected as the

⁸⁰ It is important to note here that the Sandusky jury found that McQueary did not in fact witness Sandusky anally sodomizing a boy in the shower in February 2001. The jury also found that Victims 5 and 6 were not the victims of indecent assault in 2001 and 1998, respectively.

⁸¹ Matthew 5:41 (NRSV) ("and if anyone forces you to go one mile, go also the second mile"); Jerry Sandusky & Kip Richael, *Touched: The Jerry Sandusky Story* 184 (2000).

Pennsylvania recipient of the SGMA Heroes Award, which was presented for “contributions to the pursuit of sports excellence, sportsmanship, participation or opportunity within their local community.” Sandusky had been awarded the University’s Barash Human Services Award and the YMCA Service-To-Youth Award. Sandusky and his late father had received the annual Human Rights Award presented by the Washington, Pennsylvania, branch of the National Association for the Advancement of Colored People.

In announcing his retirement in the pages of Sports Illustrated, the article finished with this quote: “Here’s the best thing you can say about Jerry Sandusky: He’s the main reason Penn State is Linebacker U . . . and the linebackers aren’t even his enduring legacy.”⁸²

Sandusky adopted six children and had fostered many others since the 1970s. Sandusky had been married to the same woman since 1966, giving him the imprimatur of being a loving husband. Three of his children were adopted as infants, three after having them in foster care. In other words, on six different occasions, Sandusky was evaluated by state officials and a Pennsylvania judge for fitness to adopt; six times Sandusky passed. As far as anyone knew, a number of children had come through Sandusky’s home and none of them had alleged that he had abused them.

Paterno had coached with Sandusky for 30 years and had known him even longer. Paterno watched Sandusky go from playing football at Penn State, graduating first in his class and serving as student marshal, to becoming one of the most successful assistant coaches in the country, while at the same time founding The Second Mile, which was honored by President George Bush as being a national “Point of Light” organization. Through thousands of individual acts, both large and small, Paterno watched Sandusky for almost four decades be the total opposite of what he would expect a child molester to be. Events and behaviors that look like red flags today seemed to be the exact opposite in 1998 and 2001.

7. The mistaken belief that someone had to know

Most people in the general public believe that close colleagues, nice guys, altruistic people, dedicated professionals, good fathers, child advocates, people who love children, cannot at the same time be child sex offenders. But this belief is not true at all. A large percentage of child sex crimes victims are victimized by teachers, priests, boy scout leaders, mechanics, trainers, psychologists, doctors, reporters, actors, anchormen, camp counselors, coaches, police officers, and even FBI agents who are well thought of in the community. They are “good people” who work hard, pay their taxes, raise families, go to church, act normal, but they all hide very dark secrets.

There also is a common misperception in the public that someone had to have known what Sandusky was up to all of those years: The coaches and others at Penn State must have known and covered for him. After all, molesters are different from the rest of us. Because they have such evil thoughts on the inside, they must be weird, quirky, or “off” on the outside. We assume that people close to the offender probably knew something was wrong and suspected

⁸² Jack McCallum, *Jerry Sandusky, the dean of Linebacker U, is leaving Penn State after 32 years to devote himself to a different kind of coaching*, Sports Illustrated, Dec. 20, 1999.

something but chose to ignore it. People must have seen the red flags but kept quiet because he was Jerry Sandusky. This could not be further from the truth.

Even after he was arrested, many people who knew Sandusky had a very hard time believing he was a child sex offender. In fact, two of Sandusky's long time colleagues, Dick Anderson and Book Brooks, testified in Sandusky's defense at trial. Anderson played football with Sandusky and then coached with him for over 20 years. Brooks coached with Sandusky for 15 years. Anderson testified that Sandusky "had a wonderful reputation in the community. He was well thought of in every regard."⁸³ Brooks was asked if he knew anything about the charges against Sandusky. Brooks responded, "I did read it online from the grand jury report. But I understand everything. I am an adult that's knowledgeable and I know everything that happens in the grand jury room is only one-sided and I'll wait for the end of the everything before I make up my mind."⁸⁴ In other words, after having known Sandusky for decades, having coached with him for years, having traveled with him to Bowl games, and seeing him on the sidelines with children, Brooks read the grand jury presentment with the testimony of six victims and still had not made up his mind. That is the effect Sandusky had on those closest to him.

The false belief that those who knew Sandusky understood and covered up his offending is rebutted by more than just the experiences and testimony of his friends and former colleagues. Consider the testimony of Joe Miller. At the time of Sandusky's trial, Miller worked for the Chambers Environmental Group in Bellefonte, Pennsylvania, and on the side he coached wrestling at an elementary school. But he was well aware of Sandusky's reputation in the community. Miller testified for the prosecution at Sandusky's trial to corroborate the testimony of Victim 1. According to Miller, in 2006 or 2007, Miller was driving home from school after practice. His son had left his wrestling gear at school, so Miller went back to get it. When Miller returned, he noticed that a light was on in the weight room. Here is Miller's description of what happened next:

[S]o I went in there to turn the light off. And the light switch was to my right, and I heard something when I went to turn the light off. And before I turned the light off, I turned to my left and I saw Jerry and [Victim 1] all the way in the back far corner beneath the rock-climbing wall on a small, little exercise mat, and they were laying there fact-to-face, side-to-side — or face-to-face on their sides. And by the time I turned and looked, Jerry propped himself up on one arm and looked at me and said, "Hey, Coach, [Victim 1] and I are just working on some wrestling moves."

And I didn't think really a whole lot of it because I've seen Jerry with him a number of times and I looked at Jerry as, you know, sort of a father figure to [Victim 1]. So I said, "Okay, Jerry, no problem. Just make sure you turn the light off and secure the door before you leave."⁸⁵

⁸³ Sandusky trial transcript, June 18, 2012, at 85.

⁸⁴ *Id.* at 129.

⁸⁵ Sandusky trial transcript, June 12, 2012, at 308-09.

On the ride home, Miller started to think about it. He thought it was kind of “peculiar” that Sandusky would be working on wrestling moves late in the evening on a small mat in the back corner of the weight room when there was a whole wrestling room right next door. The wrestling move Sandusky was supposedly showing Victim 1 was unlike any wrestling move Miller was familiar with. Moreover, to Miller’s knowledge, Sandusky did not know anything about wrestling. As these thoughts passed through his mind, he reached this conclusion:

“Well, it’s Jerry, Jerry Sandusky. He’s a saint, you know. What he’s doing with these kids, it’s fantastic, you know.” I didn’t think anything of it.⁸⁶

Joe Miller has a son the same age as Victim 1 and who was in the same grade at the same school. He also has a son two years younger than Victim 1. Miller is a responsible, concerned father who cares about his own sons, as well as the other young boys he coaches in wrestling. Miller witnessed Sandusky in the process of grooming, and the beginning of a sexual assault as Victim 1 later testified.⁸⁷ Yet, Miller, like everyone else, looked right past it. He missed it not because of the culture of football, or fear of bad press, or indifference to the safety of children, but because of ignorance regarding “nice-guy” acquaintance offenders.

8. Paterno’s character

Paterno is well known for his decency and ethics, no matter the situation. Everyone who knew him attests to his honesty and integrity, so much so that he was considered by some to be too pious and sanctimonious.⁸⁸ After all, he would not allow his children to use the pencils he brought home from work because, he said, “that’s university property.”⁸⁹ However, what is less discussed, but well known by those close to Paterno, is that he was a prude; he was extremely uncomfortable with private and sexual matters. The Paternos rarely watched television except for *The Wonderful World of Disney* on Sunday nights.⁹⁰ According to his children, Paterno found the television series *Love Boat* to be too racy.⁹¹ When Paterno served in Korea, he wrote letters reporting his revulsion with fellow GI’s engaging prostitutes.⁹² On the eve of his son’s wedding, who was then 22-years-old, in passing Paterno asked whether his son needed to talk to him about anything (i.e., implying sex). His son said, “no, I’ll figure it out,” and Paterno replied, “okay, good.”⁹³ Paterno was so outdated or uncomfortable with the subject, or both, that he could not bring himself to use the word “sex” with his own adult son. Paterno was even put off by the word “fart.”⁹⁴

⁸⁶ *Id.* at 309.

⁸⁷ Sandusky trial transcript, June 12, 2012, at 33.

⁸⁸ Interview with Paterno family member, Jan. 4, 2013.

⁸⁹ Posnanski at 132.

⁹⁰ *Id.* at 4-5.

⁹¹ Interview with Paterno family member, Jan. 4, 2013.

⁹² *Id.*

⁹³ Interview with Paterno family member, Jan. 25, 2013.

⁹⁴ Posnanski at 131.

9. Why Paterno did what he did and no more

Contrary to the SIC report's opinion, it was not fear of bad press or public scrutiny that caused Paterno to simply report to his superiors what he'd been told and step away from the investigative and/or decision-making process. When he heard the detailed allegations against Sandusky, he lamented and wished he had done more, but there was never any evidence that fear of damage to the reputation of Penn State or its football program was ever a factor. What is at fault is the basic ignorance of the general public (and apparently at least one counselor contracted by Centre County Children and Youth Services in 1998) of the behavior of "nice-guy" preferential child sex offenders, the results of effective "grooming," and the dynamics of "compliant victimization."⁹⁵ As I have discussed, all of these factors are critically important in gaining a complete understanding of the behavioral dynamics surrounding child sexual victimization, especially when it involves an adult male offender victimizing male children.

As an expert in the field of child sexual victimization, I firmly believe that there is another far more reasonable explanation for Joe Paterno's behavior than the one proffered by the SIC report: (1) McQueary did not convey to Paterno that he thought Sandusky was having sex with the boy, and (2) Paterno could not make the huge leap from the watered-down, sketchy description and superficial information McQueary told him to the realization that Sandusky was actually a child sex offender.

Paterno simply could not reconcile what he knew of Jerry Sandusky with the thought that Sandusky was a huge fraud and a child sex offender.⁹⁶ The man Paterno thought he knew through thousands of interactions over decades working with him as a brilliant defensive coach, a loving husband and father, a devoutly religious man, a mentor to disadvantaged kids, an altruist, a teetotaler who looked down on those who drank alcohol, a selfless advocate for disenfranchised youth, a long time colleague, a compassionate advocate for players, and a "goofy" prankster, could not possibly be a "monster predator." This man could not possibly have pulled the wool over Paterno's eyes for decades. He could not have fooled so many coaches, athletes, administrators, contributors, social services workers, psychologists, children, friends, and family. After all, if Sandusky had actually been victimizing children, where were all the victims that he took advantage of? Why hadn't any of them come forward? In fact, in all the years that Sandusky was molesting boys, not one of them came forward to make an allegation of sexual assault against Sandusky until Victim 1 did at the prodding of his mother and counselor in 2008. To Paterno, what McQueary was ineptly suggesting must have all seemed like a huge misunderstanding. Nonetheless, McQueary seemed very upset about what he'd seen. So, in spite of all his reasonable doubts, Paterno reported what he learned up the chain of command in hopes that those more qualified than him would know how to handle the situation and "get to the bottom of it."⁹⁷

⁹⁵ When the mother of Victim 6 pushed for an investigation against Sandusky for having physical contact with her son in the shower, the boy repeatedly said he did not want Sandusky to get into trouble.

⁹⁶ The difficult truth is that Sandusky was actually not a complete fraud. He actually helped many disadvantaged children over the decades. What was fraudulent about Sandusky was his motivation for helping children. He did it to gain access, authority, and control over boys so he could molest them. Of course, none of the positive work he did excuses his many sex crimes against those children.

⁹⁷ Posnanski at 273.

Paterno then stepped out of the decision-making process and may or may not have been kept abreast of how the administration handled the situation. However, according to McQueary, in the few months after McQueary's report, Paterno checked up on McQueary a couple of times asking him if he was "okay."⁹⁸ In other words, Paterno presented McQueary at least two opportunities over the next few months — after time had passed and McQueary's emotions had subsided — to tell Paterno the explicit details of what he had seen or express displeasure with how the matter was being handled. Despite these opportunities, McQueary remained silent.

C. Paterno Not Part Of Any "Active Agreement To Conceal"

1. No evidence linking Paterno to any active agreement to conceal

When law enforcement investigators endeavor to prove an active agreement to conceal between two or more people (i.e., a conspiracy), they search for several different types of dispositive evidence. They look for emails, text messages, letters, notes, documents, or other communications sent between the members of the conspiracy in which they discuss their agreement or actions. They search for phone records, calendar entries, logs, or other information that document conversations or meetings between the conspirators. They initiate or search for audio or video recordings of such conversations. Investigators also attempt to find witnesses who overheard conversations between the co-conspirators. And, if corroborated, the best type of evidence they could find is a co-conspirator who is willing to come forward and admit their involvement in the conspiracy and testify against the other members of the conspiracy. Investigators also look for attempts to silence witnesses, limit the flow of information, influence those looking into the matter and make attempts to hide the truth.

In this case, there are no emails or other electronic communications written by Joe Paterno to any conspirators. There are no emails or other electronic communications written by any conspirators to Joe Paterno. There are no documents that purport to lay out any instructions by Paterno in furtherance of any conspiracy. There are no audio or video recordings of Paterno engaging in any conversations about, or acts in furtherance of, any conspiracy. There are no witnesses who report that Paterno was actively involved in a conspiracy. And, there are no co-conspirators who claim that they conspired together with Paterno. In short, there is absolutely no evidence at all that Paterno actively participated in an agreement to conceal.

After reviewing 3.5 million communications and documents, the SIC located only three relevant emails and one note⁹⁹ that even mention Joe Paterno. However, none of these records contain any evidence of any participation in an "agreement to conceal" or "conspiracy" by Paterno. None of them even contain any verifiable information that can be attributed to Paterno.¹⁰⁰

⁹⁸ Preliminary hearing at 39-40.

⁹⁹ An additional "relevant" note was written by Paterno circa 1999, but that note had to do with basic insurance liability issues and not Sandusky's grooming or offending behavior. *See* SIC report at Ex. 2G.

¹⁰⁰ The SIC never interviewed Paterno. Moreover, the SIC never interviewed Curley or Schultz about the content of these records. The SIC interview Spanier less than a week before it published its report. The emails and notes were located in March 2012 and Spanier was interviewed on July 6, 2012.

In two of those emails sent in 1998 referencing Paterno, Curley wrote, “I touched base with coach,” and “Coach is anxious to know where it stands.”¹⁰¹ Neither of these emails were corroborated, nor did they contain any details as to what was purportedly discussed or what Paterno’s reactions were to what was purportedly discussed. These emails simply reference Paterno. He was not a party to either of them. He wasn’t even copied on them.¹⁰² And there is no evidence that the conversations actually took place. There is also no evidence proffered to support the contention that these purported conversations included any active agreement to conceal. Though it is possible that others later concealed information about the 1998 and/or 2001 incidents, there is no evidence linking Paterno to such concealment, there is no evidence that he knew about such concealment, and there is no evidence that he participated in such concealment.¹⁰³ Without such evidence, it is simply wrong to accuse a person of such a criminal act.

2. The SIC misinterprets Curley’s February 27, 2001 email

What led the SIC to erroneously conclude that Paterno was involved in an active agreement to conceal is found in the remaining two documentary references to Paterno. Those references can be found in the 2/12/01 handwritten note by Schultz memorializing a discussion between Schultz and Curley, and the 2/27/01 email from Curley to Schultz and Spanier. In order to draw the conclusion that there was an agreement to conceal, the SIC ignored the former and therefore misinterpreted the latter.

The lynchpin that the SIC report uses to base its conclusion that Paterno engaged in an active agreement to conceal with Curley, Schultz, and Spanier, is the note and exchange of emails between Curley, Schultz, and Spanier dated 2/25/01 to 2/28/01. The SIC characterizes the 2/27/01 email from Curley as documenting a change in plans to not inform DPW of the 2001 incident.¹⁰⁴ In his prepared remarks upon issuing the SIC report, Freeh stated that the only intervening cause between the 2/25/01 plan to inform DPW and the 2/27/01 plan not to inform DPW, was Curley talking it over with Paterno.¹⁰⁵

The problems with this conclusion are many. The SIC mischaracterizes the 2/27/01 email by failing to consider it in the context of all of the communications on the topic as opposed to just the note from the February 25 and the emails on February 26 through February 28. A basic

¹⁰¹ SIC report at Exs. 2A & 2E.

¹⁰² Although Paterno did not utilize an electronic email account, his secretary maintained an email account in Paterno’s name and in the rare event that he received an email, she would print it out and give him a hard copy. Paterno would then write a hard copy response and have that physically delivered to the other party. Interview with Paterno family member on Jan. 4, 2013.

¹⁰³ There are pending criminal cases against Curley, Schultz, and Spanier regarding their grand jury testimony and related actions that have not yet been litigated at the time of this analysis, and may relate to this issue. Nonetheless, Paterno, who fully cooperated with the investigation and testified in the grand jury was never charged with a crime and no evidence exists to date that inculpates Paterno in any way.

¹⁰⁴ SIC report at 63, 74-76.

¹⁰⁵ Louis Freeh, press conference, July 12, 2012 (“Based on the evidence, the only known, intervening factor between the decision made on February 25, 2001 by Messrs. Spanier, Curley, and Schultz 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 regarding what to do about Sandusky.”).

content analysis of these documents in conjunction with the note from 2/12/01, reveals the plain meaning of these documents and undermines the SIC's claim that the 2/27/01 email represents a change in plans to not inform DPW.

The SIC's conclusion ignores the fact that Schultz's note of his meeting with Curley dated 2/12/01, clearly document an intention on the part of Curley to meet with Sandusky and, "unless he 'confesses' to having a problem, TMC will indicate we need to have DPW review the matter as an independent agency concerned with Child Welfare." So the *original* plan to contact DPW was conditioned on Sandusky not confessing, and that plan was made two weeks *before* what the SIC purports was the "intervening cause" conversation between Curley and Paterno on 2/26/01.¹⁰⁶ The fact that Curley merely restates this same conditional plan in his email of 2/27/01 proves it is: (1) not a change in plans, (2) not the result of the call he said he made to Paterno on 2/26/01, and, therefore (3) Paterno is not the intervening cause.

In order to fully understand what led to the erroneous assertion by SIC that Paterno was the "intervening cause" in a decision by Curley to not notify DPW of the allegations against Sandusky, it is important to review the totality of documentation on that subject:

In a handwritten note dated 2/12/01, Schultz writes:

Talked w TMC
-reviewed 1998 history.
-agreed TMC will discuss w JVP and advise we think TMC 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.
-TMC will keep me posted.¹⁰⁷

This note states that Schultz talked with Curley but it doesn't give a date, time, place or methodology utilized for this talk. It then goes on to mention that they "reviewed 1998 history." When they "reviewed 1998 history," the similarities between what they knew about the two incidents would have been obvious, and they would have known that the incident in 1998 had been investigated and resolved with a finding of no criminal behavior. This could reasonably result in Curley's and Schultz's anticipation that the 2001 incident, which Paterno informed them about the day before, would also likely lead to the same conclusion.¹⁰⁸

¹⁰⁶ As discussed infra, the 2/25/01 note and 2/26/01 email are simply summary bullet points of the types of actions they are planning on taking, not detailed specifics of any plans at the time.

¹⁰⁷ SIC report at Ex. 5C.

¹⁰⁸ Because the 1998 investigation concluded with a finding of no sexual intent, it would have reinforced in the minds of those who knew and were close to Sandusky that the allegations were wrong. As discussed supra, it is extremely common for people who know and respect a "pillar of the community" offender to disbelieve any allegations of sexual improprieties against the person, especially when they were investigated and determined to be unfounded. In this instance, it was much more reasonable for Curley, Schultz, Spanier, and Paterno to believe that Sandusky was a good man who just did not recognize the impropriety of horsing around with boys in the shower.

However, the situation in 2001 raised a bigger issue this time because it indicated to them that Sandusky did not heed the UPD warning to refrain from showering with children. (This is exactly what Spanier had noted as a potential vulnerability in his 2/27/01 email.) Curley, Schultz, and Spanier saw Sandusky's behavior as indicating that Sandusky had a problem with recognizing that horsing around with boys in the shower was not appropriate.

The 2/12/01 note also appears to delineate, with some specificity, the plans by Schultz and Curley to deal with the information provided to them by Paterno about what McQueary had told him. Five things are clear from this note: (1) Paterno was not involved in the discussion that produced these plans; (2) Curley had agreed to discuss something with Paterno before Friday, February 16, 2001; (3) Curley's and Schultz's discussion included a conditional plan to contact DPW unless Sandusky "confesses"¹⁰⁹ to having a problem; (4) there is no mention of what they plan to do if Sandusky "confesses" to having a problem; and, (5) there was no documented plan at this time to notify The Second Mile.

Two weeks after his 2/12/01 note, Schultz writes in a hand-written note dated 2/25/01:

- (3). Tell Chair* of Board of Second Mile.
 - (2). Report to Dept of Welfare.
 - (1). Tell J.S to avoid bringing children alone into Lasch Bldg
- *Who's the chair ??

This note appears to briefly list the plans after the reports from Paterno and McQueary to Curley and Schultz about the Sandusky shower incident. There is nothing about this note that indicates it is a comprehensive and detailed description of what they planned to do about the Sandusky incident. Instead, on its face, it is a bullet-type summary list of their plans. There is no indication that the plan to "Report to the Dept of Welfare," is not still conditioned upon whether or not Sandusky "confesses" to having a problem (just as it was documented in greater detail in the 2/12/01 Schultz note and later in the 2/27/01 Curley email). The 2/25/01 note does not go into any details about who would perform the three listed steps or when or where the steps would be taken, further indicating that it is in fact just a brief summary. To conclude that this is now a change in plans to report to DPW without condition is not supported by the evidence.

Schultz then recounts this bulleted summary of their plans, though in a different order, in his 2/26/01 email to Curley stating:

From: Gary C. Schultz <gcs2@psu.edu>
Sent: Monday, February 26, 2001 11:57 PM
To: TMC3@psu.edu
Cc: Coble-Joan (JLC)
Subject: Confidential

Tim, I'm assuming that you've got the ball to 1) talk with the subject ASAP regarding the future appropriate use of the

¹⁰⁹ Schultz put the word "confesses" in quotes to likely distinguish it from the literal meaning of "confesses," which typically indicates an admission of wrongdoing.

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.¹¹⁰

Again, though there is slightly more detail about the timing of the talk with Sandusky and about Curley being the one who would perform the listed tasks, it is still consistent with the fact that their plan to contact the "Dept of Welfare" remained conditioned on whether Sandusky "confesses" to having a problem." This is most likely the case because in Curley's email to Schultz and Spanier the next day on 2/27/01, Curley goes into great detail about the plans and he restates, in virtually the same language, the original conditional plan: they would go to DPW in the event that Sandusky is not "cooperative." The only change in the plan to contact DPW evinced in the 2/27/01 email, from the one delineated in the 2/12/01 Schultz note, is the change from "unless he 'confesses'" to "if he is cooperative." Arguably, these phrases meant exactly the same thing to these men and that is why "confesses" was in quotation marks in the original note.

On 2/27/01, Curley, Spanier, and Schultz traded the following emails regarding this subject:

At 08:10 PM 2/27/01 -
0500, Tim Curley wrote:
 <blockquote type=cite cite>I had scheduled a meeting with you this afternoon about the subject we discussed on Sunday. After giving it more thought and talking it over with Joe yesterday- I am uncomfortable with what we agreed were the next steps. I am having trouble with going to everyone, but the person involved. I think I would be more comfortable meeting with the person and tell him about the information we received. I would plan to tell him we are aware of the first situation. I would indicate we feel there is a problem and we want to assist the individual to get professional help. Also, we feel a responsibility at some point soon to inform his organization and 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?¹¹¹

At 10:18 PM 2/27/01-
0500, Graham Spanier wrote:
 <blockquote type=cite cite>Tim: This approach is acceptable to me. It requires you to go a step further and means that your conversation will be all the more difficult, but I admire your willingness to do that and I am

¹¹⁰ SIC report at Ex. 5F.

¹¹¹ *Id.* at Ex. 5G. Although the emails are listed in reverse order in the original, (latest email on top) I have reversed them here for clarity by putting them in chronological order.

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.¹¹²

Schultz responded the next day:

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

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.¹¹³

The SIC mischaracterized the 2/27/01 email because their reading of the following: "After giving it more thought and talking 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." The SIC took this sentence to mean that Curley wanted to inform only Sandusky and not inform DPW. The SIC's reading of these sentences is both internally inconsistent and externally inconsistent with the other three related emails and documents. Three sentences later Curley writes, "Also, we feel a responsibility at some point soon to inform his organization and and [sic] maybe the other one about the situation." One sentence after that, Curley writes, "If not, we do not have a choice and will inform the two groups." This is a clear delineation of the same conditional plan that Schultz wrote about on 2/12/01.¹¹⁴

When he wrote, "I am having trouble with going to everyone, but the person involved," Curley was raising the issue of his discomfort with not disclosing to Sandusky the information they had about the shower incidents as well as their plans to speak to The Second Mile and DPW.¹¹⁵ Curley was not stating that he did not want to report to DPW. He was stating that when he spoke to Sandusky first — as they had planned — he wanted to also confront Sandusky with all the information they had and the fact that they believed he had a problem. Curley wanted to go a step further than merely telling Sandusky about the proper use of Penn State facilities. In effect, Curley did not want to go behind Sandusky's back to The Second Mile and DPW without

¹¹² *Id.*

¹¹³ *Id.* at Ex. 5G.

¹¹⁴ *Id.*

¹¹⁵ It appears from the language used here by Curley that he understood Schultz's email from 2/26/01 to mean that all he was supposed to talk to Sandusky about was "the appropriate use of the University facility." But Curley apparently was uncomfortable with this and wanted to do more, not less. This willingness to do more is what Spanier apparently applauded him for in his email on 2/27/01.

first giving Sandusky an opportunity to cooperate.¹¹⁶ This is confirmed in Spanier's 2/27 reply, in which he applauds Curley for offering to take the additional, difficult step, of confronting Sandusky with what they know and the fact that they feel he has a problem.

Curley then goes on to lay out in great detail a scripted version of what he planned to say to Sandusky when he met with him. Included in that version is a detailed discussion of under which circumstances he will notify The Second Mile and maybe notify DPW and under which circumstances he will notify both. Therefore, the notification of DPW plans devised on 2/12/01 were the same as those recounted in the 2/27/01 email. Hence, there was no change in plans instigated by Paterno. He was not an intervening cause in any change of plans because the evidence shows there was no change of plans with regard to conditionally notifying the DPW. Therefore, there was no conspiracy or any agreement to conceal.

At the time, everyone still believed that Sandusky was a respected member of the community. This is why Schultz called this plan "more humane and upfront." It wasn't because he was indifferent to child victims, it was because he had no idea that there were any child victims. It was humane because it contemplated not going behind Sandusky's back with embarrassing information, and it was upfront because it contemplated telling Sandusky the whole truth. Apparently, their earlier discussions, which were only briefly summarized by Schultz in the 2/25 note and the 2/26 email, must have contemplated only talking to Sandusky about the appropriate use of the facilities.

What is different about the plans as discussed by Curley and Schultz in the 2/12/01 notes, and the later notes and emails, is the addition of notifying the chair of The Second Mile. Therefore, it is more reasonable to conclude that if a conversation with Paterno was an intervening cause, it was to *add* The Second Mile to the list of those to be notified, not *remove* DPW. After all, The Second Mile was the very agency that was most likely responsible for the well-being of the child who McQueary saw being victimized in the shower by Sandusky. It was also an outside agency "providing children with help and hope."¹¹⁷ And there is no question that Curley planned to and in fact did notify The Second Mile. Yet the SIC still found it reasonable to conclude that Paterno and others engaged in an active agreement to conceal Sandusky's behavior. This despite the fact that there is no evidence that they attempted to control or limit what the executive director of The Second Mile did with the information Curley provided to him. In fact, the executive director informed two trustees of the organization as well, neither of which reported any attempt to silence or limit what they did with the information.

The way that the 2/27/01 email is written lends itself to the conclusion that Curley had thought about going further with what he wanted to discuss with Sandusky and then discussed this with Paterno (i.e., "After giving it more thought and talking it over with Joe yesterday . . ."). Throughout this email, Curley carefully and deliberately used the personal pronoun "I" nine times to convey his plans and motivations, as well as, the plural pronoun "we" nine times to convey the plans and motivations of himself and unspecified others. The only aspects of these

¹¹⁶ This language is also consistent with the belief that the "problem" they were referring to was that Sandusky did not understand that horsing around with boys in the shower was improper.

¹¹⁷ The Second Mile website can be found at <http://www.thesecondmile.org>.

plans and motivations that could potentially be attributed to Paterno are the ones that follow “we.”¹¹⁸

In fact, none of the uses of “we” evince a change in mind or an agreement to conceal. However, at least three of these references are followed by plans to conditionally notify DPW just as is stated in the 2/12/01 Schultz note. Therefore, it is not accurate to state that this email encompasses a change in plans or a plan to not notify DPW. This fact undermines the SIC’s assertion that Paterno was the intervening cause in a decision not to inform DPW.

In my opinion, as discussed above, this purported “change of plans” as concluded in the SIC report did not in fact happen. Instead, the 2/27/01 email simply restates a plan that was devised in a meeting between Schultz and Curley on 2/12/01. Also, the fact that there were circumstances under which they did not necessarily plan to inform DPW was based on a completely reasonable belief that they didn’t know whether informing DPW was necessary. At the time, as delineated in Schultz’ 2/12/01 note, they believed that informing DPW was necessary only if Curley couldn’t get Sandusky to admit to having a problem and agree to get help. They saw DPW as an agency skilled at investigating and dealing with similar situations, which may be helpful in impressing upon Sandusky the problems with his behavior. However, if Sandusky were to admit that he had a problem and was cooperative, then there would be no need to enlist the help of DPW. Additionally, even if they didn’t notify DPW initially, they left open to option to still decide to inform DPW in the future, after Curley had confronted Sandusky, and after they had notified The Second Mile.¹¹⁹ They never even contemplated that Sandusky might have been committing sex crimes against boys, which is why they never even discussed the issue or discussed going to the police.

Either way, informing The Second Mile is clearly not keeping the information in-house or concealing information. The Second Mile was an independent child care agency/charity founded by Sandusky but run by a board and a CEO. It is also the most likely place where Sandusky obtained access to the child in question. Accordingly, The Second Mile is precisely the organization that was in the best position to identify that child. And, because its CEO, Jack Raykovitz, was a licensed psychologist, he was a mandated reporter of any sexual victimization allegations regarding any children within his professional or institutional care.

3. Vulnerability for not having reported

In the his 2/27/01 email, Spanier raised the following issue, “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.”¹²⁰ This indicates that Spanier felt some vulnerability regarding the conditions under which they were not planning on reporting to DPW, however, the nature of what that vulnerability was is not stated here. Spanier later stated that his

¹¹⁸ The SIC apparently did not do a detailed content analysis of this email.

¹¹⁹ All of the notes and emails in this series listed contacting Sandusky first. The 2/25/01 Schultz note listed contacting DPW before The Second Mile; however, the 2/26/01 Schultz email listed contacting DPW after The Second Mile. This change in the order of their plans is consistent with the theory that they had contemplated notifying DPW only as a last resort on 2/26/01 before Curley talked to Paterno.

¹²⁰ SIC report at Ex. 5G.

only “concern [was] about the possibility that Jerry would not accept our directive and repeat the practice.”¹²¹ This indicates that their concern was with Sandusky’s “practice” of horsing around in the shower with boys as opposed to an indication that they knew or even suspected he was sexually assaulting boys.

Schultz then addresses this same issue in his 2/28/01 email by saying, “We can play it by ear to decide about the other organization.” Again, there is no definitive decision here to refrain from reporting to DPW. They are simply delaying the decision to do so, until they see whether Sandusky is cooperative and admits to having a boundary issue problem. That way, their decision could be based on the outcome of Curley’s confrontation of Sandusky. In other words, it would be an informed decision, rather than one made in the dark. The crucial issue here is that they wanted to get Sandusky to realize that he has a problem horsing around with boys in the shower and he needs to get help for it. If Sandusky were to admit to this, and agree to get help, then there would be no need to enlist DPW. On the other hand, if Sandusky were uncooperative and did not confess to having this problem, then they would have to enlist the help of DPW to investigate and convince Sandusky that he did in fact have a problem that required help.

In the end, according to Spanier, Curley reported that he had spoken with both Sandusky and The Second Mile and “those discussions had gone well and our directive accepted, and the matter was closed.”¹²² Meaning, Sandusky was told not to bring children into the facilities at the university and The Second Mile was alerted to the “problem” that Sandusky had with horsing around with boys in the shower, so there was no need in their minds to enlist the help of DPW to enforce the directive against Sandusky. None of these communications indicate any belief on the part of the men that Sandusky was committing sex crimes against boys.

It is clear from the notes and emails beginning on 2/12/01 through 2/28/01 that Curley, Schultz, and Spanier are trying to develop and execute a plan to make their former colleague understand and accept that he has a problem, which they naively believed professional help would resolve.¹²³ There is no indication in any of these documents or in their behavior that these men had any idea of the actual nature and extent of Sandusky’s “problem” or that he had long ago progressed to being a child sex offender.

If there was any error in the logic and plans of Curley, Schultz, and Spanier in dealing with the 2001 Sandusky shower incident, it was the fact that they believed that a boundary issue problem was not sufficient to warrant a notification to the UPD. Schultz contacted the UPD on February 12, 2001 asking about whether a file existed on the 1998 incident. There is no evidence

¹²¹ *Id.* at Ex. 2J.

¹²² *Id.* at Ex. 2J.

¹²³ The difference between this naïveté on the part of men who had no professional contact or care of children, and did not know that Sandusky had committed any sex crimes against children, versus the purported ignorance on the part of the leaders in the Boys Scouts of America and Catholic Church, which received explicit repeated complaints of actual child sex crimes perpetrated against children, from the children themselves, is that both of those organizations are in the business of care of children that are entrusted to them and are therefore in a position to have to know about the behavior of child sex offenders and had been put on notice by victims, parents, law enforcement, child care professionals, lawyers and District Attorneys. And yet, there were deliberate acts of moving offenders to other jurisdictions, or hiding or destroying documents, or ordering victims and witnesses to be silent. While Curley, Schultz, and Spanier, were not in the childcare business and had no training in this area at all.

indicating whether Schultz notified the UPD at that time about the existence of the then current allegation against Sandusky. If he did not, it could mean that he relied on Courtney's advise to him that what had taken place was not reportable, or this could be troubling evidence that may indicate a decision on the part of Schultz to conceal information from law enforcement authorities. This is also consistent with the more recent discovery on March 20, 2012¹²⁴ of a "private" file that had been kept in Schultz's office and was not disclosed to investigating authorities or the SIC. We do not know whether Schultz was aware of this file at the time he received inquiries or subpoenas regarding files related to allegations against Sandusky. We do not know whether Curley and/or Spanier knew about the existence of the inquiry Schultz made to the UPD or of the private file that Schultz maintained. However, what is certain is that there is no evidence to date that indicates Paterno ever knew of the existence of the UPD inquiry or of the "private" Schultz file.

4. "A more humane approach"

On February 28, 2001, Schultz wrote, "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)."¹²⁵ Schultz was most likely referring to Curley's additional plan to tell Sandusky what they knew about his behavior and that he had a problem. Schultz referred to the approach as "upfront" because it involved going to Sandusky directly. Schultz is talking about disclosing additional information, rather than hiding information. Schultz goes on to write, "We can play it by ear to decide about the other organization."¹²⁶ In other words, Schultz is indicating that he, Spanier, and Curley had not ruled out going to DPW, if necessary.

5. No evidence of Paterno's participation in an active agreement to conceal

There is no evidence that Joe Paterno was part of any agreement to conceal what McQueary reported witnessing in the Lasch Building showers in 2001. All available evidence suggests that Paterno did (1) inform McQueary he would find out who in the school's administration should handle this matter, (2) inform his superiors (Curley and/or Shultz) and make sure that McQueary spoke directly to them, (3) step out of the administrative process at that point, (4) at most was updated about the administration's response to McQueary's report, and (5) went back to McQueary and made sure he was okay. There is no evidence that Paterno participated in the ultimate decision to inform or not to inform DPW.

All available evidence also suggests that Paterno did not (1) dissuade McQueary from believing what he saw Sandusky doing in the locker room, (2) persuade McQueary to forget what he saw, (3) ask McQueary who else he had told, (4) tell McQueary to keep what he saw a secret, (5) filter, shape, or edit what McQueary told the Penn State administration about what he saw, (6) attend the administration's interview of McQueary, (7) debrief McQueary about what he had recounted to the administration, (8) participate in the administration's investigation of the events that McQueary reported, (9) dissuade the administration from thoroughly investigating

¹²⁴ Louis Freeh, press conference, July 12, 2012.

¹²⁵ SIC report at Ex. 2F.

¹²⁶ *Id.*

what McQueary reported, (10) make any attempt to hide what the administration found during their investigation of what McQueary reported, (11) make any attempt to prevent the administration from acting as it deemed appropriate as a result of their investigation into what McQueary reported, or (12) limit or shape what the administration reported to The Second Mile.

In the United States we enjoy the presumption of innocence. If an investigation finds no evidence to prove a crime, you must not make leaps of faith and jump to conclusions to find participation in that “crime.” For all the above stated reasons, it is erroneous to attempt to tie Paterno, using innuendo and conjecture, into any agreement to conceal as the SIC claims.

D. Paterno’s Subsequent Actions

Every single action Paterno took subsequent to McQueary’s report in 2001 and throughout the ensuing ten years, indicates that Paterno did not understand what McQueary was trying to communicate to him. In fact, the aspect of McQueary’s testimony that has remained fairly consistent is the fact that he did not give Paterno any specific details about what he thought Sandusky was doing in the shower. While other witnesses have told versions of events that minimize their role and their knowledge, Paterno has done the opposite. He admits that he didn’t know how to handle what was reported to him and he simply passed on the version of events he heard from McQueary. At the time it was all he thought he needed to do. Later, when he found out the truth about Sandusky’s actions, he wished he had done more.

1. Paterno mischaracterized facts which put his own actions in a less favorable light

When Paterno testified before the grand jury that after he received the report from McQueary, he waited to inform others because he did not want to interfere with their weekends. That was factually incorrect and to his detriment. Based on the record, he may have called Curley the same day that McQueary came to him. If he didn’t, he unquestionably conveyed McQueary’s report to Curley and met with Curley and Schultz on Sunday, the very next day.¹²⁷

When Paterno spoke about reporting the incident, he said he merely called Curley, but maybe spoke to him in person. In fact, according to Curley and Schultz, Paterno called them that weekend, and both of them went to Paterno’s house on Sunday and spoke to Paterno in person. If Paterno were trying to make it sound like he responded appropriately to a serious situation, he would not testify that he sat on the information and then informed one person over the phone. Paterno was undermining the strength of his own actions in response to the report by McQueary. Thanks in part to the testimony of others, we now know that is not what happened. Paterno, in fact, acted even more promptly than he originally remembered. If Paterno had been trying to cover up something, he would have been much more likely to oversell his actions than to undersell them.

¹²⁷ In fact, with an hour of meeting with McQueary, Paterno flew to Pittsburgh for induction into the Pittsburgh Sports Hall of Fame and remained there overnight. Interview with Paterno family member, Feb. 6, 2013. This ceremony had been planned months in advance and Paterno was the guest of honor. The next opportunity Paterno had to meet with Curley and Schultz was in fact the day he met with them, Sunday, February 11, 2001. “I had a meeting with Tim and Gary [Schultz] might have been there, and I told them what Mike had told me.” Posnanski at 273.

2. Paterno's first account

On Monday, January 3, 2011, Cynthia Baldwin, general counsel for Penn State, interviewed Paterno about his recollection of what McQueary told him in 2001. Baldwin took what appear to be contemporaneous notes of this interview. According to these notes, Paterno said McQueary “[s]aw Jerry horsing around w[ith] 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.”¹²⁸ This was Paterno’s first interview about the incident that had happened in 2001. Baldwin’s notes indicate that Paterno did not think McQueary was reporting anything sexual. This was before Paterno had heard or read any of the details of the 2011 allegations against Sandusky. This is before Paterno spoke with the grand jury. However, by the time Paterno had testified in the grand jury, he was aware that Sandusky was being investigated by the state attorney general for molesting boys.

3. Paterno's explanations

Paterno gave the following reasons when asked why he took no action to identify the February 9, 2001 child victim and for not reporting Sandusky directly to state authorities.

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.”¹²⁹

This answer appears to be typical of Paterno’s frank, open, and honest style of speaking. It is very revealing that he admits he didn’t know how to handle what he was told. It also is illuminating that Paterno was afraid to break even the university rules. That is not something that would worry someone who was planning on breaking criminal laws by concealing information about child sex crimes. Paterno doesn’t try to spin his behavior in the best light. He simply explains what he did and admits that it did not work out. If McQueary had simply told Paterno that Sandusky was raping a boy, or having sex with a boy in the shower, then Paterno, like everyone else in the world, would have known what to do: “We would have gone to the police right then and there, no questions asked.”¹³⁰

In what was perhaps the most comprehensive interview of Paterno on the subject, Joe Posnanski, author of the biography, *Paterno*, had the following conversation with Paterno in late November 2011.

Posnanski: Did Mike [McQueary] say that he saw anything?

Paterno: I think he said he didn’t really see anything. He said he might have seen something in a mirror.

Posnanski: A mirror?

¹²⁸ SIC report at 83. This also indicates that Paterno was again underselling his actions.

¹²⁹ Sally Jenkins, *Paterno's Last Interview*, Wash. Post, Jan. 14, 2012.

¹³⁰ Posnanski at 277.

Paterno: Yeah, like the bathroom mirror. But he told me he wasn't sure he saw anything. He just said the whole thing made him uncomfortable.

Posnanski: What did you think he saw?

Paterno: I didn't know. I thought he saw them horsing around. Maybe he thought he saw some fondling. I don't know about any of this stuff. But I could tell it made Mike very upset.

Posnanski: What did you say to him?

Paterno: I told him he didn't have to tell me anything else. I told him he did the right thing bringing it to me, and that now it was my job to get him together with the right people for him to report it.

Posnanski: Did you consider calling the police?

Paterno: To be honest with you, I didn't. This isn't my field. I didn't know what to do. I had not seen anything. Jerry didn't work for me anymore. I didn't have anything to do with him. I tried to look through the Penn State Guidelines to see what I was supposed to do. It said that I was supposed to call Tim [Curley]. So I called him.

Posnanski: That day?

Paterno: I'm pretty sure I called him that day. I know it was a weekend, so I can't be a hundred percent sure, but I do think I called him that day.

Posnanski: And what did you say?

Paterno: I said, "I think there may be a problem here. You need to get to the bottom of this."¹³¹

Here, Paterno is honest about the limits of his memory of a decade old conversation. He does not overstate details but remembers generally what was said. The most significant components of his memory were that McQueary was uncertain about what he'd seen and the general observation Paterno made at the time that McQueary was very upset by what he saw and was having trouble talking about it to Paterno. So much so, that Paterno told McQueary he didn't have to tell him any more. This, coupled with McQueary's admission that he only used generalities and not "very much detail" when recounting what he saw to Paterno, underscores the fact that McQueary did not convey to Paterno the same thing he would testify about a decade later. Namely, McQueary did not convey in 2001 that he thought he saw Sandusky having intercourse with a boy in the shower. Posnanski, unlike the prosecutor who questioned Paterno in the grand jury, went on to ask further details.

Posnanski: Were you shocked?

Paterno: I wasn't really even sure what it was. Mike didn't give me any details. I could just tell he was upset.

Posnanski: Had you heard any rumors at all about Jerry Sandusky [showering with boys]?

Paterno: Absolutely not. Maybe people talked about it, I don't know. But I didn't hear anything.

¹³¹ *Id.* at 272-73.

Posnanski: Did you think about investigating yourself?

Paterno: I wouldn't know how to investigate something like this. I don't know anything about it. [Jerry] didn't work for me. I had a meeting with Tim and Gary [Schultz] might have been there, and I told them what Mike had told me. And they said they would get to the bottom of it. I trusted Tim would take care of it. He's a good administrator. He had negotiated the retirement deal with Jerry, and he was still in contact with Jerry. Tim's a good person. I expected him to handle it right.

Posnanski: Did you ever follow up?

Paterno: No. I trusted Tim.

Posnanski: Do you regret that?

Paterno: I did what I thought was the right thing. . . . If what they're saying about Jerry is true, I think we all wish we would have done more.¹³²

Paterno, even up to a few months before he passed away, still used the qualifier "if" when referring to the allegations about Sandusky. He still didn't believe it himself. He had not formed an opinion as to Sandusky's guilt because he thought he knew Sandusky and he trusted and expected the system to work to determine the veracity of the allegations. He had plenty of reason to harbor extremely ill will towards Sandusky at this point. The entire university and city were up in arms by this point about Sandusky's crimes. Despite the fact that Paterno and Sandusky had reportedly disliked each other for years, Paterno tried to remain neutral. Not because he was trying to protect the name of Penn State football, but because Sandusky hadn't had his day in court yet and Paterno still could not believe that Sandusky had fooled him and everyone else for so long.

In his statement to the community just before he was fired, Paterno said, "If true, the nature and amount of charges made are very shocking to me and all Penn Staters."¹³³ Then he went on to say, "I understand that people are upset and angry, but let's be fair and let the legal process unfold."¹³⁴ From these statements it does not appear that Paterno knew or even believed that Sandusky was in fact a child sex offender. By this time, he had read the presentment against Sandusky in all of its graphic detail and he still couldn't believe that what was being alleged was true about a man he thought he knew. Paterno showed his real concern for children who were molested by Sandusky by lamenting, "I wish I had done more." As opposed to McQueary who said, "I did right . . . I did the best I could."¹³⁵

4. Conclusions

Paterno's actions, in the wake of McQueary's cryptic disclosure, were arguably the most honest and moral of anyone involved. Although later he would wish he had done more, that was

¹³² *Id.* at 273-74. Paterno was almost 85-years-old when Posnanski conducted the above interview and he was undergoing both radiation and chemotherapy for terminal lung cancer.

¹³³ Paterno family press release, Nov. 6, 2011.

¹³⁴ *Id.*

¹³⁵ Mike McQueary's email to Senior Deputy Attorney General Jonelle Eshbach, Nov. 10, 2011.

only after he found out that there was a possibility that Sandusky had deceived him and everyone else at Penn State and had been sexually victimizing boys for decades.

Everything in Paterno's behavior speaks to him wanting to get to the bottom of what Sandusky may or may not have been doing in the shower with the boy. He informed two of the top people in the university and, if he was actually kept informed of what happened next, he would have known that the president of the university was also informed. These are the top administrative people at Penn State. Paterno would have no reason to believe anything other than they would properly handle the information and determine what had actually taken place. Paterno would not have had any reason to believe, and it has yet to be proven, that Curley, Schultz, or Spanier would conspire to conceal the information he passed on to them. He trusted them and their judgment.

Paterno also may have known from his discussion with Curley that Curley had planned to inform at least The Second Mile and maybe DPW. Either plan is clearly not an attempt to conceal information. If he had known about the 1998 investigation and if he had remembered any details of it in 2001, it would not have seemed unusual for the 2001 allegations also to turn out to be unfounded and easily explained as boundary issues. He was not trained in the area of child sexual victimization. He did not know that Sandusky would later be found out and convicted of numerous counts of sexually assaulting boys. He thought he knew Sandusky and was fooled by his personality, professionalism, and outward dedication to helping children.

When there exists another more reasonable interpretation of the events that actually takes into account the specific and counter-intuitive dynamics of acquaintance child sexual victimization, in my opinion it is incorrect to conclude that Paterno's intent was criminal in nature as opposed to simply being fooled like the rest of the community. Yes, everyone but Sandusky wishes that Paterno had been trained in the field of preferential child sex offender behavior, "nice-guy" acquaintance offenders, "grooming," and "compliant victimization." If he had, he might have been better able to recognize Sandusky's behavior for what it was. He might also have been able to decipher McQueary's sketchy report for what it was intended to be. But Paterno was never trained in this area and had no experience dealing with issues related to it. In light of the fact that Paterno is no longer here to answer detailed questions about the incident or his reactions thereto, it is wrong to conclude that he was involved in an agreement to conceal Sandusky's activities from law enforcement. There is no evidence that Paterno had reason to believe that Sandusky was a child sex offender in the first place, and no evidence that he was part of any agreement to conceal.

Based on my decades of experience with these exact type cases and offenders as skilled as Sandusky, it is completely understandable, and in no way blameworthy or immoral, that Paterno did not recognize Sandusky for what he truly was and do more. Years of anecdotal evidence tells us that nearly anyone in his position, even those held in the highest moral regard like Paterno, without an understanding of acquaintance child sexual victimization, would have acted in the same way. What Paterno did and didn't do in this case is very different from what has been revealed and litigated in the past in organizations like the Boy Scouts of America, and the Catholic Church, where there was a knowing and deliberate plan to conceal the explicitly documented sex crimes of multiple offenders to preserve the name of the organization.

Instead, Sandusky is a case involving effective grooming by a “nice-guy” acquaintance offender, with classic compliant victims who were extremely reluctant to come forward. The victims and witnesses who did come forward in 1998 and 2001 gave equivocal and watered down versions of what happened and as a result, the true nature of Sandusky’s behavior was not discovered at the time. Sandusky fooled an entire community for decades because he actually did help thousands of children through The Second Mile, while he molested selected boys from that group.

V. Difficulties Investigating “Pillar of the Community” Cases

Most people don’t realize how extremely difficult it is to make a case against a male “pillar of the community” who is accused of committing sex crimes against boys. As demonstrated in this case in 2008 when allegations again surfaced against Sandusky, it took the better part of three years for the authorities to remove his access to children and arrest him. This delay occurred despite the fact that, this time, the allegations came from a victim who explicitly articulated that Sandusky had sexually assaulted him. By 2010, they had already interviewed and gotten a detailed statement from at least one victim¹³⁶ and an objective adult eye-witness, McQueary. At that time McQueary was actually giving detailed accounts of his belief that he had witnessed Sandusky sodomizing the boy. Why didn’t they move immediately to arrest Sandusky and protect the children that were exposed to him?

The answer is not a simple one. It is as complicated and tragic as what happened when McQueary and the janitors witnessed Sandusky sexually assaulting boys. The sad truth is that law enforcement officers and prosecutors know that going up against a “pillar of the community” “nice-guy” offender with the word of just one victim is both risky, in terms of the unlikelihood of conviction, and unfair to the victim, in terms of putting a huge burden on the victim’s shoulders. Therefore, they try to build an airtight case against the offender by finding more victims that are willing to testify against him. The biggest obstacle to doing that is most male victims of child sex crimes refuse to talk about it, ever. There is too much societal stigma, too many negative sexuality implications, and too much of a threat to their manhood to overcome.¹³⁷ In addition, once you have identified victims and gotten them to fully disclose, it can still take a long time to convince them to agree to testify in open court. This is something that requires a great deal of strength and courage on the part of the victims. I have investigated and consulted on hundreds of similar cases and have found that most if not all are extremely difficult to investigate and prosecute.

In my colleague Ken Lanning’s treatise on the subject, *Child Molesters: A Behavioral Analysis*, he states:

For the public the “default setting” still seems to be stranger abduction. To them child molesters are sick perverts or “predators” who physically overpower children and violently force them into sexual activity.

¹³⁶ Sandusky trial transcript, June 12, 2012, at 148.

¹³⁷ This is in addition to the guilt, shame, embarrassment and/or self-loathing that most victims of child sex crimes experience.

The often forgotten piece in the puzzle of the sexual victimization of children is acquaintance molestation.¹³⁸

Acquaintance molesters are still, however, one of the most challenging manifestations of sexual victimization of children for society and professionals to face. People seem more willing to accept a sinister, unknown individual or “stranger” from a different location or father/stepfather from a different socioeconomic background as a child molester than a clergy member, next-door neighbor, law-enforcement officer, pediatrician, teacher, coach, or volunteer. Acquaintance molesters often gain access to children through youth-serving organizations. The acquaintance molester, by definition, is one of us. He is not simply an anonymous, external threat. He cannot be identified by physical description and, often, not even by “bad” character traits. Without specialized training or experience and an objective perspective, he cannot easily be distinguished from others.¹³⁹

This last sentence is critical in understanding the behavior of Paterno in this case. He did not have any specialized training or experience. He was not in an objective position. He had known Sandusky for more than thirty years and everyone who knew Sandusky thought that he was a fundamentally good and honest person.

Acquaintance offenders with a preference for younger victims (younger than 12) are more likely to also have to spend time seducing the potential victim’s parents/guardians or caretakers to gain their trust and confidence.¹⁴⁰

This dynamic is perfectly exemplified in this case. Sandusky was able to groom not only the parents, or legal guardians of the boys he victimized, but the entire community with his affable and goofy personality, his role as a husband and as a foster and adoptive parent, his work with the charity he founded, and his tireless efforts raising funds to care for tens of thousands of disadvantaged youth.

Society’s lack of understanding and acceptance of the reality of acquaintance molestation and exploitation of children often results in:

- Victims failing to disclose and even denying their victimization
- Incomplete, inaccurate, distorted victim disclosures when they do happen
- Degrees of shame, embarrassment, and guilt felt by victims

¹³⁸ Lanning at 7.

¹³⁹ *Id.* at 8.

¹⁴⁰ *Id.* at 10.

- Offenders being able to exploit numerous victims over an extended period of time.¹⁴¹

All of these factors are present in the Sandusky case. Jerry Sandusky was a cunning and deliberate child sex offender. He presented himself as an advocate for children, a philanthropist, and altruist and community icon in order to get access to children for sex. That is not to say that he didn't actually "love" boys. He did "love" boys and that is why he could put up with spending so much time with them. By his own words, he actually enjoyed their company. But his "love" for boys was sexual in nature and not the nurturing love that he purported it to be. He admits in his book, *Touched*, that he felt like a kid himself. This is a common trait of many "boy lover" child sex offenders. Indeed, Sandusky and similar offenders rationalize to themselves that because they love boys, having sex with those boys is a natural extension of that love. They tell themselves that this kind of loving sex with boys is educational and nurturing for the boys and not harmful. Clearly, they are wrong. Though this country has seen many "nice-guy," "pillar of the community" child sex offenders, few of them have been as bold as to create a foundation for children, making a name for themselves as a child advocate, as someone who has dedicated his life to caring for troubled children, and as foster and adoptive parent for dozens of those children, while at the same time, using that very charity, and the foster program, as a source to hunt for victims.

Joe Paterno, on the other hand, was actually an advocate who cared deeply about his athletes as students, so much so, that he consistently maintained one of the highest graduation rates for his football players in the country. He was a true philanthropist, an altruistic community leader, and a national icon. Paterno worked with Sandusky for 30 years. He thought he knew the man. However, he and everyone else in State College who thought they "knew" Sandusky were very wrong.

VI. Additional Biases, Limitations, and Erroneous Conclusions in the SIC Report

A. Report Bias

1) The SIC report wholly accepts and rationalizes the behavior of Mike McQueary despite inconsistencies, impossibilities, and unexplained behavior.

The five men to whom McQueary reported the Sandusky shower incident in February 2001, all had recollections that differed from what McQueary believes he conveyed. Inconsistency in eyewitness testimony undermines the credibility of that testimony, it does not bolster it. I do not suggest that McQueary didn't witness Sandusky grooming and sexually assaulting a boy in the shower in 2001, but his accounts of what he saw, how he saw it, how many times he saw it, what he said to his father and Dr. Dranov, and then later to Paterno and still later to Curley and Schultz were filled with inconsistencies and generalities. However, they were taken as credible and accurate accounts of the actions he observed and undertook, and the words that he used. Given the fact that none of the actions or words were documented at the time — in fact they were first documented almost a decade later — the accuracy and reliability of those accounts and specific words should have been taken as fairly low, particularly in light of

¹⁴¹ *Id.* at 11.

the variations in those accounts. The one thing that McQueary has consistently stated is that he told Paterno far less than what he thought he saw.

2) The SIC report rationalizes McQueary's and the janitors' behavior and condemns the actions of Paterno.

The executive summary of the SIC report is written in such a way that it rationalizes the behavior of McQueary and the janitors while it condemns most of Paterno's behavior. By doing this, the SIC is engaging in argument instead of stating fact. For example, the SIC stated, "Fearing that they would be fired for disclosing what they saw, neither janitor reported the incidents to the University officials, law enforcement or child protection authorities."¹⁴² This statement rationalizes the behavior of the janitors. Later, the SIC notes that "McQueary met with and reported the incident to Paterno on Saturday, February 10, 2001." This is a neutral statement of fact. Compare both of these statements to the SIC characterization of Paterno: "Paterno did not immediately report what McQueary told him, explaining that he did not want to interfere with anyone's weekend."¹⁴³ This statement is argumentative and misleads the reader into thinking that Paterno unnecessarily delayed reporting the incident based on an absurdly weak excuse.¹⁴⁴

3) The SIC report did not understand the behavior and reactions of McQueary and the janitor, so the SIC blamed the confusing reactions of McQueary and the janitors on Paterno and Penn State.

What the SIC report fails to process or even consider is the fact that McQueary and the janitor witnessed such a confusingly negative event that it affected both of them profoundly. The janitor compared what he witnessed to the horrors of war he witnessed in Korea. He said that he witnessed something he will never forget, but he couldn't bring himself to report it to the authorities. And McQueary testified that what he had just witnessed was "ridiculous" and was so embarrassing that he wanted to get out of there as quickly as he could. Though McQueary pushed past his discomfort to a degree, reporting the incident to his father and Dr. Dranov, he had a great deal of trouble verbalizing the details. Then when he recounted the incident to Paterno, he apparently had an even more difficult time recounting any details because of how "prudish" Paterno was known to be. It is the profoundly disturbing nature of child sex crimes that is to blame for the message getting lost on the people to whom McQueary reported.

4) The SIC selectively quotes Paterno's testimony to cast Paterno in the worst light.

¹⁴² SIC report at 62. Fear of losing one's job is not a justification for not acting when you are an eyewitness to a child being sexually assaulted. Although I have no reason to question whether the janitor feared for his job, this is absolutely no excuse for an adult to allow a child to be sodomized right in front of his eyes. This janitor is the only known person who actually witnessed Sandusky sodomizing a boy, and knew exactly what he was witnessing, yet he let it happen and did nothing to stop it or report it to any administrators or authorities.

¹⁴³ *Id.*

¹⁴⁴ Paterno did in fact interfere with their weekends and the SIC was well aware of this. As the SIC report itself states on page 62, "On Sunday, February 11, 2001, Paterno met with and reported the incident to Curley and Schultz." *Id.* at 62.

According to the SIC, “We also know that he delayed . . . Mr. Paterno . . . reporting Sandusky’s sexual conduct because Mr. Paterno did not to ‘want to interfere’ with people’s weekend.”¹⁴⁵

The SIC is well aware that Paterno did in fact “interfere” with the weekends of Curley and Schultz because he met with them the very next day on the very same weekend — Sunday, February 11, 2001. And the SIC should be aware that Paterno may very well have called Curley on Saturday to set that meeting up. Remarkably, the SIC failed to note that Paterno was unavailable and flew to Pittsburgh that Saturday — the day McQueary reported to Paterno — to be inducted into the Pittsburgh Sports Hall of Fame. This is a fact that was well documented in new stories.¹⁴⁶

The SIC quotes from Paterno’s grand jury testimony but ignores Paterno’s later testimony and the testimony of others. In November 2011, Paterno told his biographer, “I’m pretty sure I called him that day. I know it was a weekend, so I can’t be a hundred percent sure, but I do think I called him that day.”¹⁴⁷ In January 2012, Paterno told an interviewer that he “[w]aited till Sunday because I wanted to make sure I knew what I was doing.”¹⁴⁸ (Notably, the SIC quotes Paterno’s words that immediately precede this sentence, but ignores this sentence.) Furthermore, Curley and Schultz have testified that they did in fact meet on Sunday, February 11 to discuss this matter. So, Paterno did interfere with Curley’s and Schultz’s weekend. None of them remember exactly when Paterno called, but we do know that they met the very next day. It is possible that Paterno made the call on Saturday, February 10, the same day that McQueary told him about the incident, and they met the following day. In sum, the SIC selectively quotes the one statement that puts Paterno in the worst light even though two of Paterno’s later statements and the testimony of everyone else involved in addition to the facts themselves directly contradict the quote that the SIC chose to highlight.

5) The SIC unfairly compares the 1998 investigation into allegations against Sandusky, which resulted in a finding of no sexual intent and no criminal conduct, to banning a sports agent from campus who was found guilty of a crime.

In criticizing Penn State officials for not limiting Sandusky’s access to Penn State facilities, the SIC report compares the Sandusky investigation to a situation in which a sports agent had been banned from the campus. This type of comparison demonstrates the SIC’s lack of understanding regarding acquaintance child sexual victimization. According to the SIC report, “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”¹⁴⁹ The SIC quotes Spanier as saying at the time that the “agent fooled around with the integrity of the university, and I won’t

¹⁴⁵ Louis Freeh, press conference, July 12, 2012. The SIC also repeats this misleading claim three times in its report. SIC report at 23, 62, and 68.

¹⁴⁶ See, e.g., Ed Bouchette, *Dorsett, Paterno enter Pittsburgh hall*, Pittsburgh Post-Gazette, Feb. 10, 2001, at B-1.

¹⁴⁷ Posnanski at 272-73.

¹⁴⁸ Sally Jenkins, *Joe Paterno’s last interview*, Wash. Post, Jan. 14, 2012.

¹⁴⁹ SIC report at 52.

stand for that.”¹⁵⁰ What the SIC does not mention is that the agent Spanier was referring to actually broke the law, was charged and convicted.¹⁵¹ There was no question that it was a crime, and there was no question about what actually happened. And the result of that investigation was that the agent pleaded no contest, was found guilty, and the judge ordered him to pay a \$10,000 fine and perform 100 hours of community services as part of a year of probation for his conviction. Contrast that with the Sandusky incident in 1998. The original accusation was the Sandusky had showered with a young boy and it may have been inappropriate. After a full investigation, child welfare experts, police, and the district attorney made a finding of no criminal activity. This is not a fair comparison.

B. Limitations of Mandate

However well intentioned, the SIC investigation was admittedly limited in scope, depth, and power. It was neither a criminal nor a civil litigation-based investigation with subpoena power, grand jury power, the power to conduct covert investigation or overhears, the power to compel interviews or take sworn testimony, or the power to grant limited or complete immunity. Because this investigation lacked the power and authority to utilize these basic and essential investigative tools, it should not be taken as the final and comprehensive word on the facts and circumstances surrounding the sexual victimization crimes committed by Jerry Sandusky.¹⁵² It had the limited scope and purpose of investigating the child sexual victimization activities by former Penn State coach Sandusky at the university, and the administration’s response to those activities. The SIC investigation had to rely on the voluntary cooperation of individuals and organizations involved. The SIC investigation was not intended to replace a thorough and comprehensive civil or criminal investigation into all of the sexual victimization offenses committed by Jerry Sandusky, of The Second Mile, or of any other matter inside or outside Penn State University.

Of particular note is the SIC investigation does not find evidence of earlier child sex crimes by Sandusky during the nearly three decades of Sandusky’s association with Penn State prior to the allegations that surfaced in 1998. We know from Sandusky’s adoptive son, Matt, that Sandusky had been molesting him since he was 8 years old in 1987¹⁵³ and preferential child sex offenders typically recognize their attraction to children in their late adolescence and begin offending shortly thereafter.¹⁵⁴ In the Catholic Church child sexual victimization cases, a majority of victims took over 30 years to disclose their victimization.¹⁵⁵ Furthermore, the SIC does not explore the nearly three years of sex crimes likely committed by Sandusky during the Attorney General’s investigation that began in 2008.

¹⁵⁰ *Id.*

¹⁵¹ The agent took Penn State’s running back, Curtis Enis, on a \$1,000 shopping spree. Donald Gilliland, *Graham Spanier said agent in Curtis Enis incident ‘fooled around’ with Penn State’s integrity*, The Patriot-News, July 15, 2012.

¹⁵² It should be noted here that when asked, Louis Freeh stated that the SIC report was not intended to make criminal conclusions, it only made “reasonable conclusions.”

¹⁵³ Michael Isikoff, *Matt Sandusky details alleged sex abuse by his father*, NBC News, June 26, 2012.

¹⁵⁴ Lanning at 53.

¹⁵⁵ Karen J. Terry, et al., John Jay College Research Team, *The Causes and Context of Sexual Abuse of Minors by Catholic Priests in the United States, 1950-2010*, at 78 (May 18, 2011).

There have been unconfirmed news reports of allegations against Sandusky between the 1970s when he founded The Second Mile and 1987, and as an expert in the field, in my opinion, there is a very high probability that Sandusky had been grooming and victimizing boys during this time. This, in and of itself, underscores both the limitations of the SIC investigation and the effectiveness of Sandusky's "grooming" capabilities.

The SIC investigation was also limited in that it did not utilize the typologies of "nice-guy" acquaintance child sex offenders and their methodologies, of "grooming" and the results thereof, and of "compliant victimization" and the counter-intuitive way in which victims of this class of crimes behave. In sum, it is my opinion that in addition to the SIC being hampered in their task by not having criminal or civil investigative powers, they drew erroneous conclusions based on, among other things, their lack of consideration of the specific and counter-intuitive dynamics particular to acquaintance child sexual victimization cases.

Though the SIC investigation conducted over 430 interviews, and reviewed over 3.5 million pieces of data and documents, they actually uncovered only four that reference Paterno.¹⁵⁶ They did not interview any victims, nor did they interview Mike McQueary, John McQueary, Dr. Dranov, Paterno, Curley, Schultz, or Sandusky. None of the emails or notes discovered by the SIC investigation that referenced Paterno were found before Paterno's death and therefore Paterno was never given the opportunity to affirm or refute the references made to him therein. This dearth of evidence relating to Paterno creates a hole in any case against him, but it does not create a justified opportunity to fill that hole with conjecture and assumptions.

The SIC report treats the well-disguised, insidious, and hidden behavior of Sandusky as if it were an average event on campus about which Paterno would know everything. In fact, it is anything but that.

The SIC report gives all sources of information equal weight and credibility without taking into account their reliability or nature, including contemporaneous documentation of events, decade old memories of events, sworn testimony, statements made to the press, triple hearsay, rumor, and innuendo. However, the report unfortunately ignores a tremendous resource, Joe Posnanski, a biographer who was interviewing Paterno during critical periods of the breaking Sandusky scandal. As such, Posnanski was witness to events as they unfolded and since Paterno is no longer alive, the interviews Posnanski had with Paterno contain valuable information that should have been considered. While his book was not published until August 2012, it was well-known that he was writing the book and had access to Joe Paterno.

C. Other Errors and Erroneous Conclusions

1.) *The SIC concludes that there was "[a] culture of reverence for the football program that is ingrained at all levels of the campus community."*¹⁵⁷

¹⁵⁶ See Curley's May 5, 1998 email to Schultz, SIC report at Ex. 2A; Curley's May 13, 1998 email to Schultz, SIC report at Ex. 2B; Schultz's handwritten note on February 12, 2011, SIC report at Ex. 5C; Curley's February 27, 2001 email to Spanier and Schultz, SIC report at Ex. 5G.

¹⁵⁷ SIC report at 17.

The fact that Paterno is personally responsible for conducting “The Grand Experiment” that resulted in making Penn State football one of the most successful, academically oriented college football programs in the country should and rightly did command a culture of reverence within the university and within college football in general. Moreover, a culture of reverence can exist in any sport, in any organization, in any community, in any location; and, “nice-guy” acquaintance offenders have groomed victims and members of all those communities over the years.

It is only because the SIC report lacks an understanding of the dynamics of acquaintance child sexual victimization that it has misconstrued the behavior of the individuals involved and blamed Sandusky’s ability to hide and continue his offending on the “culture of reverence for the football program.” If the writers of the SIC report had fully understood those dynamics, they would not have been searching for reasons why Paterno and others did not recognize Sandusky’s offending behavior for what it was.

2.) *The SIC incorrectly assumes that McQueary communicated enough information to Paterno for Paterno to understand the need for immediate law enforcement intervention.*

According to Louis Freeh at his press conference, “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 now my job to figure out what we want to do.’ What was to figure out here?”

All the evidence and McQueary’s own testimony indicates that Paterno did not know that McQueary believed he saw Sandusky having sex with the boy. McQueary’s implications were not direct enough to convey to Paterno that the boy was being sexually victimized. And, the above quoted statement by Paterno¹⁵⁸ was further illuminated in his interview with Posnanski in which he stated, “I told [McQueary] that he did the right thing bringing it to me, and that now it was my job to get him together with the right people for him to report it.”¹⁵⁹ What Paterno had to figure out was who were the right people to report to. So, in Paterno’s own words, “I didn’t know what to do. I had not seen anything. Jerry didn’t work for me anymore. I didn’t have anything to do with him. I tried to look through the Penn State Guidelines to see what I was supposed to do. It said that I was supposed to call Tim [Curley]. So I called him.”¹⁶⁰ The record speaks for itself here.

3.) *The SIC claims that it was not making legal conclusions. At his press conference, Louis Freeh was asked “could it be construed as obstruction of justice, conspiracy, aiding or abetting, or a cover-up?” Freeh replied, “Those are all legal conclusions, which I’m not prepared to make. The evidence clearly shows in our view an active agreement to conceal, and I*

¹⁵⁸ See *supra* Part IV.B.4. As stated earlier, Paterno gave three different accounts of what he told McQueary and the SIC chose the quote that put Paterno’s actions in the worst light.

¹⁵⁹ Posnanski at 272.

¹⁶⁰ *Id.*

*think it would be up to a grand jury and a law enforcement officer to make decisions whether it meets the elements of criminal offenses.”*¹⁶¹

In fact, Freeh did make a number of unsubstantiated legal conclusions. Freeh stated “[t]he evidence clearly shows” that Paterno “repeatedly concealed critical facts relating to Sandusky’s child abuse from authorities,” Paterno was an “integral part of this active decision to conceal,” and, consequently, Paterno “empowered Sandusky” and “failed to protect against a child sexual predator harming children for over a decade.” The definition of a conspiracy is an agreement between two or more persons to commit a crime. And knowingly conspiring to conceal evidence of the sexual victimization of a child is a crime. While Freeh never used the word “conspiracy,” he nonetheless enunciated the elements of a criminal conspiracy.¹⁶²

Although, Curley, Schultz, and later Spanier, were all charged with crimes, Paterno was not. However, the SIC report lumps all four of these men, and their actions and inactions, together effectively accusing Paterno of committing a crime.

4.) *The SIC notes, “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.”*¹⁶³

As stated in the SIC report, none of the staff members who observed Sandusky showering with boys informed Paterno, therefore, it is wrong for the SIC to attempt to hold Paterno responsible for the actions and inactions of others.¹⁶⁴ However, even if Paterno had known about this practice, adult coaches showering with boys after sporting or exercise activity is not wrong unless there are nefarious or sexual intentions. This happens every day across the United States and around the world in gyms, locker rooms, and YMCA’s. In fact, Paterno’s own son showered with Sandusky and other coaches on many occasions.¹⁶⁵

5.) *According to the SIC, “On May 5, 1998, Schultz’s notes about the incident state: “Is this opening of pandora’s box? Other children?”*¹⁶⁶

These are valid questions that were officially answered by the closing of the investigation with a finding of no sexual intent and no criminal behavior. However, there is no evidence Paterno was ever aware of these notes.

¹⁶¹ Louis Freeh, press conference, July 12, 2012.

¹⁶² Additionally, by alleging that all four men were responsible for the actions of each individual, Freeh was relying on the legal principles of conspiracy. Once any person involved in a conspiracy commits an overt act in furtherance of a conspiracy then all of the co-conspirators are responsible for all actions committed in furtherance of that conspiracy.

¹⁶³ SIC report at 39, 40.

¹⁶⁴ As head coach, Paterno had a shower in his office. However, Paterno rarely used the shower and instead showered at home. He therefore did not shower with the other coaches and athletes. Interview with Paterno family member on Jan. 4, 2013.

¹⁶⁵ Interview with Paterno family member on Jan. 4, 2013.

¹⁶⁶ SIC report at 20, 39, 48.

6.) According to the SIC, “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.’”¹⁶⁷ The SIC italicized that last clause for emphasis.

Of course Schultz would be relieved that the matter was investigated and resolved with a finding that there was no sexual victimization. However, by italicizing the phrase for emphasis, the SIC report attempts to superimpose nefarious intent on this communication when the evidence about 1998 proves the opposite.

7.) According to the SIC, the “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.’”¹⁶⁸

This is a common investigative practice, especially in child sexual victimization cases. In fact, this is how the FBI teaches CSV investigators to maximize the chances of gaining cooperation. The fact that the SIC report even mentions it in this light demonstrates a misunderstanding of child sexual victimization cases and how they are investigated. The more relaxed and non-confrontational the law enforcement officers are when interviewing suspected child sex offenders, the more they increase their chances of obtaining a confession. This is because child sex offenders expect to be vilified by law enforcement. When they are treated with dignity and respect and encouraged to relax, it undermines their expectations, builds a bond of rapport, and it creates an environment that is more prone to honest disclosures.

Additionally, as discussed above, the fact that the detective advised Sandusky not to shower with any child is an appropriate response to a finding that he had boundary issues related to showering with boys and horsing around with them. Such an admonition holds far greater weight than that of the head coach, especially since it relates to children on and off campus.

8.) According to the SIC, “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 [sic] any measures to protect children on their campuses.”¹⁶⁹

This is an absurd statement in light of the circumstances. These men are not clairvoyant. The information received from the trained childcare worker, detective, and prosecutor was that there was no sexual intent, and no crimes committed.¹⁷⁰ Instead, there were indicators of boundary issues. Taken in the context of a well-respected member of the community who was highly thought of and praised for his work with youth, this is not the factual profile the general public would expect to pose a threat to children. This suggestion by the SIC implies that all people exonerated during the course of a criminal investigation should be treated as if they had been convicted. It is wrong to accuse these men of doing nothing to protect children from a man who was just exonerated.

¹⁶⁷ *Id.* at 39, 50.

¹⁶⁸ *Id.* at 20, 39, 46.

¹⁶⁹ *Id.* at 39.

¹⁷⁰ *See id.* at 46-50, Ex. 2D, Ex. 2E.

They were not told, for example, that the investigation against Sandusky uncovered evidence that he was victimizing children but they did not have enough to prosecute. They were told, instead, that there was no sexual intent. And at worst, they may have been told that Sandusky may have boundary issues. Therefore, the proper action to take was to have the police admonish Sandusky not to cross those boundaries again by showering with any child in the future. That would include children on or off the Penn State campus.

9.) *According to the SIC, “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.”*¹⁷¹

This is a baseless suggestion. Paterno would have made himself vulnerable to a defamation lawsuit or other action if he had spread rumors about Sandusky after he was cleared of wrongdoing in this matter. Those at Penn State who knew about the 1998 investigation would have had no reason to suspect that this was not an isolated incident that would never be repeated because Sandusky had been admonished not to shower again with any child by the UPD.

10.) *The SIC notes, “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.’”*¹⁷²

Paterno’s fear of breaking even University rules should be more reasonably taken as an indication of his integrity, not as an indication that he was afraid of bad publicity. In fact, no evidence recounted by the SIC Report indicates that Paterno even mentioned bad publicity or a fear of the effects thereof.

11.) *According to the SIC, Paterno’s “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.”*¹⁷³

Paterno had no way of knowing that Sandusky had any victims. Sandusky had been cleared in 1998 and he did not know McQueary was trying to tell him that he thought Sandusky was actually having sex with the boy in the shower in 2001. Paterno told his biographer, “I wouldn’t know how to investigate something like this. I don’t know anything about it. [Jerry] didn’t work for me. I had a meeting with Tim and Gary [Schultz] might have been there, and I told them what Mike had told me. And they said they would get to the bottom of it. I trusted Tim would take care of it. He’s a good administrator. He had negotiated the retirement deal with Jerry, and he was still in contact with Jerry. Tim’s a good person. I expected him to handle it right.”¹⁷⁴

¹⁷¹ Louis Freeh, press conference, July 12, 2012.

¹⁷² SIC report 16, 77-78 (quoting Sally Jenkins, *Paterno’s Last Interview*, Wash. Post, Jan. 14, 2012).

¹⁷³ Louis Freeh, press conference, July 12, 2012.

¹⁷⁴ Posnanski at 273.

Additionally, with respect to making attempts at identifying the victim in 2001, the plans that Curley may have talked over with Paterno included notifying the chair of The Second Mile. Paterno had known and worked with Sandusky for over 30 years by this time and he was well aware that Sandusky often brought The Second Mile children to Penn State and elsewhere. Had Paterno been told any details of Curley's plans, Paterno would have had every reason to believe that by informing The Second Mile of what Sandusky was seen doing with a boy in the shower, The Second Mile would easily be able to identify that child and investigate what if anything happened to him that day. To say that he did nothing to identify that child or protect him or other boys from victimization is simply inaccurate.

12.) *According to the SIC, "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."*¹⁷⁵

The officers may have been trying to protect their investigative source (the mother) and their investigative method (consensually monitoring the conversations) from Sandusky. They may very well have promised the mother that they would not let Sandusky know that she was cooperating with the investigation. We really shouldn't be "Monday morning quarterbacking" here. Even if this statement were true, none of this has anything to do with Paterno or Penn State administrators. In fact, Paterno had absolutely no child sex crimes investigative training, or even child sex crimes awareness training. If objective, trained investigators and child welfare workers misevaluated this situation, then it is even more likely that Paterno did as well, especially when he personally knew Sandusky and his only conceivable source of information about the incident, if he received any information at all, was from those very professionals.

13.) *According to the SIC, "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."*¹⁷⁶

Though Seasock's report may have been filled with misconceptions, mischaracterizations, and erroneous conclusions, nevertheless, it was the report that the DPW, UPD, and the DA based their decision on to close the 1998 investigation.

14.) *According to the SIC, "Schreffler also noted that no referral of the Sandusky incident was made to the Penn State Office of Human Resources ("OHR"). Schreffler said such referrals routinely were made in other cases. A senior OHR official recalled no report of the Sandusky incident in 1998, and the OHR files contained no such report. The official thought the Sandusky case was so 'sensitive' that it was handled by Schultz alone. The official said no*

¹⁷⁵ SIC report at 45-46.

¹⁷⁶ *Id.* at 46.

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.”¹⁷⁷

When allegations of this nature are made against a “pillar of the community” and are determined to be unfounded, then it is in fact proper to contain the information and treat it as “sensitive,” because of the grave damage that it can do to the reputation and profession of an innocent person. Had the allegations been substantiated, however, then notifications and warnings would have been necessary and proper.

15.) *The SIC includes a passing footnote stating, “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.’”*¹⁷⁸

While it is clear from this notation that Paterno appropriately considered potential “liability problems” associated with Sandusky bringing The Second Mile kids into training and workout facilities at the university, there is absolutely no evidence to indicate that this concern had anything to do with potential sexual victimization. This reference related to benign general liability regarding use of school facilities for non-school purposes. This is a basic tenant of insurance coverage law. It is a reasonable concern that the school would be outside its standard coverage for any instance in which The Second Mile children were brought on campus.

16.) *The SIC notes that “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.”*¹⁷⁹

The SIC ignores that the janitor who witnessed this sexual assault was a part-time, temporary employee.¹⁸⁰ How is it that this person who was not even a full-time employee of the university is in a position to characterize the culture at the university? Again, the SIC report fails to point out that the janitor made a grave miscalculation. In fact, he would have not have been fired if he reported Sandusky or rescued the child he actually witnessed being sodomized. This is proven by the fact that McQueary reported what he saw and remained on staff and later was even promoted.

17.) *The SIC notes that “On Sunday, February 11, 2001, Schultz reached out to then University outside legal counsel Wendell Courtney to discuss the ‘reporting of suspected child*

¹⁷⁷ *Id.* at 49.

¹⁷⁸ *Id.* at 51, note m.

¹⁷⁹ *Id.* at 62.

¹⁸⁰ Sandusky trial transcript, June 13, 2012, at 201, 224.

*abuse.’ Courtney conducted legal research on this issue and had another conference with Schultz about it that day.”*¹⁸¹

Paterno was not a party to this conversation. Though Wendell Courtney categorized his consultation with Schultz as related to the “reporting of suspected child abuse,” he followed it up with research and apparently reported the results of that research to Schultz.¹⁸² According to Spanier, though Courtney did not remember the content of this conversation in 2012, Courtney was certain that what Schultz told him about the incident did not amount to a reportable event. This is because if it had been, then Courtney would have insisted that the event be reported and he would have noted his file accordingly.¹⁸³ Also, there is no evidence that Paterno knew about this conversation at the time or was ever informed of it later.

18.) *The SIC draws the following conclusion about a note written by Schultz in February 2001. “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.”*¹⁸⁴

This extreme interpretation of the note ignores the content and context of the note itself. It is yet another example of the SIC taking the most negative and “conspiratorial” interpretation in order to substantiate a case that is based on conjecture and innuendo.¹⁸⁵ In fact, this note actually shows that despite Schultz being counseled by attorney Courtney that the incident did not amount to a reportable event, these men still considered reporting to DPW under certain conditions even before they talked to McQueary.

19.) *According to the SIC, “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.”*¹⁸⁶

As an expert in child sexual victimization, I disagree that Paterno and others did not make any effort to identify the child victim in 2001 or determine if he had been harmed. All of the options they discussed, and the actions Curley in fact carried out, included reporting the incident to The Second Mile.¹⁸⁷ The Second Mile was the highest probability source of information on the

¹⁸¹ SIC report at 62.

¹⁸² *Id.* at Ex. 5A.

¹⁸³ Although Spanier made this statement to the SIC during its interview of him in July 2012, the SIC did not include this illuminating and exculpatory information in this section of its report. However, the SIC did use the notation in Courtney’s notes to imply that Schultz suspected that Sandusky’s behavior amounted to “suspected child abuse.”

¹⁸⁴ *Id.* at 63.

¹⁸⁵ For analysis see *supra* Part IV.C.

¹⁸⁶ SIC report at 63.

¹⁸⁷ See *supra* Part IV.C.2 for an explanation for why it is likely that informing The Second Mile may have been at the urging of Paterno.

child that Sandusky had with him in the shower that day. The then CEO of The Second Mile is a licensed psychologist who is a mandated reporter. Paterno would have no reason to believe that The Second Mile would not follow through on the report from Curley, and it would be reasonable for Paterno to believe that The Second Mile would be in the best position to determine who the child was and whether he had been harmed in any way. If the chair of The Second Mile did nothing to follow up on the same information provided to Paterno, then surely Paterno was justified in doing what he did.

20.) *According to the SIC report, “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.¹⁸⁸ Furthermore, according to the SIC, “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.”¹⁸⁹*

Actually, informing Sandusky that his activity with the boy in the shower had been reported to The Second Mile likely significantly reduced the chances that Sandusky would do anything else with that child. It also likely reduced the chances of Sandusky doing anything in the Lasch building with other children. This is because Sandusky was now on notice that what McQueary had seen had been reported. Remember, Sandusky was the only adult who actually knew exactly what he had done to the child in the shower. Curley would have had no basis for using the words “sex” or “intercourse” with Sandusky because McQueary never used those words when he reported the incident to him.

Moreover, in the course of the 1998 investigation, the University Police informed Sandusky that his actions had been reported and admonished him not to shower with any child again. Informing a person that an allegation has been made against them and attempting to elicit a confession from that person is a well-established and effective interrogation technique that is employed by law enforcement around the world. It has the additional benefit of putting the suspect on notice that people are watching him and are suspicious about his behavior. Also, warning Sandusky not to bring any young people into the athletic facilities should reasonably curtail his use of those facilities to molest children because it increased the probability that he’d be caught if he did.

Additionally, Sandusky was not the only person who knew the identity of the child in the shower. The Second Mile was also in a position to know or determine the child’s identity and investigate whether any sexual victimization occurred as well. Sandusky would not have been able to hide the identity of the child from The Second Mile had they investigated the matter.¹⁹⁰

¹⁸⁸ SIC report at 64.

¹⁸⁹ *Id.* at 63, 76.

¹⁹⁰ It is unknown whether The Second Mile did anything to determine the identity of the child or the nature of Sandusky’s contact with him. However, what is certain is that The Second Mile had a duty of care with regard to that child and should have investigated the matter.

21.) *The SIC report accepts without proffering any evidence at all, Janitor B's word that "reporting the incident 'would have been like going against the President of the United States in my eyes.' 'I know Paterno has so much power, if he wanted to get rid of someone, I would have been gone.' He explained 'football runs this University,' and said the University would have closed ranks to protect the football program at all costs.*"¹⁹¹

The SIC report uses this unsubstantiated statement to prove the football culture ruled at Penn State and he couldn't report what he saw because they would all be fired. The fact that this is not the case was proven when McQueary, who was only a graduate assistant at the time, reported an incident to the head football coach, the athletic director, and a vice president of the university. That report also went all the way up to the President of the school. Despite all of these people being informed of McQueary's report, not only was his job not affected negatively, he was promoted a few years later to assistant coach based on merit and unrelated to the 2001 incident.

22.) *According to the SIC, "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."*¹⁹²

Again, The Second Mile executive director is a trained psychologist, heading up a foster care organization, educated in matters of child sexual victimization, who is a mandated reporter, and he determined that Sandusky's behavior was a non-incident, not reportable, and obviously not criminal. The standard of care that this childcare professional is held to is much greater than that of Paterno in these kinds of matters. Why did the SIC not consider how this determination and inaction on the part of The Second Mile and its board would have influenced the way in which Penn State officials, and possibly Paterno, would have viewed the incident? When professionals who are trained and burdened with the responsibility to investigate and protect children from victimization do not see a problem, it is wrong for the SIC to blame people in the general public for not seeing it as well.

23.) *The SIC report claims that "Paterno [was] obligated to report the 2001 Sandusky incident to the University Policy Department for inclusion in Clery Act statistics and for determining whether a timely warning should be issued to the University Community."*¹⁹³

In reaching this conclusion, the SIC report misstates the Clery Act and misapplies it to Paterno. Under the Clery Act, colleges and universities are required to disclose the number of criminal offenses on campus that are reported each year.¹⁹⁴ Recognizing that not all crimes are

¹⁹¹ *Id.* at 65.

¹⁹² *Id.* at 64.

¹⁹³ *Id.* at 110.

¹⁹⁴ The Clery Act is codified at 20 U.S.C. § 1092 and the related regulations are found primarily at 34 C.F.R. § 668.46. The main goal of the Clery Act was to ensure that when selecting an institutional of higher education ("IHE"), current and prospective students, as well as their parents, would be able to obtain accurate "official" statistics about how much crime had occurred on a campus. This in turn would pressure IHEs to take student safety more seriously because they would be at a competitive disadvantage when attracting students if they did not take such steps. Bonnie S. Fischer, et al., *Making Campuses Safer For Students: The Clery Act as a Symbolic Legal Reform*, 32 Stetson L. Rev. 61, 63-64 (2002).

reported to campus police, the Clery Act created a category of persons called campus security authorities (CSAs). The function of the CSA is to pass the report on to the official or office designated by the university to collect crime report information. The university is then responsible for including the report as a statistic in its annual security report to the U.S. Department of Education.

Even though the Clery Act creates a category of school employees called campus security authorities, the Clery Act does not place any affirmative requirements on these individuals. Nor does the Clery Act contemplate any sort of penalty for CSAs who do not make a report.¹⁹⁵ Instead, the Clery Act places an affirmative requirement on the institution to disclose the reports received from its CSAs.¹⁹⁶ It is up to the institution to designate who is a CSA and craft internal university policy for collecting crime reports from its CSAs.¹⁹⁷ The SIC report ignores this basic fact that the Clery Act created no obligation for Paterno.

In 2001, Penn State had not even implemented the Clery Act. In fact, as of November 2011, the university's Clery Act policy was still in draft form.¹⁹⁸ Moreover, prior to 2007, the Penn State official charged with Clery Act compliance was unaware that the Clery Act included the concept of CSAs.¹⁹⁹ Therefore, in 2001, Joe Paterno along with the rest of the Penn State community, had received zero guidance from his employer that the university may want to treat him as a CSA and what that would entail.

Nonetheless, to persuade the reader that Paterno qualified as CSA, the SIC cites to the Clery Act Handbook — guidance drafted by the U.S. Department of Education.²⁰⁰ The SIC is correct that on page 75 of the current Handbook a “team coach” is listed as an example of an individual who meets the criteria for being a campus security authority.²⁰¹ The SIC acknowledges in a footnote that it is citing to the 2011 Handbook but explains that “the Department of Education has had similar guidance in place setting forth its interpretation of Campus Security Authorities since at least 1999.”²⁰² The most likely reason the SIC wrote “similar guidance” is because in 1999 the Department of Education had not published a

¹⁹⁵ See 20 U.S.C. § 1092(f)(13). Furthermore, the Clery Act also places strict limits on its enforcement and reach. According to the statute, it may not be construed to “(i) create a cause of action against any institution of higher education or any employee of such an institution for any civil liability; or (ii) establish any standard of care.” 20 U.S.C. § 1092(f)(14).

¹⁹⁶ Penn State, as an institution, may have had an obligation under the Act to include any reports regarding Sandusky in its statistical disclosures pursuant to the Clery Act. However, Joe Paterno, as an individual, did not have such an obligation.

¹⁹⁷ According to the Department of Education, “official responsibilities and job titles vary significantly on campuses, a list of specific titles is not provided in the regulations. To determine specifically which individuals or organizations are campus security authorities for your institution, consider the function of that individual or office.” U.S. Department of Education, Office of Postsecondary Education, *The Handbook for Campus Crime Reporting*, Washington, DC, at 75 (“Clery Act Handbook”); See also 34 C.F.R. § 668.46(c)(2).

¹⁹⁸ SIC report at 116.

¹⁹⁹ *Id.* at 115.

²⁰⁰ Clery Act Handbook at xi.

²⁰¹ *Id.* at 75.

²⁰² SIC report at 113, note rr.

Handbook (the first Handbook was published in 2005²⁰³) and the U.S. Code Federal Regulations did not — and still does not — indicate that a “team coach” qualified as CSA. In fact, under the Act, institutions are not obligated to designate their “team coaches” CSAs.²⁰⁴

After misstating the Clery Act and mischaracterizing the Clery Act guidance, or lack thereof in 2001, the SIC proceeds to find fault with Paterno. First, the SIC acknowledges that Paterno “did report the [2001] incident to Schultz who, as SVP-FB, was ultimately in charge of the University Police Department.”²⁰⁵ However, the SIC concludes that “Schultz was not a law enforcement officer and was not the person designated to receive Clery Crime reports or collect Clery Crime statistics for the University.”²⁰⁶ In support of this claim, the SIC included this footnote: The Clery Act regulations “require[] the University to include in its ASR [annual security report] 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.”²⁰⁷ In other words, the SIC report finds fault with Paterno where no Clery Act guidance existed and where the university had not even designated him as a CSA. Despite the fact that Paterno was not required to report the incident to anyone under the Clery Act, Paterno nonetheless reported what he learned to the vice president of the university who oversaw the police department.

In sum, the SIC report is wrong about the Clery Act in two ways. First, the SIC report incorrectly states the law. Second, even if the SIC report’s statement of the law were correct, Paterno fulfilled the requirements and spirit of the Clery Act. In fact, in the face of the university’s failure to comply with the Clery Act and giving Paterno zero internal guidance, Paterno did exactly what he should have done under the Clery Act.

VII. Conclusions

1.) This case is a textbook example of how people in the general public misinterpret the behavior of real world acquaintance child sex offenders. The sad truth is that people do not recognize the “grooming” behavior of “nice-guy” acquaintance offenders when they know or are close to that person. They also don’t talk about the topic of acquaintance child sex offenders except to show extreme outrage when such an offender is discovered among them. They then tend to demonize that offender, calling him evil and therefore imbuing him, nominally, with supernatural powers that elevate him to the level of an insurmountable adversary who displays disturbing and recognizable features. Unfortunately, this image creates a huge obstacle to

²⁰³ On page 50 of the 2005 Clery Act Handbook it states, “For example, a dean of students who oversees student housing, a student center or student extracurricular activities has significant responsibility for student and campus activities. Similarly, a director of athletics, a team coach and a faculty advisor to a student group also have significant responsibility for these activities.”

²⁰⁴ In addition to the fact that “team coach” is not listed in the Act or the regulations, according to the U.S. Department of Education’s Helpdesk for Campus Safety and Security for Clery Compliance, universities are not obligated to make “team coaches” into CSAs.

²⁰⁵ SIC report at 118.

²⁰⁶ *Id.* at 118.

²⁰⁷ *Id.* at 118, note aaa.

identifying actual acquaintance offenders.²⁰⁸ Other observers in the general public who read media accounts of these cases are misguided by these mischaracterizations. In the end, they do a great disservice to victims. Children hear these things and become fearful of monsters but never see the “nice-guy” offender who treats them special as he grooms them for sexual victimization.

2.) Because people are on the lookout for monsters, predators, perverts, and despicable human beings, they therefore do not recognize the actual “nice-guy” offenders who are standing right in front of them. This is why Paterno said, “If what they’re saying about [Sandusky] is true.”²⁰⁹ Like so many who knew Sandusky, it was still hard for Paterno to believe that Sandusky had actually committed a host of sex crimes against boys. Hopefully, the Sandusky scandal and trial has started the process of teaching the world that seemingly good, affable, charismatic, hard working, loving, caring, “normal,” professional people, can actually be child sex offenders at the very same time. Thankfully, most of them are not, but some are and we each have a responsibility to be vigilant in weeding them out.

3.) Given my 30 years of education, training and experience working, evaluating and assessing child sex crimes investigations around the world, it is my expert opinion that Paterno did not know, or even believe in the possibility, that Sandusky was capable of sexually assaulting boys. At worst, he believed that Sandusky was a touchy-feely guy who had boundary issues. This fact is clear from his repeated statements before he died. He did what he believed was reasonable and necessary to address the situation based on his understanding of the facts, and his position at the time. Paterno did what most people who cared about children would have done in the same situation. More than a decade later, and in hindsight, Paterno showed his concern for the victims when he stated he, “wished [he] had done more.” He also said, “If this is true we were all fooled, along with scores of professionals trained in such things, and we grieve for the victims and their families. They are in our prayers.”²¹⁰

4.) In the end, it was the perfect storm of events that created the circumstances under which Paterno reasonably failed to recognize the severity of what McQueary was trying to suggest to him and consequently did not do more to address the issue. McQueary was overwhelmed with confusion and disbelief at what he briefly witnessed in the shower in 2001 and did not effectively communicate what he saw to Paterno. McQueary knew nothing about “nice-guy” acquaintance offenders, so he was completely thrown-off by what he saw Sandusky doing to that boy. And he knew nothing of “compliant victimization,” and therefore was further confused by the counter-intuitive way in which the boy acted when they made eye contact during the incident. Consequently, McQueary didn’t know what to do at first. He then went to his father and Dr. Dranov for advice and was directed to inform Paterno. Unfortunately, McQueary failed to use graphic sexual terms with Paterno, whom he looked up to and respected. Instead,

²⁰⁸ One of the best indicators of the continuing lack of understanding of the nature of “pedophilia” is that the media and society still view as a contradiction the fact that someone could be a caring, dedicated teacher (e.g., clergy member, coach, doctor, children’s volunteer) and sexually victimize a child in his care. The vast majority of dedicated schoolteachers are not pedophiles, but many pedophiles who become schoolteachers are dedicated teachers. Lanning at 37.

²⁰⁹ Posnanski at 273-74.

²¹⁰ Paterno family press release, November 6, 2011.

McQueary gave a watered-down version with implied sexual behavior to Paterno who reasonably inferred borderline/non-sexual behavior from McQueary's words.

5.) Paterno, like everyone else who knew Sandusky, simply fell victim to effective "grooming." As an expert behavioral analyst and based on my review of the evidence, Paterno did not believe that the information he received from McQueary amounted to Sandusky being a predatory child sex offender.

6.) There is no evidence to support the conclusion that Paterno engaged in "an active agreement to conceal." As this report demonstrates, Paterno learned so little from McQueary there was nothing for him to conceal. Nonetheless, if we accept the erroneous conclusion that Paterno had something to conceal, the SIC misinterprets a critical email²¹¹ to which Paterno was not even a party. Quite simply, the SIC misread the email, ignored its context and content, ignored an earlier critically important document,²¹² and reached what it deemed a "reasonable" conclusion. In that process, the SIC erred in its findings and failed to reach a more reasonable conclusion grounded in fact and informed by decades of child sex crimes research and case work.

7.) It is clear from the evidence that Paterno never made any attempt to hide any information, hinder or impede any investigation, silence any witnesses, or limit the number of people to whom McQueary reported the incident. It is also clear that there is absolutely no evidence presented by the SIC that Paterno ever expressed any fear of or aversion to bad publicity or the effects thereof.

8.) The fact that Sandusky molested a number of boys over the course of several decades has nothing to do with Penn State football or Joe Paterno. It could have happened under any head coach, of any sport, in any school or university. If the public continues to convince itself of that misperception, then they are unwittingly enabling other "nice-guy" offenders who are out there right now. In doing so, they will cancel out everything learned about acquaintance child sexual victimization during the past several decades. They will not get us closer to understanding these cases and preventing or limiting them in the future. And we, as a society, are doomed to seeing this happen over and over again, at other schools and in other settings. Unfortunately, this is the mistake that the SIC report made. There is no other way to say it: on the most critical aspects of the Sandusky investigation, the SIC report is a failure. It does a tremendous disservice to Penn State, Joe Paterno, and the victims of Jerry Sandusky.

9.) Indeed, it is time we stop letting child sex offenders get away with their crimes right under our noses by blaming their ability to hide their activities on things like the culture of college football. The blame should be shared by all who refuse to speak openly about child sexual victimization and on our ignorance of the ways offenders actually disguise their offending behavior. We must have a dialogue on what "nice-guy" offenders look and act like, and the counter-intuitive ways in which real victims respond to "grooming" and sexual victimization. This is especially true for male children who are victimized by male offenders. They simply do not want to talk about it. Most of them want it to stop but do not know how to accomplish that

²¹¹ SIC report at Ex. 5G.

²¹² *Id.* at Ex. 5C.

without stopping the benefits they are receiving through grooming, or without hurting the offender's feelings, or they feel trapped by the circumstances and don't know how to extricate themselves from the relationship into which they have been manipulated. Blaming football and Joe Paterno has not gotten us any closer to protecting children from "nice-guy" acquaintance offenders.

VIII. Recommendations

A. What the Freeh Group and SIC Report Should Have Done

In my opinion, the SIC investigators should have taken into account the fact that charges were never brought against Paterno. This was for good reason: he cooperated fully with the investigation and did not commit any crimes. The SIC should have withheld final conclusions until the evidence against Curley, Schultz, and Spanier was presented and examined regarding perjury and concealment of information to determine its accuracy and credibility. The SIC should have refrained from speculation until the attorney general's office lifted the restrictions on interviewing critical witnesses and suspects in the Sandusky, Curley, Schultz, and Spanier investigations. In short, the SIC report was a rush to judgment.

They should have interviewed Sandusky's victims, his foster and adoptive children, and his wife. They should have admitted on the record that, although they have theories about concealing information and questions about why more was not done, they did not find any actual evidence of an agreement to conceal between Curley, Schultz, Spanier, and Paterno. And they should have admitted that, even if they did find that a conspiracy existed between Curley, Schultz, and/or Spanier, they did not find any evidence to tie Paterno into that agreement. They should have refrained from speculating and accusing a man who should have been presumed innocent until proven otherwise. Although the SIC states that their conclusions are "reasonable," this is not a legitimate legal standard and would therefore hold no weight in a court of law and should hold little weight in the court of public opinion. Finally, and most importantly, the SIC should have taken into consideration the unusual dynamics of acquaintance child sexual victimization crimes, grooming, and compliant victimization in order to better understand the actions and inactions of all the people involved, including Joe Paterno's reasonable response to the limited information he was given.

B. A Way Forward

1. Next steps

A thorough and complete criminal investigation should be undertaken into the child sexual victimization crimes committed by Jerry Sandusky. Though the statute of limitations has most likely lapsed on any crimes he committed long ago, in order to get a complete picture of Sandusky's offenses against children, this investigation should go back as far as Sandusky's association with younger children that his parents cared for when Sandusky was a teen and young adult. Although many decades have passed since Sandusky was a teen, based on the behavioral typology of offenders like him, the potential for him to have victimized children since that time is very high. More importantly, the ramifications of such victimization could still be

affecting those victims today. They deserve to have the crimes they were subjected to investigated and resolved.

Additionally, a comprehensive and proactive investigation should be undertaken of The Second Mile and its administration. All former child participants in the program who had any private, one-on-one contact whatsoever with Sandusky should be interviewed by a forensic child interview specialist and/or evaluated by a forensic child psychologist and offered psychological counseling. All of Sandusky's former foster children should be interviewed to determine if any of them were witnesses or victims of grooming or sexual victimization by Sandusky. All of Sandusky's adopted children (male and female) should also be interviewed for the same reason. If not done already, Sandusky's computers should be searched for child pornography, child erotica, and other evidence as should his home and offices.

2. Lessons learned

When I first heard about the allegations against Sandusky and the six prior incidents that were reported about him (the "wrestling" in the weight room and the five shower incidents: Victim 6 and his friend, Janitor A, Janitor B, and Victim 2), I too jumped to the conclusion that Sandusky must have been protected because of his position at Penn State, or that McQueary must have been afraid to lose his job just like the janitors were. However, the facts simply do not support those conclusions.

When I actually read the SIC report, the attorney general's investigative reports, and the grand jury, preliminary hearing, and trial transcripts, it became clear to me that the people who witnessed these events largely did not communicate with each other. In fact, as is typical in such cases, people do not want to talk about such a distasteful topic at all. They steadfastly avoid these conversations and are then blindsided when news breaks about a sex offender in their midst. Had Mike McQueary, John McQueary, Dr. Dranov, Paterno, Curley, Schultz, Spanier, Janitor A, Janitor B, Joe Miller, the mother of Victim 6, Dottie Sandusky, Matt Sandusky, Detective Schreffler, caseworkers, psychologists, the head of The Second Mile, and CYS and DPW all talked to each other, a critical mass would have been reached that would have unearthed Sandusky's hidden crimes. But they largely kept the details of what they knew to themselves or to a small group of people. If it wasn't such a taboo topic, those people would have been much more likely to speak openly about what happened and Sandusky's crimes would have been uncovered earlier. We should learn from this example.

The lesson we also should learn from this case is that adults must push through the difficult barriers that prevent them from confronting and speaking about issues surrounding child sexual victimization, especially when it involves male offenders on male victims. The more we discuss the uncomfortable reality that male children are easily manipulated into compliant victimization through the use of effective grooming techniques employed by nice-guy acquaintance offenders, the less of a taboo topic it will be. And the more we will be able to prevent it. An example should be made of the mothers of Victims 1 and 6 as the heroes of the Sandusky case. These mothers recognized behavioral changes in their sons, found out what happened to them, and vehemently pursued the truth but were blocked at every turn. Yet they remained determined and vigilant and didn't give up their efforts to protect their sons. It is a shame that the system failed these mothers and their sons for so long.

It is a shame that once Victim 1 reported his victimization to the police, it took nearly three years to arrest Sandusky. It should be enough to get an offender arrested that he has victimized one child one time. But it is extremely difficult to prove such a case in our criminal justice system. So offenders like Sandusky are free to offend with relative impunity unless and until a number of credible victims come forward. Even when they do, they typically have issues. The very same issues that made them vulnerable to sexual victimization are the ones that can make them undesirable witnesses. Most prosecutors would prefer to only put victims on the stand who are “innocent angels.” However, most children who are victimized have behavioral problems, they may fall into substance abuse, they may get into trouble with the law, they may become sexually promiscuous, or they may become self-destructive in many other ways.

People should be made aware that most government child services agencies are set up to investigate and deal with child sexual abuse (intra-familial victimization) rather than acquaintance or stranger sexual victimization. These agencies are often underfunded and understaffed. They are bogged down with procedural roadblocks to effectively addressing offenders like Sandusky. If these agencies are going to more effectively prevent child sexual victimization, instead of just responding to it, then they must be given a broader mandate, bigger budgets, and greater manpower, training, and investigative powers.

For example, although the report of counselor Seasock regarding the 1998 Sandusky incident is methodical and thorough, it is filled with inaccurate, rigid, pigeonholed assumptions about the behavior of “pedophiles.” Though I understand his desire to go into a potential victim interview unbiased by the reports and conclusions of others, it is irresponsible to make any final conclusions in such a vacuum. He had a responsibility to gather information from all available sources and assess it before reaching his final conclusions in the case. He should have read the transcripts of the previous interviews of the alleged victim, the Chambers report, and other police reports to determine whether the child had been consistent in the allegations and whether additional information had been elicited during those interviews. His inept handling of the case and his erroneous conclusions about “pedophiles” in general, and Sandusky in particular, are a major reason why Sandusky was not discovered as a preferential child sex offender in 1998.

People should pay close attention to the perjury and conspiracy trial of Curley, Schultz, and Spanier. Scrutinize the information that is proven during this trial and see what the jury determines. If these men actively participated in an agreement to conceal the crimes of Sandusky, they should be punished. However, if they, like all the childcare professionals who dealt with Sandusky, and the people who worked and lived with him, were deceived by his effective grooming capabilities, then they should learn from their mistakes. Their experiences should educate the population about how easily offenders can get away with child sex crimes if we continue as a people to avoid the topic of discussion.

If you know of an adult who is friendly, kind and helpful, and who is spending an inordinate amount of time with children who are not his own, if that adult tends to be very physical and playful with children, if he describes himself as a child or childlike, if he frequently puts himself in positions where he is alone with children, taking them on trips, spending the night with them, having them change clothes, having them shower with him, spending time at night “tucking them in,” entering the bathroom while they are showering, telling them he loves them when he has just recently met them, lavishing them with attention, affection, gifts, access, and

adventures, then you know someone who is exhibiting some of the major red flags of potential child sexual victimization. Be advised, that if you look the other way, you are enabling him to potentially offend against children. If on the other hand, you confront him, question his behavior, put him on notice that you are watching him, and educate the parents and children around him, engage in a frank, age-appropriate dialogue with them, let them know that no matter what happens/happened you are there for them, notify child care professionals about your suspicions, and even notify law enforcement, then you are taking steps to stop and prevent child sexual victimization.

I have worked with an organization called Stop It Now!, which has championed adult responsibility and the need for adults to recognize early warning signs and take action immediately to protect children from sexual victimization. On its website, www.stopitnow.org, helpful information can be found regarding warning signs and actions people can take to protect children from ongoing or potential sexual victimization.

Do you know an adult or older child who exhibits one or more of these red flag behaviors for child sexual victimization?

- Doesn't seem to understand what's acceptable when it comes to personal space.
- Makes others uncomfortable by ignoring social, emotional or physical boundaries or limits.
- Refuses to let a child set any of his or her own limits regarding boundaries or touch. Uses teasing or belittling language to keep a child from setting a limit.
- Insists on hugging, touching, kissing, tickling, wrestling with or holding a child whether or not the child wants this physical contact or attention.
- Frequently walks in on children/teens in the bathroom.
- Turns to a child for emotional or physical comfort by sharing personal or private information or activities, normally shared with adults.
- Has secret interactions with teens or children (e.g., games, sharing drugs, alcohol, or sexual material) or spends excessive time emailing, text messaging, writing to, or calling children or youth.
- Insists on or manages to frequently spend uninterrupted time alone with a child.
- Misses or ignores social cues about others' personal or sexual limits and boundaries.
- Often has a "special" child friend, maybe a different one from year to year.
- Spends most of his/her spare time with children and shows little interest in spending time with someone their own age.
- Encourages silence and secrets in children.

- Seems “too good to be true,” i.e., frequently baby sits different children for free; takes children on special outings alone; buys children gifts or gives them money for no apparent reason.
- Allows children or teens to consistently get away with inappropriate behaviors.
- Is overly interested in the sexuality of children or teens (e.g., talks repeatedly about the child’s developing body or interferes with normal teen dating).
- Frequently points out sexual images or tells dirty or suggestive jokes with children present.
- Exposes a child to adult sexual interactions or images without apparent concern.
- Links sexuality and aggression in language or behavior, e.g., sexualized threats or insults, like “whore” or “slut.”
- Makes fun of children’s body parts, describes children with sexual words like “stud” or “sexy” or talks about the sexual activities of children or teens.
- Masturbates so often that it gets in the way of important day-to-day activities.
- Has an interest in sexual fantasies involving children and seems unclear about what’s appropriate with children.
- Looks at child pornography or downloads/views internet pornography and is not willing to show whether children are involved.
- Asks adult partners to dress or act like a child or teen during sexual activity.
- Minimizes hurtful or harmful behaviors when confronted; denies harmfulness of actions or words despite a clear negative impact.

3. What the SIC report got right

The SIC report discovered notes, emails, and other records that had not been located by the attorney general’s investigators. These documents shed light on the response by Penn State’s administration to Sandusky shower incidents in 1998 and 2001. Without these records much of what happened would be left to conjecture.

The SIC report established a number of administrative policies and procedures that will go a long way toward correcting the problems at Penn State and hopefully become a benchmark for other universities and institutions across the country.

Also, the detailed description of events contained in the SIC report helped educate the public about how people in leadership positions too often are not equipped to deal with early warning signs, let alone allegations of possible or actually sexual victimization, and too often are

more concerned about not wrongfully accusing adults rather than taking protective action for children.

The SIC report makes clear that the bottom line is that all organizations that work with children and youth, even in a tangential or temporary way, need to put the safety of children above other concerns and must be willing to have the tough conversations, rules, training, and preventative procedures in place regarding boundaries that are needed to keep children safe.

Hopefully, the discussion started by the SIC report and my analysis will, in the end, act as a “tipping point” that results in institutional behavioral changes around understanding their responsibility to not only recognize and respond to red flag behaviors but also to educate themselves and all their employees in an effort to create an environment and culture of safety and accountability.

4. Best ways to prevent this from happening again
 - a) Education and dialogue

There should be resources dedicated to commission a panel of experts to compile a comprehensive Education & Prevention Manual to help ensure that the events that took place at The Second Mile and Penn State are never repeated again in any university, school, club, organization, team, or community center. This panel should be comprised of a multi-disciplinary team of experts from the various organizations that deal with child sexual victimization, and it should compile a manual of best practices for education and prevention of child sexual victimization.

- b) Create a national child sexual victimization umbrella organization

There should be resources dedicated to create a national umbrella organization that would coordinate the efforts of state, local, and community child sexual victimization organizations across the country. It should be a repository of information, education, model policies, model practices, prevention guidelines, best practices, education, training, and support for other organizations so that they are not reinventing the wheel each time a new offender is discovered. This national organization would benefit greatly from the world-renowned charitable fundraising efforts of the Penn State student body and generous alumni. This would allow the organization to fund grants to improve child sexual victimization education and prevention efforts across the country and around the world.

- c) Foster an environment of support and healing for victims

Helping the victims of Jerry Sandusky and their families overcome the negative effects of sexual victimization should be a priority for everyone at Penn State and the surrounding State College community. I strongly recommend the establishment of a support group for these individuals to help them through this process.

To conclude, the lesson from the Sandusky scandal is that we all can and must do more to help prevent child sexual victimization. By raising awareness of this insidious crime and bringing it out in the open, we will help prevent the abuse of countless thousands of children.

APPENDICES

APPENDIX 1

QUALIFICATIONS

Retired FBI Supervisory Special Agent (SSA) James T. Clemente is an expert in the area of child sexual victimization formerly assigned to the FBI's Behavioral Analysis Unit (BAU) Crimes Against Children Section. The BAU is a component of the National Center for the Analysis of Violent Crime (NCAVC), which is the country's center for research and investigative knowledge regarding violent and sexual crimes. Clemente is one of only a handful of similarly qualified nationally recognized experts in the fields of child sexual victimization, child sex offender behavior, grooming, and child pornography. Clemente has testified as such in Federal, State, Military, criminal, and civil courts on these and related matters. Prior to the FBI, he earned his law degree and was a prosecutor for the City of New York.

Clemente had been a Special Agent with the FBI since 1987. He was promoted to the Behavioral Analysis Unit (BAU) in 1998 and retired out of that unit at the end of 2009. As a member of the BAU, Clemente consulted on child sexual victimization cases throughout the United States and around the world. Clemente's training has involved over 100 specialized courses in the area of child victimization. He has given over 200 presentations and lectures to local, state and federal law enforcement officers, judges, prosecutors, defense attorneys, psychologists, social workers, health care professionals, undergraduate and graduate students throughout the United States and around the world on various topics related to child sexual victimization, including, but not limited to the following topics: Behavioral Analysis of Child Sex Crimes Offenders; Interviewing Sex Offenders And Their Victims; Behavioral Dynamics of Child Sex Offences; Compliant Sexual Victimization; Grooming; and Child Sex Offender Typologies. In addition, he has lectured on these and related topics at the FBI new agent training academy, the FBI National Academy, and a number of universities across the country.

As a member of the BAU, Clemente analyzed and consulted on hundreds of child sexual victimization cases a year. His analyses are based on all available evidence, including relevant statements, behavior, and background information. The vast majority of the cases he has analyzed have involved either preferential or situational sex offenders.

Clemente's role in these cases has varied as follows: from assisting in investigations, to analyzing investigative results for the purpose of making investigative suggestions, to providing expert affidavits for search warrant applications, to providing interview strategies for subjects and victims, to assisting and consulting with local, state, and federal investigators on all aspects of investigations, to consulting with prosecutors on trial strategies, to testifying as an expert witness. In addition, Clemente has interviewed approximately 100 offenders himself, and has consulted on the interviews of approximately 1,000 additional offenders. A behavioral analysis is not a clinical diagnosis; rather, it is a law enforcement tool used to identify, understand, and sometimes predict offender behavior. It has also been used to dispel myths concerning the behavior of child sex offenders, their victims, and their interactions.

APPENDIX 2

CURRICULUM VITAE

James T. Clemente

Supervisory Special Agent FBI (Retired)
Behavioral Analysis Unit
National Center for the Analysis of Violent Crime

FBI Supervisory Special Agent (SSA) James T. Clemente retired in November 2009, from the National Center for the Analysis of Violent Crime (NCAVC), Behavioral Analysis Unit (BAU), an integral part of the Critical Incident Response Group, which provides behavioral support during all FBI crisis incidents. Its mission is to provide Criminal Investigative Analysis of violent, sexual and serial crimes as a resource available to law enforcement agencies worldwide. Prior to the FBI, he earned his law degree and was a prosecutor for the City of New York.

The FBI's Behavioral Analysis Unit is staffed by Supervisory Special Agents with an average of 18 years of law enforcement experience focused on violent and sexual criminal investigations. Many BAU members hold advanced degrees in areas including Law, Psychology, Entomology and Criminology. Each member has completed the NCAVC's comprehensive 560-hour training regimen, as well as numerous other advanced and specialized courses.

All BAU members perform case analysis, conduct research, and provide training. Annually they analyze 1,500+ cases, conduct multiple ongoing research projects, and train more than 10,000 law enforcement officers, prosecutors, judges, medical and mental health professionals worldwide. BAU members also provide on-site Crime Scene Analysis, Case Consultation, Crime Reconstruction, Investigative Strategies, Interview and Interrogation Strategies, Prosecutive Strategies, Statement Analysis, and other related services, as well as, Expert Testimony.

SA Clemente entered on duty with the FBI on November 16, 1987. His first duty assignment was to the New York Field Division's Joint FBI/NYPD Sexual Exploitation of Children Task Force. He was then assigned to the Office of the Independent Counsel in the Little Rock Division in 1994 and the Washington Field Office in 1995. In 1998, he was promoted to SSA and assigned to a Supervisory position in the NCAVC. While in the FBI he has been qualified as an Expert Witness in the areas of Child Sex Offender Behavior, Child Sexual Victimization and Child Pornography. Prior to joining the FBI, Clemente headed the Child Sex Crimes Prosecution Team for the New York City Law Department, Bronx, NY.

Since retiring from the FBI on October 30th, 2009, Clemente has been providing Expert Consulting and Testimony services for Park Dietz & Associates on Civil Matters and for the Academy Group, Inc. on Criminal Matters related to violent and sexual crimes, and abductions, and the investigations thereof. He also lectures to Law Enforcement and Academic Audiences across the U.S. and Internationally.

Employment History:

2009 to Present: Consultant/Expert Witness

-2009 to Present: Independent Consultant - Park Dietz & Associates
-2009 to Present: Independent Consultant - Academy Group, Inc.

1987 to 2009: Federal Bureau of Investigation

-1998 to 2009: Behavioral Analysis Unit, FBI Academy, Virginia
-1996 to 1998: Major Case Homicide Task Force, Washington Field Office
-1995 to 1996: Office of the Independent Counsel, Washington, DC
-1994 to 1995: Office of the Independent Counsel, Little Rock, AR
-1988 to 1994: SEOC, Violent Crimes, WCC, New York Division

1983 to 1987: New York City Law Department

-1985 to 1987: Prosecutor for the City of New York, Bronx, New York
-1983 to 1985: Law Clerk for NYC Corporation Counsel, New York, New York

Educational History:

1985: Juris Doctor Degree, Law - Fordham University School of Law
1981: Bachelor of Science Degree, Chemistry - Fordham University

2000 – 2003: Masters level courses offered by University of Virginia and Virginia Commonwealth University at the FBI Academy.

Professional Associations:

1986: Admitted to the New York State Bar, First Judicial District
1992: FBI Agents Association
1992: FBI Evidence Response Team
1997: Virginia Homicide Investigators Association
1998: Association for Crime Scene Reconstruction
2000: International Homicide Investigators Association
2001: International Criminal Investigative Analysis Fellowship
2001: National Organization of Male Sexual Victimization
2002: Expert Panel - "Stop It Now"
2003: Advisory Board – NOMSV
2003: Legal & Expert Testimony Program Manager, CIRG, BAU
2003: Advisory Board - "Stop It Now"
2006: Adjunct Professor, University of Virginia

Specialized Training Received:

1985: New York City Law Department Prosecution Seminar, New York
1986: Interviewing Child Witnesses and Victims Seminar, New York
1986: Sex Abuse and Neglect of Children Seminar, New York

1987: Prosecuting Child Sex Crimes Seminar, New York
1987: Special Agent Training, FBI Academy, Virginia
1988: Advanced Violent Crimes Investigator's In-Service, FBI Academy, Virginia
1992: Evidence Response Team Basic Training, New York
1996: Certified Legal Instructor/Advisor In-Service, FBI Academy, Virginia
1997: Evidence Response Team Advanced Training, Washington, D.C.
1998: Serial, Sexual & Mass Murder Seminar, George Mason Univ., VA
1998: Managing Death Investigations, FBI National Academy, Virginia
1998: Innocent Images On-Line Sex Crimes Against Children Training, Maryland
1998: On-Line Sex Crimes Against Children Regional Seminar, Illinois
1998: Interpersonal Violence, FBI National Academy, Virginia
1998: Dallas National Crimes Against Children Seminar, Texas
1998: On-Line Sex Crimes Against Children Regional Seminar, California
1998: NCAVC Coordinator's In-Service, FBI Academy, Virginia
1998: Sexually Violent Crimes Seminar, George Mason University, Virginia
1998: Clinical Forensic Psychology, FBI National Academy, Virginia
1998: Violent Crime Profiling/Behavioral Analysis, George Mason University, VA
1998: NCMEC Missing & Exploited Children Seminar, Virginia
1998: NCAVC Research Seminar, NCAVC, Virginia
1998: NCAVC Serial Homicide Research Seminar, NCAVC, Virginia
1999: Research Methodologies, Virginia Commonwealth University
1999: Forensic Anthropology, NCAVC, Virginia
1999: Statement Analysis, NCAVC, Virginia
1999: On-Line Sex Crimes Against Children Regional Seminar, Missouri
1999: Psychopathy, NCAVC, Virginia
1999: Statement Analysis, NCAVC, Virginia
1999: Threat Assessment, NCAVC, Virginia
1999: FBI National School Violence Seminar, Virginia
1999: Neuro Linguistic Programing in Interviewing & Interrogation, NCMEC, VA
1999: Dallas National Crimes Against Children Seminar, Texas
1999: Certified Police Instructor In-Service, NCAVC, Virginia
1999: DOJ/OJJDP Missing Children Seminar, Washington, D.C.
1999: Serial Rape Research Interview Briefing, NCAVC, Virginia
1999: MO, Ritual & Signature Advanced Seminar, NCAVC, Virginia
1999: Advanced NLP in Interview & Interrogation, NCAVC, Virginia
1999: NCAVC Coordinator's In-Service, FBI Academy, Virginia
1999: Department of Justice Hate Crimes National Symposium, Washington, D.C.
1999: NCAVC Criminal Investigative Analysis Training, NCAVC, Virginia
1999: Expert Testimony, NCAVC, Virginia
2000: Reid & Associates School of Interview & Interrogation, Virginia
2000: Criminology, Virginia Commonwealth University
2000: Stalking & Threat Assessment, George Mason University, Virginia
2000: International Homicide Investigators Association Annual Conference, VA
2000: Police Fellowship/NCAVC Coordinators In-Service, FBI Academy, Virginia
2001: Stalking Threats: Risk Assessment and Risk Management, Reid Meloy, Ph.D., Forensic Psychologist, FBI Academy, Virginia
2001: Back to Basics Training, FBI Academy, Quantico, Virginia
2001: Victimology, The Peter Wilke Case Study, Baltimore, MD
2002: Threat Assessment Training, FBI Academy, Quantico, VA
2002: Cross Examination of Behavioral Experts, VA Legal Education
2002: Threat Assessment Protocol Training, Dr. Stock, NCAVC, VA

2002: Sex Offender Treatment Modalities, Dr. Fred Berlin, Arlington, VA
2002: Law Enforcement/Business Interface in Threat Assessment, Dr. Stock, NCAVC, Virginia
2002: Development of Deviant Sexual Behavior, Major Galbraith, Charleston, SC
2002: Interviewing Teen Sex Victims, Kim Poyer, FBI, Charleston, SC
2003: Child Victim Dynamics, M. Finnegan, FBI, St Thomas, USVI
2003: Prosecuting Child Sex Cases, A. Turkel, APRI, St Thomas, USVI
2003: Case Study: Jeffery Dahmer, Det. P. Kennedy, Ret. Milwaukee PD
2003: Medical Expert in Child Sexual Exploitation, S. Cooper, MD, UNC
2003: Digital Image Manipulation, John Van Vliet, Migrant Film Works
2003: The PROTECT Act, Monique Perez Roth, DOJ CEOS
2003: DNA Technology, Norm Gahn, ADA, Milwaukee, WI
2003: Working with Compliant Victims, Martha Finnegan, FBI
2003: Juvenile Sex Offenders, Allison Turkel, Sr. Atty., APRI
2003: Pretext Phone Calls, John Bradley, DA, Georgetown, TX
2003: Ethics, Rod Leonard, DDA, Los Angeles, CA
2003: Cross Examination of Expert Witness, D. Trufio, ADA, Syracuse, NY
2003: Compliant Victims, Ken Lanning, CAC Consultants (Ret. FBI)
2003: Child PROTECT Act, USAO, Tampa, FL
2004: Paraphilias & Sex Offenders, Dr. Nathan Galbraith, USAF
2004: Incarcerated Sex Offender Treatment, Dr. Michael Bourke, USBOP
2007: Overview of BAU Research Projects, CIRG
2007: Detection of Deception for Law Enforcement, Dallas, TX
2007: Clergy Sex Abuse Research, John Jay College of Criminal Justice, NY, NY
2007: New Zealand, Male Survivors of Child Sexual Abuse, NY, NY
2007: The Lost Self, Survivors of Childhood Sexual Assault, Dr. Alan Downs
2008: Cyber Personalities & Threats, CIRG
2008: Men Of Courage, 1st Provincial Conference on Male Sexual Victimization
2008: Why I Didn't Say Anything, Sheldon Kennedy, Toronto, Ontario, Can.
2008: Forensic Science in Criminal Investigations, Dr. Henry Lee, Wash., DC
2008: Sex Offender Research, Dr. Michael Bourke, USBOP
2008: Expert Testimony – Moot Court, BAU, Quantico, VA
2009: Women Who Molest Children, Capt. Carson, MD Heights PD
2009: Behaviorally Based Interviewing, Wayne Sheppard, NCMEC
2009: Cross-Examining Defense Experts, Victor Vieth, Winona State Univ.
2009: Fantasy Defense in Internet SEOC Cases, Ken Lanning, Dallas, TX
2009: Victim Identification, Jennifer Lee, NCMEC
2009: Cyber-Bullying, Yeager, Rampolla and Donofrio, Dallas, TX
2009: The Star Kids Investigation, SA Baker, SA Miller, Dallas, TX
2009: False Allegations of Child Abduction, SSA Canning, Dallas, TX
2009: Facebook Investigations, Max Kelly, CSO, Dallas, TX
2012: Male Survivor Conference, John Jay College of Criminal Justice

Presentations, Lectures, Symposiums, and Training Given:

1998: Behavioral Analysis of Child Sex Crimes Offenders, Maryland
1998: Equivocal Death Investigations, FBI National Academy, Virginia
1998: Equivocal Death Investigations, FBI National Academy, Virginia
1998: Equivocal Death Investigations, FBI National Academy, Virginia
1998: On-Line Sex Crimes Against Children, National Academy Retrainer, KY

1998: On-Line Sex Crimes Against Children, Innocent Images, Maryland
1999: Equivocal Death Investigations, FBI National Academy, Virginia
1999: Interrogation & Miranda, Georgetown University School of Law, Wash, DC
1999: On-Line Sex Crimes Against Children, Innocent Images, Maryland
1999: Dallas National Crimes Against Children Seminar, Texas
1999: On-Line Sex Crimes Against Children, Regional Police Conference, Ohio
1999: Equivocal Death Investigations, FBI National Academy, Virginia
1999: NCAVC Coordinators In-Service, FBI Academy, Virginia
1999: On-Line Sex Crimes Against Children, NCMEC, Virginia
1999: On-Line Sex Crimes Against Children, Regional Police Conference, MA
1999: On-Line Sex Crimes Against Children, Innocent Images, Maryland
1999: Profiling Concepts in Law Enforcement, American University, Wash., D.C.
2000: Equivocal Death Investigations, FBI National Academy, Virginia
2000: On-Line Sex Crimes Against Children, Innocent Images, Maryland
2000: On-Line Sex Crimes Against Children, NY State Regional Conference, NY
2000: Equivocal Death Investigations, FBI National Academy, Virginia
2000: Profiling Concepts in Law Enforcement, American University, Wash., D.C.
2000: Equivocal Death Investigations, FBI National Academy, Virginia
2000: Equivocal Death Investigations, FBI NCAVC, Virginia
2000: On-Line Sex Crimes Against Children, Oklahoma
2000: Equivocal Death Investigations, FBI National Academy, Virginia
2000: On-Line Sex Crimes Against Children, Texas
2000: On-Line Sex Crimes Against Children, Innocent Images, Maryland
2000: Behavioral Analysis of On-Line Child Sex Offenders, American Psychological Association, Washington, D.C.
2000: Interrogation and Miranda, Guest lecture Georgetown University School of Law, Washington, D.C.
2000: On-Line Sex Crimes Against Children, Texas
2000: On-Line Sex Crimes Against Children, Texas
2000: Behavioral Analysis of On-Line Child Sex Offenders, American Psychological Association National Symposium, Washington, D.C.
2000: On-Line Sex Crimes Against Children, Advanced CAC Coordinators In-Service, FBI Academy, Virginia
2000: Criminal Investigative Analysis, NCAVC, Virginia
2000: Equivocal Death Investigations, FBI National Academy, Virginia
2000: On-Line Sex Crimes Against Children, Innocent Images Franchise, MD
2000: Government Corruption in FHA, White Collar In-Service, FBI Academy, VA
2000: Equivocal Death Investigations, FBI National Academy, Virginia
2000: On-Line Sex Crimes Against Children, Innocent Images Franchise, MD
2000: On-Line Sex Crimes Against Children - Case Studies, FBI NA, VA
2000: Dallas National Crimes Against Children Seminar, Texas
2000: Equivocal Death Investigations Regional Conference, California
2000: On-Line Sex Crimes Against Children, Kentucky
2000: Equivocal Death Investigations, FBI National Academy, Virginia
2000: Equivocal Death Investigations, FBI National Academy, Virginia
2000: Advanced Presentation Skills on Power Point, NCAVC, Virginia
2000: Central America Regional CAC Seminar: El Salvador, Costa Rica, Guatemala, Honduras, Mexico, Nicaragua, and Panama.
2000: DOJ, Office of Justice Programs second National Summit: Sexual Assault Prevention and Sex Offender Management.
2001: Behavioral Analysis of Child Sex Offenders/Victimology, FBI Academy, VA
2001: Child Sex Offender Interactive Panel, FBI Academy, Virginia

2001: On-Line Child Sex Crimes; Sexual Tourism & Child Prostitution;
Child Abduction Response Plan; Expert Testimony; DOJ Manila, Philippines

2001: Sex Offender Behavior Typologies, CAC Regional, Phoenix, AZ

2001: Investigating Child Abuse and Exploitation, FBI Academy, Virginia

2001: Computer Child Sex Crimes, FBI National Academy, Virginia

2001: Sex Offender Behavior Typologies, CAC Regional, Chicago, IL

2001: Cyber Sex Crimes, US Courts Federal Probation, St. Louis, MO

2001: Behavioral Aspects of Internet Child Sex Crimes, ACIT Cross
Training, CIRG, NCAVC, Virginia

2001: Child Sex Offender Behavioral Typologies, MJJA, Lake Ozark, MO

2001: Behavioral Analysis & CAC Research, Centennial HS Law & Justice
Program, NCMEC, Alexandria, VA

2001: Child Sex Offender Typologies & Expert Testimony, Texas District
Attorney's Association, Richardson, TX

2001: Equivocal Death Investigations, FBI National Academy, Virginia

2001: Cyber Sex Offenders & Expert Testimony, Utah Prosecutor's High
Tech Crime Conference, Salt Lake City, UT

2001: Applied Behavioral Science for Law Enforcement, Quantico, VA

2001: Internet Exploitation Case Studies, FBI National Academy, Virginia

2001: Vince Foster Death Investigation, FBI Dallas, TX

2001: Child Pornography Collectors, British CAC Investigators, NCAVC

2001: Equivocal Death Investigations, FBI National Academy, Virginia

2001: ON-Line Child Sex Crimes, FBI National Academy, Virginia

2001: Computer Child Sex Crimes, Violence in America Seminar, FBI-NA, VA

2001: Foster Death Investigation, FBI National Academy, Quantico, VA

2001: Indian Country Child Abuse, Offender Typologies, Seattle, Washington

2001: Foster Death Investigation, Harvard Associates International
Homicide Seminar, Annapolis, Maryland

2001: CAC Regional Conference, Chicago, IL

2001: Child Sex Offender Typology, US Probation National Conf, Lake Tahoe, CA

2001: Sex Offender Typologies, NOMSV, John Jay College, NYC, NY

2001: Federal Agent/Survivor, NOMSV, John Jay College, NYC, NY

2001: Sex Offender Typologies, Mid States National Academy, Ozark, MO

2001: Sex Offender Treatment Group, National Institute for the Prevention
and Treatment of Sexual Trauma, Baltimore, MD

2001: Sex Offender Typologies, 8th Circuit US Probation Conference, Nebraska

2001: National CAC Enhancement Training, FBI Academy, Quantico, VA

2002: Child Sex Offender Typologies and Victimology, Arlington, VA

2002: Sex Offender Panel, Dr. Galbraith, Arlington, VA

2002: Equivocal Death Investigations, FBI Academy, Quantico, VA

2002: Sex Crimes Against Children, FBI Academy, Quantico, VA

2002: Sexual Tourism & Child Sex Offenders, San Jose, Costa Rica

2002: Child Abduction Homicides, San Jose, Costa Rica

2002: Expert Testimony in Child Sex Cases, San Jose, Costa Rica

2002: Ashcroft v. Free Speech: Legal & Repercussions, Charleston, SC

2003: Behavioral Investigations of Internet CAC Cases, Calverton, MD

2003: Behavioral Dynamics of Child Sex Offences, St Thomas, USVI

2003: Child Sex Offences a Multi-disciplinary approach, St Thomas, USVI

2003: Behavioral Investigations of Internet CAC Cases, Calverton, MD

2003: Sex Offender Typologies, Fox Valley Tech. College, Fox Valley, WI

2003: Sex Offender Typologies, South West Regional, El Paso, TX

2003: Child Sex Crimes Overview, McAllen, TX

2003: Behavioral Dynamics of Child Sex Offenders, Phoenix, AZ
2003: Understanding & Interviewing Child Sex Offenders, US Secret Service Polygraph School, Orlando, FL
2003: Internet Child Sex Crimes Offender Behavior, Managua, Nicaragua
2003: Child Abductions & Sex Crimes, Managua, Nicaragua
2003: Internet Child Sex Crimes Offender Behavior, El Paso, TX
2003: Sex Offender, Survivor, Treatment Panel, Male Survivor Conference, MN
2003: Sex Offender/Survivor/Treatment Panel, St. Paul, MN
2003: Child Sex Offender Typologies/Child Pornography, McAllen, TX
2003: Behavioral Insights of Sex Offender Management, Crystal City, VA
2003: Expert Search Warrants in CAC Investigations, NAC, Columbia, SC
2003: Compliant Sexual Victimization: An Additional Perspective, USAO/FDLE Interagency Training, Tampa, FL
2003: Child Sex Offender Typologies, APRI Equal Justice, Baltimore, MD
2003: Internet Child Sex Crimes, Midland, TX
2003: Child Sex Crimes Offender Behavior, Appleton, WI
2003: Child Sex Crimes A Behavioral Perspective, Columbus, OH
2003: Internet Child Sex Crimes Offender Behavior, Toronto, Canada
2003: Internet Child Sex Crimes Offender Behavior, NCAC, Quantico, VA
2004: Behavioral Investigations of Internet CAC Cases, Calverton, MD
2004: Internet CAC Training Course, Richmond, KY
2004: Behavioral Investigations of Internet CAC Cases, Calverton, MD
2004: Behavioral Investigation of Sex Crimes Against Children, Roanoke, VA
2004: CAC In-Service: CSO Typologies & The CARP, Arlington, VA
2004: CAC In-Service: CSO Typologies & The CARP, Quantico, VA
2004: Stopping Internet Sex Crimes Against Children, Richmond, VA
2004: Child Sexual Victimization Continuum, Baltimore, MD
2004: NCAVC Coordinator Basic Training, Fredericksburg, VA
2004: Search Warrants Affidavits in CAC Cases, Fox Valley Tech. College, WI
2004: Behavioral Investigations of Internet CAC Cases, Calverton, MD
2004: Under Cover Investigations of Internet CAC Cases, Calverton, MD
2004: BAU Training: Sexual Victimization of Children, Quantico, VA
2004: Undercover Sex Crimes Investigations, London, United Kingdom
2004: Behavioral Aspects of Child Pornography & Molestation, CIA
2004: Host: International Online Child Sexual Victimization Symposium at VA
2005: Interview & Active Listening, Cohorts Training, FBI Academy
2005: Interview & Active Listening, FBI Police Training, FBI Academy
2005: Advanced Interview of Sex Crime Victims, FBI National Academy/UVA
2005: Interview & Interrogation, FBI New Agent Training, FBI Academy
2005: Seminar In Investigative Interviewing, FBI National Academy/UVA
2005: Online Child Sex Crime Offender Behavior, Burlington County, NJ
2006: Seminar In Investigative Interviewing, FBI National Academy/UVA
2007: Child Abduction Rapid Deployment Team training, FBIHQ
2007: Psychopathy Checklist Training, Dr. Hare & Dr. Forth, CIRG
2007: Interviewing Sex Offenders, FBI National Academy/UVA
2007: Behavioral Analysis Applied to Criminal Investigations, FBI Academy
2007: Interviewing Child Victims, FBI Academy New Agents
2007: Online Undercover Agent In-Service, Calverton, MD
2007: Behavioral Analysis of Child Sex Crimes, Phase I Training, CIRG
2007: Sex Offender Behavior, Advanced Undercover School, Calverton, MD
2007: Interviewing Sex Offenders, FBI National Academy/UVA
2007: Sex Offenders & Child Sexual Victimization Continuum, Dallas CAC

2007: Virtual Global Task Force, Washington, DC
2007: Sex Offenders & CSVC, Project Safe Child, New Hampshire
2007: Behavioral Analysis Applied to Criminal Investigations, FBI Academy/UVA
2007: Online Undercover Agent In-Service, Calverton, MD
2007: Advanced Investigative Interviewing, Las Vegas, NV
2007: Investigations Seminar, Georgetown Law School, Washington, DC
2007: Interviewing Sex Offenders, Univ. Of Texas, Austin, TX
2007: Federal Agent/Survivor, MS, John Jay College, NYC, NY
2007: Sex Offender Typologies & Male Victimization, John Jay College, NYC
2007: Overview of BAU Child Sex Crimes, London, UK
2007: Behavioral Analysis Applied to Criminal Investigations, FBI NA
2007: Risk Assessment Protocol, Dr. Harley Stock, Arlington, VA
2007: Interviewing Sex Offenders, FBI National Academy/UVA
2008: Expert Behavioral Analysis Testimony, Dr. Kris Mohandie
2008: Interviewing Sex Offenders, FBI National Academy/UVA
2008: Federal Agent/Survivor, MS, Toronto, Ontario, Canada
2008: Sex Offender Typologies & Male Victimization, Toronto, Ontario, Can.
2008: Interviewing Sex Offenders, FBI National Academy
2008: Advanced Investigative Interviewing, Atlanta, GA
2008: Art & Science of Criminal Profiling, Duquesne Law, Pittsburgh, PA
2008: Interviewing Sex Offenders, FBI National Academy/UVA
2008: Focused Investigations/Interviews, Fed. Energy Reg. Comm., Wash, DC
2008: Child Sex Offenders and Their Male Victims, 1st Provincial Conference on Male Sexual Victimization, Ottawa, Ontario, Canada
2008: SVOC/Rape Panel, Sexual Assault Centre-Quinte, Bellevue, Ontario, Can.
2008: Survivor to Thrive, Sexual Assault Centre-Quinte, Bellevue, Ontario, Can.
2008: Training Video: SVOC, Catholic Charities of Baltimore, MD
2008: Keeping Children Safe from SVOC, Bellevue, Ontario, Canada
2008: CSI Effect, National Symposium on Media & Forensic Science, Duquesne University School of Law, Pittsburgh, PA
2008: Criminal Behavioral Analysis, Duquesne Law, Pittsburgh, PA
2008: Advanced Interview/Interrogation Seminar, Nat. Black P.O. Assoc. Atl, GA
2008: Interviewing Sex Offenders, FBI National Academy, Quantico, VA
2008: Forensic Science and Fiction, Columbia University, NYC, NY
2008: Internet Social Networking, Children's Justice Cntr., Salt Lake City, UT
2008: Interviewing Sex Offenders, FBI National Academy, Quantico, VA
2008: CSOT, Child Sexual Victimization Continuum, Conroe, TX
2008: Art & Science of Criminal Profiling, Towson, Univ., Baltimore, MD
2008: FBI-BAU Methodology & Research, Serious & Organized Crime Agency, Child Exploitation & Online Protection, London, UK
2008: FBI-BAU Methodology, Research & Cases, National Police Improvement Agency, Bramms Hill, UK
2008: FBI-Behavioral Analysis Overview, American Univ., Wash., DC
2008: SVOC/CSVC, Santa Monica Rape Treatment Center/LAPD, LA, CA
2008: Detection of Deception, Marymount Univ. Grad. School, Arlington, VA
2008: Behavioral Aspects of Interview/Interrogation, FBI NA, Quantico, VA
2008: Investigations: Cong./IC/Criminal, Georgetown Law, Wash., DC
2008: SVOC/Child Abduction, Nat. Assoc. - Public School Administrators, MB, SC
2008: Detection of Deception, Marymount Univ. Grad Sch., Arlington, VA
2009: FBI & Law Enforcement Careers, JS Burke & Washingtonville HS, Goshen, NY
2009: Interviewing Child Sex Offenders, Child Advocacy Center, Bristol, VA

2009: Detection of Deception, Marymount Univ. Grad. School, Arlington, VA
 2009: BAU Overview, FBI National Academy, Quantico, VA
 2009: Interviewing Sex Offenders, FBI-NA, Quantico, VA
 2009: Child Sex Offenders, FBI-NA, Quantico, VA
 2009: CSI Effect on Investigations & Prosecutions, Boston, College, Boston, MA
 2009: Interviewing Sex Offenders, FBI-NA, Quantico, VA
 2009: Child Sex Offenders, FBI-NA, Quantico, VA
 2009: SVOC & Grooming, Fox Valley Technical College, Appleton, WI
 2009: CAC/Child Abductions, Nat. Latino Police Officers Assoc, LA, CA
 2009: False Allegation of Child Abduction Case Study, BAU, Quantico, VA
 2009: SVOC/Grooming, UCLA Regional Seminar, LA, CA
 2009: Behavioral Analysis of Child Sex Offenders, Dallas CAC, Dallas, TX
 2009: Interviewing Sex Offenders, FBI-NA, Quantico, VA
 2009: Rigorous Obedience to the Constitution, FBI Core Values Video, FBI Office of Integrity Compliance, FBIHQ, Wash., DC
 2009: Detection of Deception, Univ. or Conn Grad School, New Haven, CN
 2009: Detection of Deception, Marymount Univ, Arlington, VA

2010: Sex Offender Investigations, University of PA, Forensic Mental Health Dept.
 2010: Sex Offenders and Child Abductors, Fairbanks Alaska PD
 2010: Interviewing & Detection of Deception, Henry C. Lee Institute of Forensic Science, University of New Haven, New Haven, CN

2010: Sex Offence Investigations, US Dept of the Navy
 2010: Non-Traditional Fraud/Corruption Investigations, USDOJ, Public Integrity Section

2010: Sex Offences, Rape & Abductions, National Assoc. of Forensic Nursing. Las Vegas, NV

2010: Profiler Profiled: Male Sexual Victimization, John Jay College of Criminal Justice

2011: Interviewing Sex Offenders & Their Victims and Child Abductions, Arizona Homicide Investigators Assoc., Las Vegas, Nevada

2011: Profiling, The Media, and Investigations, Toronto, Canada

2011: Use of Cooperating Witnesses in Major Crimes Investigations, USDOJ Greenwich, CN

2011: Detection of Deception in Interviewing, Henry C. Lee Institute of Forensic Science, University of New Haven, New Haven, CN

2012: Detection of Deception, National Black Police Officers Org.

Criminal Investigative Analysis Consultations:

- SSA Clemente has analyzed hundreds of cases for and has provided investigative, prosecutive, and sentencing guidance to FBI Agents, Federal, State, and Local Law Enforcement Agencies, Prosecutors', Psychologists, Social Workers, and other professional organizations across the United States and overseas in cases involving Sexual Exploitation of Children, Child Pornography, Child Sex Abuse, Child Prostitution, Child Abduction, Serial Rape, Incest, Sexual Assault, Sexual Homicide, Serial Homicide, Kidnapping and Equivocal Death.

Expert Testimony and Affidavits:

- SSA Clemente has given sworn expert testimony in the areas of Child Sex Offender Behavioral Characteristics, Child Sexual Victimology, and Child Pornography in the following cases:

2001: US v. Daniels, US Army Base Camp Ederly, Vicenza, Italy [Case-in-chief]
2001: US v. Daniels, US Army Base Camp Ederly, Vicenza, Italy [Sentencing]
2001: US v. Smith, US District Court, District of Colorado [Sentencing]
2001: US v. Vogt, US District Court, Southern District of Florida [Case-in-chief]
2001: US v. Vogt, US District Court, Southern District of Florida [Sentencing]
2002: Texas v. Doyle, Montgomery County Court, Conroe, Texas [Case-in-chief]
2002: Texas v. Doyle, Montgomery County Court, Conroe, Texas [Sentencing]
2003: US v. Thomas, US District Court for the Northern District of Maryland [Detention]
2007: US v. Sanders, US District Court for the Central District of California [Case-in-Chief]
2007: US v. Sanders, US District Court for the Central District of California [Case-in-Chief]
2008: US v. McGill, US District Court for the District of Wyoming [Case-in-Chief]
2008: US v. Farris, US District Court Western District of Pennsylvania [Detention]
2009: US v. Pepe, US District Court for the Central District of California [Case-in-Chief]
2009: US v. Weisberg, US District Court, Central District of California [Case-in-Chief]

- SSA Clemente has given expert testimony in the form of affidavits in Support of Government's motions for detention a number of cases including:

2001: US v. White, United States District Court for the Eastern District of California
2001: US v. Holverstott, United States District Court for the Eastern District of California
2002: US v. Pertle, United States District Court for the Northern District of California
2002: US v. Froman, United States District Court for the Southern District of Texas
2002: US v. Johnston, United States District Court for the Southern District of Texas
2002: US v. Ezeta, United States District Court for the Southern District of Texas
2002: US v. Anderson, United States District Court for the Southern District of Texas
2002: US v. White, United States District Court for the Southern District of Texas
2002: US v. Tinney, United States District Court for the Southern District of Texas
2002: US v. Seamens, United States District Court for the Southern District of Virginia
2003: US v. Thomas, United States District Court for the Northern District of Maryland
2003: US v. Adkins, United States District Court for the Eastern District of Kentucky [Affirmed by Court of Appeals]

- 2002: -SSA Clemente has provided expert opinions on Child Sex Offender Behavior, Child Sexual Victimization and Child Pornography for the FBI's Testimony before the U.S. Congressional Subcommittee on Crime, Terrorism and Homeland Security.
- 2002: -SSA Clemente has provided expert testimony in the form of a Declaration regarding Child Sex Offender Behavior and an analysis of Defendant's recidivism risk and danger to the community: People v. Gove; Manitowoc County, Wisconsin
- 2009: -SSA Clemente has provided expert testimony in the form of a Declaration regarding Grooming Behavior: US v. DeWitt, US District Court, Central District of California
- SSA Clemente has provided expert affidavits regarding Sexual Victimization of Children, Child Pornography, and On-line Sex Crimes Against Children in several hundred search warrants.

Awards, Letters & Commendations:

1997: Exceptional Performance Award, DOJ
1997: Certificate of Appreciation, NDIC Homicide Task Force, MPD, Wash., DC
1998: Certificate of Recognition, State of Wyoming
1998: Exceptional Performance Award, DOJ
1998: Superior Service Award, FBI
1999: Exceptional Performance Award, DOJ
2000: Exceptional Performance Award, DOJ
2001: Director's Certificate of Commendation
2001: Superior Service Award, FBI
2002: Superior Service Award, FBI
2003: Superior Service Award, FBI
2004: Superior Service Award, FBI
2004: Commendation Award, DOJ
2007: Superior Service Award, FBI
2008: Superior Service Award, FBI
2008: Distinguished Award, DOJ
2009: Superior Service Award, FBI

- SSA Clemente has received numerous letters of commendation from Federal, state, and local Law Enforcement Agencies, Prosecutors' Offices, as well as, other professional organizations across the United States.

Research Projects:

1999 to 2009: -Serial Rape Research Project, Joint Research by NCAVC, University of Virginia, and Radford University
1999 to 2009: -NCAVC/Innocent Images On-line Sex Crimes Against Children Project
2001 to 2004: -Incarcerated Sex Offender Re-Offending Study, Joint Research by NCAVC, Federal Bureau of Prisons.
2004 to 2009: -Committee Chair/Editor: Behavioral Analysis Manual, FBI BAU

Publications:

- 2001: Contributor to Interpol's Investigative Manual Chapter 3: "Sexual Offences Against Children & Child Pornography"
- 2002: Co-author of the FBI's Testimony before the U.S. Congressional Subcommittee on Crime, Terrorism and Homeland Security on the topics of Child Sex Offender Behavior, Child Sexual Victimization and Child Pornography.
- 2007: "Equivocal Death Investigations." Journal of Forensic Nursing
- 2008: (Pending)"Behavioral Analysis Manual," (Committee Chair)

APPENDIX 3

ADDITIONAL BACKGROUND ON CHILD SEXUAL VICTIMIZATION

Based on my education, training, and experience, and the institutional knowledge of the FBI's Behavioral Analysis Unit, the following traits and characteristics are generally found to exist and be true in cases involving individuals who sexually victimize children.

With respect to their victims, child sex offenders typically fall into three general categories: strangers, acquaintances, and family. Their motivations for offending are evaluated on a continuum. The two ends of that spectrum are represented by situational and preferential offenders. Situational offenders are those who victimize children but who do not have a definitive sexual attraction to children. As a result, their sexual offenses against children tend to result from circumstantial access to children rather than a methodical effort to pursue sexual encounters with children. Their offenses can generally be described as opportunistic and/or impulsive in nature; however, their sexual desires and fantasies typically involve adults.

1. Preferential Child Sex Offenders

Preferential child sex offenders (PSO), on the other hand, have a definitive sexual attraction to children, usually of a particular age range, gender, body type, personality, vulnerability, other set of characteristics, or any combination of the above. Despite their specific sexual interest in these particulars, preferential offenders may at times offend outside of their preference due to availability or circumstances. Acquaintance PSOs typically gain access, authority, and/or control over their intended victims through a process known as "grooming." The grooming process is typically aimed at the intended child victims and those who are responsible for their wellbeing as well as the community that they operate in. Grooming is a constellation of otherwise innocent appearing behavior that is intended to give them ongoing access to children for sexual purposes, as well as, preventing discovery by others.

Though it is often misused by those in the public and law enforcement alike, the term "pedophile" is actually a paraphillic mental disorder that must be clinically diagnosed. This diagnosis results from a full clinical evaluation by a psychologist or psychiatrist who finds that the person being evaluated has recurrent and intense, sexually arousing fantasies, urges, or behaviors aimed at prepubescent children, typically under the age of 13. Absent such a finding, law enforcement professionals use the term preferential child sex offender to designate those who are sexually attracted to children and who commit sexual crimes against them. This criminal typology has been extensively researched and written about by my colleague, retired Supervisory Special Agent Ken Lanning and it has been utilized world-wide in the law enforcement community.

Unlike "normal" adult/adult sexual relationships, preferential offenders cannot develop lifelong sexual relationships with the object of their sexual desires. This is because the children they are sexually interested in always grow up and "age-out" of their desired age range. This drives these offenders to periodically search for and groom new children. Their sexual behavior with children therefore, is typically repetitive and predatory in nature. This phenomenon is typically referred to as "the grooming pipeline." That is, they are simultaneously involved in

various stages of grooming multiple victims at the same time in order to enable concurrent or sequential victimization.

Grooming behaviors can be used by an offender against children across a spectrum of relationships. That is, they may target children within their family, acquaintances, e-acquaintances (those they met on-line), neighbors, and/or complete strangers. Since the purpose of grooming is to gain access, authority and control over their intended victims, the more parental the relationship is between the offender and the victim, the easier it is for an offender to use “normal” parenting as a grooming tool.

A preferential offender’s sexual attraction to children may be either exclusive or non-exclusive. That is, their sexual attraction may be focused solely on children, or it may be more diverse, including a variety of sexual interests in addition to children. It is not uncommon for these offenders to engage in multiple paraphilic behaviors. A paraphilia is the recurrent and intense sexual arousal to inanimate objects or non-consenting parties (pedophilia is one example of a paraphilia). Individuals who engage in one paraphilia are likely to engage in more than one. Also, some preferential offenders can be sexually attracted to adults and children at the same time and can engage in sexual activity with adults as well as children concurrently.

Although it is impossible to accurately predict human behavior with absolute certainty, the best predictor of human behavior is a past pattern of behavior. Preferential offenders tend to engage in highly repetitive and predictable patterns of behavior. In order to satisfy their sexual desires, these offenders devote substantial amounts of time, effort, energy and/or money to the pursuit of sexual and/or non-sexual contact with children, child pornography and child erotica. They also typically discover their sexual attraction to younger children in their own late adolescence and may begin to act on this attraction soon thereafter.

The four hallmarks of preferential child sex offenders are: 1) long term persistent patterns of behavior; 2) specific sexual interests; 3) well-developed techniques; and 4) fantasy and desire driven behavior. These characteristics may be identified by some or all of the following behaviors: long-term persistent patterns of behavior demonstrated by a willingness to commit significant time, money, and energy in furtherance of their sexual interest in children, often resulting in multiple offenses; an interest in children as sexual objects and the development of a rationale to justify that interest (e.g., “I would never hurt a child, I love children,” and/or “I never did anything the child didn’t want me to do”); well-developed techniques for gaining access to victims and/or sexualized child-related material, characterized by the ability to skillfully manipulate the situation, the victims, and/or other individuals necessary for gaining access to children for sexual purposes; and a significant fantasy component featuring children as sex objects and often supported by the collection and organization of child-related material, writings, and/or child pornography. Although no single factor delineated above is determinative in and of itself, the most telling factor in determining whether an individual is a preferential child sex offender is the collection of child pornography.

Individuals with a sexual preference for children may derive sexual gratification from actual physical contact with children as well as from fantasies involving the use of sexual depictions of children or literature describing sexual contact with children. Preferential child sex offenders gravitate to employment, activities and/or relationships which provide access or

proximity to children; and frequently persist in the criminal conduct even when they have reason to believe the conduct has come to the attention of law enforcement. These are desire driven behaviors to which the offender is willing to devote considerable time, money, and energy in spite of the risks and contrary to self-interest.

2. Nice-Guy Acquaintance Offenders¹

“Nice-guy” child sex offenders are much more prevalent, effective, and prolific than the stereotypical “stranger danger” type offender. In fact, the vast majority of children who are sexually victimized are offended against by someone they know. We call those offenders “acquaintance offenders.” The category of “acquaintance offenders” includes any non-stranger and any non-biological relative. One particularly insidious sub-category of acquaintance offenders is “nice-guy” offenders (sometimes referred to as the “pillar of the community” or “man of the year” offenders).

These are offenders who are friendly, normal, helpful, giving, loving people who no one would suspect are harboring sexual attractions to children. These cases are very difficult to investigate because a number of these offenders have high social status or are authority figures, such as: “teachers, camp counselors, coaches, clergy members, law-enforcement officers, doctors, judges Such offenders are in a better position to seduce and manipulate victims and escape responsibility.” And, equally important, “[t]hey are usually believed when they deny any allegations.”² Both their status in the community and their affable personalities make it difficult to make a case against them for sexual victimization of children. “Convicting an acquaintance child molester who is a ‘pillar of the community’ is almost impossible based only on the testimony of one confused 5-year-old girl or one delinquent adolescent boy.”³

The above passages underscore the fact that even when it comes to trained law enforcement officers, it is very difficult to determine whether a person, who everyone in the community knows and respects, is a child sex offender. Sandusky is a textbook preferential child sex offender, as well as being a textbook example of a “nice-guy” offender. However, I would put him in the top one percent of effective groomers in this country. This is based on the fact that he was so bold in his high-profile “altruistic” public persona, founded a youth serving organization, and he was caught in the act of grooming and sexually assaulting children in the showers before, yet he still did the same thing in the same place again in 2001.⁴ Both times Sandusky was able to deceive his way out of it. He built his reputation both professionally and interpersonally over many years of hard work and sacrifice. Drive, determination, selflessness and altruism were his calling cards. He motivated others to give millions to needy children at The Second Mile. Sandusky was lauded and celebrated for his work. He effectively groomed most of the people who came in contact with him, including child care experts, psychologists,

¹ Kenneth V. Lanning, *Child Molesters: A Behavioral Analysis* 23-34 (5th ed. 2010).

² *Id.* at 77.

³ *Id.* at 140.

⁴ In my experience, because people do not want to talk about the topic of male on male child sexual victimization these types of “close calls” happen regularly with “nice-guy” offenders, but witnesses either do not believe what they see, do not know how to handle it, misinterpret what they see, or do not think anyone will believe them if they told.

professionals, celebrities, athletes, coaches, friends and family. And most notably, he was approved numerous times over thirty years as both a foster parent and an adoptive parent by child care professionals.

Sandusky loved children, and it showed. But he effectively hid from everyone in the community that his love for boys extended into criminal sexual activity with those boys. One reason why he was so effective at hiding this is because people find it very difficult to believe that someone as nice, as giving, as personable, as charismatic, as altruistic, as friendly, as caring, as fatherly, and as successful as Jerry Sandusky could possibly be the kind of hideous monster that is a child sex offender. Now, of course, everyone who knew Sandusky knows they were wrong. They all know that he fooled them for decades. With the degree and duration of his access, authority and control over vulnerable and needy boys and his “pillar of the community” social status, I can state there is a high degree of probability that the majority of Sandusky’s victim’s have not yet come forward. Many of them never will. It is simply too risky, too stigmatizing, too embarrassing, too misunderstood, for them to make the huge leap of faith required to tell the world that they were sexually victimized, and worse yet, by a man.

If, as a society, we are going to help these boys and men overcome their victimization, we have to have an ongoing open and non-judgmental public discussion about male sexual victimization. This is a problem that I faced for many years even within the FBI. Some of my colleagues did not want me to speak publically about being victimized as a teen. They said it would embarrass the Bureau. That it was unprofessional. Eventually, I stopped listening to them and I spoke out at conferences across the country and around the world. Almost every time I spoke out, one or more men and women quietly approached me and disclosed that they too were victimized as a child and had not disclosed to anyone before. One of the detrimental things that child advocates, investigators and lawyers do that is meant to help child sex crime victims but ultimately hurts them is overstating the resultant effects of child sexual victimization when they speak publicly about it.

Many, including the writers of the SIC report use terms like, horrendous, heinous, devastating, ruined, and other extreme words to describe what happened to the child victims. I’m sure the speakers mean well, however, those very same victims, and future victims, are hearing and reading those words and it fills them with a sense of hopelessness. It robs them of their future. They feel that they are doomed, damaged, and worthless. As responsible adults, we should make sure we temper our rhetoric and give victims the hope for a better day.

I trained hundreds of FBI agents and law enforcement officers who worked child sex crimes undercover investigations on the internet under the banner of the FBI’s Innocent Images major case undercover operation. I participated in, consulted on, and testified as an expert witness on these cases for more than a decade. And I found that male agents and officers, almost to a person, preferred to create undercover personas as girls instead of boys. This, despite the fact that the statistics are very clear that offenders who target adolescent boys are, by far, much more prolific than those who target girls. It is not unusual to discover a male sex offender who has gotten away with molesting boys for thirty or more years and has amassed a victim pool in the hundreds.

However, the majority of offenders who are caught in these undercover operations are those who prey on girls, mainly because male investigators would rather pose as a young girl rather than engaging in undercover conversations posing as boys talking with adult male offenders about sexual activity that the undercover officers consider to be homosexual activity. I have lectured many thousands of law enforcement officers across the country and around the world and have pleaded with them to overcome their inhibitions and insecurities so they can address the cases with these statistics in mind. I hope that perhaps with the infamy attached to the Sandusky case and the more open dialogue that has begun as a result of it, that law enforcement officers will take the lead and investigate the offenders who prey on boys with at least the same fervor as those who prey on girls.

The rationalizations and justifications in the SIC report about the janitors who witnessed and/or were told by co-workers of acts of sodomy against a boy by Sandusky were unfortunately part of the problem. They, as well as any other adult who witnessed a child being victimized, should have acted immediately to extricate the child from the situation, bring him/her to a hospital for forensic evaluation and do what ever is within their power to identify and report the offender to the police. If in fact those janitors were frightened of the ramifications to their careers, imagine how frightened those boys were of the ramifications to their lives. Children already grow up in a “land of giants.” From the perspective of children they find themselves living in a world populated by people who are bigger than Shaquille O’Neal is to the smallest adult. Children are surrounded by adults who dwarf them in size, have freedom to do what they want, have the ability to order them around with impunity, and have ultimate authority and control over them. They find themselves helpless against the whims and wishes of those who control them. Adults who come in contact with children in any way or forum should be acutely aware of their responsibility towards those children. This means that they have a responsibility to learn proper boundaries, red flag warning signs, and resources available to help children who are or may be victimized.

3. Grooming⁵

In the context of child sexual victimization, grooming is a dynamic process utilizing a constellation of seemingly innocent behaviors aimed at gaining the cooperation of the child to achieve sexual gratification for the offender. In other words, it is a pattern of activity employed by preferential child sex offenders to gain access, authority, and control over children for sexual purposes, to ensure their silence, and to keep them in a position in which they can be repeatedly victimized. This dynamic process is aimed at potential child victims, their parents or guardians, and the community that surrounds them. Those who are closest to the child victims or the offender are precisely the ones who are most affected by grooming practices.

Offenders who “groom” typically seek out needy, isolated, or disadvantaged children and provide both emotional and tangible things to fill the needs of those children. They do this by providing: attention, recognition, affection, kindness, romance, gifts, money, trips, jewelry, clothing, staples, food, shelter, drugs, alcohol, privileges, driving, and/or smoking. They also break down the boundaries that usually exist between adults and children by lowering inhibitions, by being overly physical and playful with them, by talking about or encouraging

⁵ Lanning at 26-28.

masturbation and/or sex, by giving sexual instructions, or by supplying pornography. They are very careful to do only those things that will be viewed in a positive light in public, and typically reserve the sexual behavior for one-on-one private encounters.

Offenders will many times touch, hug, embrace, pat, and tussle the hair of targeted children in front of their parents, guardians, or other adults to desensitize the child to touch and to surreptitiously imply that the parent or other adult tacitly approves of such behavior. That way, when the offender is alone with the child, it is much easier to take the physical interactions to the next level. Sandusky used these behaviors very commonly, as well as using invitations to attend games or work out, followed by trips to the locker room to change clothes (desensitizing the child to being undressed in front of him and vice versa) and to shower with him (desensitizing the child to being naked with him and vice versa) and horsing around in the shower (desensitizing the child to touch while naked) all of which were grooming tactics aimed at sexually victimizing the child.

On the other side, the offender rationalizes his abusive behavior by telling himself that the child's need for nurturing is really an invitation to get close and become sexual with that child. This is one of the fundamental ways in which offenders who actually "love" children, justify in their own minds that they are not hurting a child, or not doing anything the child didn't want them to do. In fact, it is typically a shock and surprise to the child when the offender who has been so nice to them suddenly turns their interactions into something sexual.

The results of effective grooming are both far-reaching and long-term. They include: continued access to the child, initial cooperation of the child, isolation of the child, feelings of love, loyalty, and a debt of gratitude on the part of the child towards the offender. Then, when the sexual activity occurs, the child can experience intense feelings of shame, embarrassment, guilt, and confusion. They typically have strongly ambivalent feeling for the offender at this point, wanting to believe that he truly loves them and not wanting the positive things that he is providing to stop, while at the same time they do not want the sexual activity to continue.

This results in behavior by the child that we call "compliant victimization." Some victims are so grateful for the positive things the offender is doing for them that they actively participate in or enjoy the sexual activity. Others feel so shamed and guilt-ridden, or compromised and trapped, that they simply put up with it. Either way, the situation is such that it enables the revictimization of multiple kids over a long period of time. And typically, none of them want anyone to find out what they have been subjected to. This is especially the case when the offender is male and the child victims are male.

Most people in the general public believe offenders are "monster predators," evil people who are so despicable, so offensive, so heinous, that they must be horrible people, who are strangers, who look weird, act unusually, and most importantly, deliberately hurt children. However, the vast majority of offenders who sexually assault child victims are known to the victim, may be related to them, are seen as harmless, helpful, kind people who are considered "nice-guys."⁶

⁶ Although there are a percentage of offenders who are female, I will use the masculine pronoun in my analysis to generalize about offenders.

One of the nefarious consequences of effective grooming is that the offenders' motives are seen as altruistic, loving, and kind. He is seen to be sacrificing his time for the benefit of the children he helps. He is seen to be a person who would "never hurt a child." In fact, in most cases of "nice-guy" offenders, the perpetrator actually loves children, enjoys their company, and has convinced himself that the sexual interactions he has with the children he feels close to are merely expression of love and not harmful to the child. This is an example of rationalization and minimization that help a child sex offender grant himself permission to commit the offenses. The "nice-guy" persona is so diametrically opposed to that of the "monster predator" most people believe embodies any person who would sexually assault a child, that those who personally know the offender cannot reconcile the thought that they could possibly be one in the same. Simply put, people who know a "nice-guy" cannot believe that he could possibly be a reviled offender.

Faced with thousands of examples of kind, altruistic, friendly, fatherly, loving, interactions with a person who you know and trust, it is actually very difficult to undo all that experience based on a couple of incidents that you hear about second or third hand, and now believe something completely different. This is likely why McQueary has stated that he had to look again and again into the shower to make sure that what he thought he saw was actually what he saw.

4. Compliant Victimization⁷

One of the most counter-intuitive aspects of child sexual victimization investigations is embodied in the concept of compliant victimization.⁸ Children who are groomed into sexual victimization typically do not call out to be rescued or disclose when questioned about possible victimization because of a complex set of physical and psychological factors, including the fact that they don't want anyone to know what has been done to them or what acts they had to do with the offender. For some, this is because they have finally found someone (the offender) who treats them well or tells them they are special; someone who grants them entrée into a world they never had a hope of entering before the offender. Typically, this creates a feeling of intense ambivalence on the part of the victims. On one hand, they love the offender for the things he has done for them. On the other hand, they hate the offender for the things he has done to them. That's why the boy in the shower in 2001 kept silent even though McQueary witnessed him being groomed and assaulted by Sandusky. That's why the nine victims who testified, or were testified about in Sandusky's trial, never made an immediate outcry. Even when investigators first came to some of these boys and asked them direct questions, most of them remained silent or denied anything sexual occurred. They claimed that they had not been victimized, when in fact they had. Eventually, most of them made partial or incremental disclosures, and then over time gave a fuller, more detailed account of their victimization. It's called the "conspiracy of

⁷ See Lanning at 24-26.

⁸ Compliant victimization is such a difficult concept for people to understand and accept that when my colleague Ken Lanning first attempted to add the concept to his monograph (*see supra* note 1), the National Center for Missing & Exploited Children (NCMEC) repeatedly asked Lanning not to use it in his publication because they believed it would sound like he was blaming the victims. This concept does not blame the victims; it explains their behavior.

silence” that surrounds child sexual victimization. It is the opposite of an “active agreement to conceal.”

5. High Risk Situations

There are certain high-risk situations that arise in investigating acquaintance exploitation cases. Unfortunately certain youth organizations inadvertently provide the child molester with almost everything necessary to operate a child sex ring. A scouting organization, for example, fulfills the offender’s needs for access to children of a specific age or gender, a bonding mechanism to ensure the cooperation and secrecy of victims, and opportunities to spend the night with a victim or have a victim change clothing. The bonding mechanism of the scouts is especially useful to the offender. Loyalty to the leader and group, competition among boys, a system of rewards and recognition, and indoctrination through oaths and rituals can all be used to control, manipulate, and motivate victims. Leaders in such organizations should be carefully screened and closely monitored. Another high-risk situation involves high-status authority figures. As stated above, child molesters sometimes use their adult authority to give them an edge in the seduction process. Adults with an added authority (e.g., teachers, camp counselors, coaches, clergy members, law-enforcement officers, doctors, judges) present even greater problems in the investigation of these cases. Such offenders are in a better position to seduce and manipulate victims and escape responsibility. They are usually believed when they deny any allegations. In such cases the law-enforcement investigator must always incorporate understanding of the seduction process into interviews, take the “big-picture” approach, and try to find multiple victims or recover child pornography or erotica in order to get a conviction.⁹

⁹ See Lanning at 137-67 (“Investigating Acquaintance Sexual Exploitation”).

APPENDIX 4

REFERENCES AND RESOURCES

Child Molesters: A Behavioral Analysis by Ken Lanning Supervisory Special Agent (retired) of the FBI's Behavioral Analysis Unit is the most comprehensive and enduring reference regarding Child Sex Offender Behavior. Lanning's monograph can be downloaded here:
http://www.ncmec.org/missingkids/servlet/ResourceServlet?LanguageCountry=en_US&PageId=469

National Center for Missing and Exploited Children (NCMEC) is a national and international resource for individuals and law enforcement agencies that are interested in learning about, reporting, detecting, investigating, and protecting children from sexual victimization, child pornography, and abduction. Its website is an extremely valuable resource:
http://www.ncmec.org/missingkids/servlet/PublicHomeServlet?LanguageCountry=en_US&

Male Survivor is an international organization that I am a long-time member of that is dedicated to preventing, healing, and eliminating all forms of sexual victimization of boys and men through support, treatment, research, education, advocacy, and activism. Its website is a great resource for individuals, groups and organizations to learn about the issues particular to, and resources available for, survivors of male sexual victimization, as well as, detection and prevention tips:
<http://www.malesurvivor.org/>

Stop it Now! is an organization that I have worked with over the years and which has become a leading voice in the fight against child sexual victimization. Its website is a comprehensive and helpful resource for any person or organization that is interested in finding out more about recognizing and preventing child sexual victimization: <http://www.stopitnow.org/>

Protect is a very successful political action organization, that I am a lifetime member of, which has championed many helpful and effective child advocacy laws. Its website is a valuable resource for information: <http://www.protect.org/home>

Safe4Athletes is an organizational advocate that I am working with for athlete welfare where every athlete is provided a safe and positive environment free of sexual victimization, bullying and harassment. Its website is a tremendous resource for individuals, groups, schools, clubs, and teams that need information and guidance on how to create safe environments for child athletes. They have model policies, agreements, complaint forms, and the like that can be used free of charge by any organization: <http://safe4athletes.org/>

APPENDIX C

**National Institute for the Study, Prevention
and Treatment of Sexual Trauma**

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J. Sedwick Sollers, III
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King and Spalding, LLP
1700 Pennsylvania Avenue, NW
Suite 200
Washington, DC 20006-4707

RE: Joseph Paterno

Dear Mr. Sollers:

As an expert on Pedophilia, I am writing in response to a request for my professional opinions about the document titled “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.” That document, which had been produced by Freeh, Sporkin, and Sullivan, LLP, is dated July 12, 2012, and it has sometimes been referred to as the “Freeh Report.” I was asked to focus on inferences that have been made about Joseph Paterno in that report, and to additionally focus on his response to the information he received about Gerald A. Sandusky. I have been asked to do so in light of my extensive experience in assessing and treating pedophilia, and in researching and addressing child sexual abuse, and related issues. My professional background also includes training in the behavioral sciences, and in the assessment of mental and motivational states. To that end, I have testified in Federal Court on more than one occasion as an expert psychiatric witness; providing information to jurors to assist them in determining the motivational state (i.e., the mental intent) of accused defendants. Because the “Freeh Report” has made certain inferences about Joseph Paterno’s alleged mental motivations, I will comment briefly about that aspect of the report as well.

Because there are a variety of criminal charges pending against certain former Pennsylvania State University personnel, I will avoid commenting in detail about those individuals at this time. I will also limit any comments that I may make regarding Gerald Sandusky, as his criminal case may yet be the subject of further appeal.

Summary of Dr. Berlin's Conclusions:

The "Freeh Report" alleges that there had been a "total and consistent disregard by the most senior leaders at Penn State for the safety and welfare of Sandusky's child victims." It further alleges 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..." As an acknowledged expert on pedophilia (and as a mental health professional with training and expertise in the behavioral sciences, and in assessing mental and motivational states), having carefully reviewed the "Freeh Report," I have reached the following conclusions:

1. Like many others in the community, Joe Paterno may not have appreciated that Gerald Sandusky likely had pedophilia; along with the inherent risks that that condition can pose. Numerous public examples exist documenting just how difficult it can be for friends, colleagues, relatives, and close acquaintances to identify a person with pedophilia, and to appreciate the risk such an individual can pose to children. In my professional opinion, Joe Paterno was likely one of hundreds, if not thousands, of such people who were so deceived. That said, I have seen no credible evidence in the "Freeh Report" supporting the conclusion that Joe Paterno had acted in bad faith regarding the Sandusky situation. Nor have I seen any evidence that Joe Paterno was a man who lacked a genuine concern for the well-being of others – particularly children. Remarkably, the "Freeh Report" shows virtually a complete disregard for Joe Paterno's strengths of character, repeatedly demonstrated moral values, and life-long pattern of responsible conduct and leadership; while instead relying heavily upon unsubstantiated inferences and innuendo.

2. Of particular significance in the "Freeh Report" is what it did not find, especially in view of the fact that its authors had had access to such a large volume of information. For example, given the very serious nature of the contained allegations, remarkably the "Freeh Report" presented no credible evidence whatsoever substantiating the claim that Joe Paterno had been involved in an effort to repeatedly conceal critical facts relating to Mr. Sandusky's child sexual abuse. In 1998, Joe Paterno may have known that Mr. Sandusky had been investigated regarding some type of alleged improper behavior with a child, and that no basis had been found for criminal prosecution. In 2001, after having been informed in vague and general terms by a graduate assistant about possible improper sexual behavior by Mr. Sandusky, Joe Paterno had immediately and responsibly passed that information along to his superiors. In essence, that is what Joe Paterno may have known, or did know – and that is what he had done about it. It is entirely unclear to me how that translates into a "total and consistent disregard" for the "safety and welfare of Sandusky's child victims," or into repeatedly concealing critical facts relating to Mr. Sandusky's child sexual abuse.

3. The "Freeh Report" infers that Joe Paterno had had control over his superiors when it came to important decisions; presumably, including decisions about how to handle information regarding Mr. Sandusky's alleged sexual abuse. Remarkably, the "Freeh Report" presented no credible evidence whatsoever (only unsubstantiated innuendos) to support such a serious contention. It also presented no credible evidence whatsoever to support the notion that Joe Paterno had wanted, or had somehow encouraged, his superiors to refrain from reporting Mr. Sandusky's alleged sexual acts to the Department of Public Welfare, or to refrain from reporting it to anyone

else. Once again, in the absence of any such evidence, it is entirely unclear to me how the “Freeh Report” could have implied that Joe Paterno had somehow been involved in an effort to repeatedly conceal critical facts relating to Mr. Sandusky’s child sexual abuse.

4. Given the very serious nature of the contained allegations, remarkably the “Freeh Report” presented no credible evidence whatsoever to support the suggestion that with respect to Mr. Sandusky, Joe Paterno had been motivated to try to avoid bad publicity.

5. Remarkably, based upon the unsubstantiated inferences contained in the “Freeh Report,” numerous very severe sanctions had quickly been imposed. Those had included (1) the removal of the now ex-head football coach Joseph Paterno’s honorary statue from a previous place of prominence, (2) the withdrawal of Mr. Paterno’s name from consideration for the receipt of a number of potential honors, (3) the removal of his name from some previously bestowed honors, and (4) the vacating of more than 100 victories previously earned by the Penn State football team – thereby denying Joe Paterno the praiseworthy achievement of having been the winningest coach in major college football history. In my professional opinion, the unsubstantiated inferences of the “Freeh Report” cannot, and should not, have been used to justify such sanctions.

6. Finally, wanting to be fair to Joe Paterno is not incompatible with having a genuine concern about the serious matter of child sexual abuse.

Dr. Berlin’s Professional Background:

I am an Associate Professor of Psychiatry and Behavioral Sciences at The Johns Hopkins University School of Medicine. I am also an Attending Physician at The Johns Hopkins Hospital. I have earned a Ph.D. degree in Psychology, as well as an M.D. degree, and I am Board Certified as a Psychiatrist by the American Board of Psychiatry and Neurology. One of my areas of expertise within the field of psychiatry is related to the various Sexual Disorders; including Pedophilia. I served as a member of the Subcommittee on the Paraphilias (in layman’s terms, the Sexual Disorders) for the third revision of the Diagnostic and Statistical Manual of Mental Disorders (the DSM). I have been an invited participant at a White House conference on Child Sexual Abuse; invited to address various Subcommittees of the United States Senate regarding that same matter; and invited to address Colleges of Judges in several states.

I had also been asked to serve as a member of the Ad Hoc Committee on Sexual Abuse of the National Conference of Catholic Bishops, and to serve as a member of The Cardinal’s Commission for the Protection of Children. I have published extensively in a variety of professional journals (including The Journal of the American Medical Association, The American Journal of Psychiatry, and The American Journal of Forensic Psychiatry), and I have provided peer reviews for many of those same entities. My published papers have spanned a number of topics including pedophilia, changes in brain chemistry during sexual arousal, and the mandatory reporting of suspected child sexual abuse. I have participated in a number of symposia sponsored by the Federal Bureau of Investigation, and by the United States Department of Justice. One of the Sexual Disorders Treatment Programs that I direct has been designated as

a “National Resource Site” by the Justice Department. I have enclosed a more complete copy of my professional vitae along with this letter.

The “Freeh Report;” Its Inferences Regarding Joseph Paterno, His Motivations, and His Actions:

The authors of the “Freeh Report” gathered and reviewed a tremendous volume of both detailed, and sometimes sketchy, information. Some of that information had been dependent upon the memories of various individuals about events that may, or may not, have taken place more than a decade ago, and some of that information was of a hearsay nature. Having examined and analyzed that information, the authors of the “Freeh Report” had then presented their theories, and conclusions, about what had occurred.

Shortly after their findings had been released on July 12, 2012, a number of very severe sanctions were quickly imposed. Those sanctions had included (1) the removal of the now ex-head football coach Joseph Paterno’s honorary statue from a previous place of prominence, (2) punishments imposed upon the Penn State football team (its players and fans having had nothing to do with the allegations in question), (3) the withdrawal of Mr. Paterno’s name from consideration for the receipt of a number of potential honors, (4) the removal of his name from some previously bestowed honors, and (5) untold damage to his reputation, to his family, and to the Penn State community. In addition, the NCAA (National Collegiate Athletic Association) vacated more than 100 victories previously earned by the Penn State football team – thereby denying Joseph Paterno the praiseworthy achievement of having been the winningest coach in major college football history. (Coach Paterno passed away in January 2012.) All of that had been done before any meaningful opportunity had been given to the representatives of Joseph Paterno to adequately digest and possibly publically rebut the theories and conclusions of the “Freeh Report.”

Beyond that, many who had felt that Coach Paterno had been treated unfairly (including numerous members of the student body) were accused by various members of the media, without any credible evidence whatsoever, of being insufficiently concerned about the serious matter of Child Sexual Abuse. Wanting to be fair to Mr. Paterno is not incompatible with having such concerns. To suggest otherwise would be disingenuous. In our legitimate effort to protect innocent children, the fair treatment of adults should not become a collateral casualty.

According to the “Freeh Report,” “The most saddening finding by the Special Investigative Council is the total and consistent disregard by the most senior leaders at Penn State for the safety and welfare of Sandusky’s child victims.” The report goes on to allege that “Taking into account the available witness statements and evidence, the Special Investigative Council finds that it is more reasonable to conclude, that in order to avoid the consequences of bad publicity (my emphasis added), 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.”

It is important to note that even though it is not possible to read the mind of another, the “Freeh Report” infers a specific motivational state; that is, an interest in avoiding bad publicity, accompanied by a “total and consistent disregard... for the safety and welfare of Sandusky’s child victims.” It does so to the exclusion of seriously considering any other meaningful alternative possible explanations. It is also important to note that although the report’s theory about what had taken place is “the most powerful leaders at the University . . . repeatedly concealed critical facts relating to Sandusky’s child abuse,” at the time of the initial formal allegations against Mr. Sandusky (which had been in 1998), no such abuse had as yet been established. In fact, Mr. Sandusky was exonerated of any illegal conduct in 1998 by the District Attorney, the police, and an examining caseworker.

At most there had only been two occasions over the years when, in the midst of his other ongoing obligations, Mr. Paterno may have been informed of concerns regarding Mr. Sandusky. Once had been in 1998; the other in 2001. In 1998, a police investigation had not resulted in the prosecution of Mr. Sandusky; a fact that may have been known by Mr. Paterno, although he did not recall that in 2011. The police investigation in 1998 had not concluded that Mr. Sandusky had engaged in any illegal pedophilic acts, and at that time it had been believed that he had been helpful to many disadvantaged children.

The “Freeh Report” seems to allege, or at least to infer, that in 2001 Mr. Paterno had been one of those who had “repeatedly concealed critical facts” in order to “avoid the consequences of bad publicity.” Prior to his death in 2012, Mr. Paterno himself had told a reporter that per his recollection, “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 I thought would have a little more expertise than I did. It didn’t work out that way.” That statement says nothing about a concern regarding bad publicity. Nor am I aware of any documents cited in the “Freeh Report” that support the conclusion that Joseph Paterno was concerned about bad publicity, or that he had had a “total and consistent disregard... for the safety and welfare of Sandusky’s child victims.” Reporting his concerns to his superiors in 2001, as he did, had been an appropriate action for Mr. Paterno to have taken.

The “Freeh Report” also alleges that in 2001, one of the ideas deliberated by Mr. Paterno and his superiors had been that the “humane” thing to do was to confront Mr. Sandusky, and to hear him out; possibly even suggesting to him, amongst other things, that he seek treatment. In deciding to consider confronting Mr. Sandusky in 2001, Mr. Paterno’s superiors had expressed the concern that they might subsequently be criticized for doing so; rather than more immediately making a report to the Department of Public Welfare (DPW). Arguably, had they simply been attempting to protect themselves, they would not have wanted to unnecessarily leave themselves open to others “second guessing” their motives for acting in such a fashion. Because there are still legal issues pending about whether Mr. Paterno’s superiors had failed to comply with Pennsylvania’s mandatory reporting requirements regarding suspected child sexual abuse, I will not further address that issue here. However, I would note that they had not remained secretive about Mr. Sandusky’s actions; having reported their concerns to representatives of the Second Mile Program. Although it is possible to second guess any decision after the fact, confronting an individual who has been accused of wrongdoing, even wrongdoing of a criminal nature, is not necessarily an unacceptable administrative strategy.

In my professional opinion, having reviewed the public record, no credible evidence has been presented documenting that Joe Paterno had ever agreed that Mr. Sandusky's actions should not be reported to DPW. The "Freeh Report" references an email from Athletic Director Tim Curley to both Senior Vice President Gary Schultz and President Graham Spanier dated February 27-28, 2001 that reads, in part, as follows: "After giving it more thought and talking it over with Joe yesterday (presumably Joe Paterno), I am uncomfortable with what we agreed were the next steps." It would appear that the original "next steps" had involved a plan to notify DPW, without first giving Gerald Sandusky the opportunity to respond to the allegations that had been made against him. The email in question had then gone on to state "I am having trouble with going to everyone but the person involved. I think I would be more comfortable meeting with the person and telling him about the information we received. I would plan to tell him we are aware of the first situation [presumably the 1998 allegation against him]. I would indicate we feel there is a problem and we want to assist the individual to get professional help. Also we feel a responsibility at some point soon to inform his organization and maybe the other [presumably DPW] about the situation. If he is cooperative, we would work with him to inform his organization [presumably, The Second Mile Program]. If not, we do not have a choice and will inform the two groups" (presumably both The Second Mile Program, and DPW).

President Graham Spanier responded by stating, in part, "The approach you outlined is humane, and a reasonable way to proceed." Senior Vice President Scultz had responded by stating "This is a more humane and upfront way to handle this" – adding "we can play it by ear" – according to the Freeh Report, that referred to the decision about whether to then notify DPW.

Once again, because there are legal proceedings pending against some of those involved in the exchange of the above-noted emails, I will not comment any further about their actions at this time. However, in my judgment to conclude that the email phrase "after talking it over with Joe" constitutes credible evidence that Joe Paterno had not wanted DPW to be informed, or that he had lacked a genuine concern about the wellbeing of children, would be a stretch. Innuendo and speculation in the "Freeh Report" that Joe Paterno had control over his superiors when it came to making important decisions is nothing more than just that; disingenuous speculation.

The above-noted information notwithstanding, at no time whatsoever, has any credible evidence been uncovered documenting that Mr. Paterno himself had been attempting to "avoid bad publicity." In fact, it is unclear what sorts of bad publicity Mr. Paterno would have feared, had a report been made concerning suspicions of a possible incident of child sexual abuse on campus by a former Penn State employee – albeit a very prominent *former* employee. Mr. Paterno could just as easily have been praised for his involvement in making such a report potentially available to the public. I have also seen no credible evidence that Mr. Paterno had "repeatedly concealed critical facts related to Sandusky's child abuse from the authorities, the University's Board of Trustees, the Penn State Community, and the public at large."

Mr. Paterno has never been accused of failing to properly report the 2001 allegations against Mr. Sandusky to his superiors. To the contrary, it is very clear that he had done just that. Mr. Paterno has never been charged with a failure to comply with Pennsylvania's Mandatory Reporting Statutes regarding Child Sexual Abuse.

Parenthetically, it might be noted that even though he had notified his superiors about his concerns, arguably Joe Paterno may not have even been a member of the category of persons who are mandated to report suspected child sexual abuse under Pennsylvania law. In defining the general rule regarding who is mandatorily required to report, the relevant statute states that “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...” It is not clear that Joe Paterno “in the course of employment, occupation, or practice of a profession” was a person who “comes into contact with children.” Be that as it may, he had nevertheless responsibly reported his concerns to his superiors. In a situation such as this, having been appropriately informed, it would ordinarily be the responsibility of a designated representative of an institution to report (or to cause a report to be made about) suspected child sexual abuse to DPW. It would not ordinarily be the sole responsibility of that institution’s football coach.

As a football coach, undoubtedly Mr. Paterno had sometimes been subjected to “Monday Morning Quarterbacking” (i.e., to second guessing his decisions after the fact). In retrospect, prior to his death, while looking back at what had occurred, Mr. Paterno himself had reportedly expressed the wish that he could have done more. The “Freeh Report” has gone far beyond “second guessing” Mr. Paterno’s actions by impugning his credibility and suggesting that he had not been acting in good faith. Having passed away, sadly Mr. Paterno is no longer in a position to defend himself. I will further address some of the above-noted issues below. I will also comment about Mr. Paterno’s considerable strengths of character over the course of his lifetime; a consideration that was given little, if any, meaningful weight in the “Freeh Report.”

What is Pedophilia; and Why Can It Be So Difficult to Recognize:

Pedophilia is a psychiatric condition in which an individual’s sexual orientation is directed, either in whole, or in part, towards young children. Although I have not clinically evaluated Mr. Sandusky, he was found guilty of multiple counts of child sexual abuse, and it is quite possible that he manifested that disorder. However, having not evaluated him clinically, I am not in a position to formally make such a diagnosis in this instance.

In growing up, some individuals discover that they have a pedophilic sexual makeup. Because of the tremendous societal stigma attached to experiencing pedophilic sexual desires, most persons with the condition would ordinarily be expected to keep that sort of very private information about themselves quite secretive. Unless others somehow become aware of the fact that an individual has actually enacted his pedophilic cravings, it can often be very difficult to conclude with confidence that a colleague, or perhaps even a close friend, has such a condition. Many persons with the disorder are hesitant to seek help; fearful that in doing so they may become a public pariah should that fact become known to others. In retrospect, Tim Curley’s suggestion that, in addition to other steps, Mr. Sandusky should have been encouraged to seek out treatment may have been very much on point and appropriate.

When behaviors are a reflection of one’s observable traits of character, and temperament, (for example, a tendency to be untrustworthy, or to become easily angered), such a person’s actions

do not necessarily come as a surprise to others. When behaviors are a reflection of the most intimate aspects of one's private sexual makeup, a makeup that one may be very motivated to conceal, anticipating "bad acts" (or even fully appreciating their significance) may become much more problematic.

Persons with pedophilia can manifest a genuine concern for the well-being of children, and they often enjoy spending time with them. That is not the problem. The problem is that in the context of spending time with them, unlike the rest of us, persons with pedophilia can then be tempted sexually – and if they act on such temptations, what might otherwise have been a very positive relationship can quickly turn tragic. The fact that persons with pedophilia can so often enjoy spending time with children, showing concern for them, can easily seem so positive; masking the hidden nature of their sexual desires. As a consequence, numerous public examples exist documenting just how difficult it can be for friends, colleagues, relatives, and close acquaintances to appreciate the risk that such an individual can pose to children. I have seen many such examples over the years in the course of my professional work.

What Did Joseph Paterno Know; When Did He Know It; And What Did He Do About It:

Keeping in mind how difficult it can be to recognize that an individual has pedophilia, in the present instance the question can be asked "what did Joseph Paterno know, and when did he know it?" In 1998, Mr. Paterno may have learned that Mr. Sandusky had allegedly been suspected of some type of improper behavior with a child. Mr. Paterno did not recall the incident when asked about it in 2011. He may also have learned that Mr. Sandusky had been investigated – and that no basis had been found for criminal prosecution in 1998. Although in 2012 Judge Freeh infers that at that point Mr. Paterno could have done more, it is unclear what that "more" might have been. It is also unclear, as the coach of the football team, based upon the information available to him at that time, how it would have been appropriate, following a police investigation, to have taken it upon himself to have done much further. Prior to the 1998 incident, Mr. Paterno had already told Mr. Sandusky that he would not be his successor as Head Football Coach. Mr. Sandusky retired from Penn State the next year in 1999.

In 2001, three years following the earlier allegation, Mr. Paterno had been informed by graduate assistant Mike McQueary that he had observed Mr. Sandusky engaging in acts that had appeared to possibly involve some form of improper sexual contact with a child. All agree that the description was general and not graphic. Eleven years later in 2012, Mr. McQueary and Mr. Paterno apparently had somewhat different recollections about the exact details of what they had discussed in 2001. That would not necessarily be unexpected given the fact that so much time, and so many life events, had ensued in between. Be that as it may, Mr. Paterno had quickly reported his concerns about Mr. Sandusky to his superiors in 2001. That would appear to be the extent of what Mr. Paterno had known about Mr. Sandusky's actions at that time.

It has been argued in retrospect that Mr. Paterno should have done more, and "knowing now what he did not know then," Mr. Paterno himself had expressed that very sentiment. However, in 2001 he had had absolutely no knowledge whatsoever about the extent of Mr. Sandusky's

sexual involvements with multiple children; involvements that have only recently been more fully documented in 2012 via Mr. Sandusky's criminal convictions.

In looking back, with the advantage of hindsight, it is one thing to suggest that perhaps more could have been done, and that there are lessons to be learned. Arguably, in any situation there is almost always more that can be done, and life often involves a series of adjustments and learning experiences. It is another thing entirely to suggest a lack of good faith, and malevolent self-serving motives, in the absence of compelling evidence. As a football coach, having reported his concerns to his superiors, Mr. Paterno may not have been well equipped to fully appreciate how best to handle such a vexing situation. However, to infer as did the "Freeh Report" that he may have been one of those at Penn State who had manifested a "total and consistent disregard . . . for the safety and welfare of Sandusky's child victims," is to itself show a serious disregard for Mr. Paterno's repeatedly demonstrated moral values; to his lifelong pattern of responsible conduct and leadership; and to his dedicated commitment to the best traditions of the Pennsylvania State University.

I have seen no credible evidence suggesting in 1998, 2001, or 2012 that the "most powerful leaders" at Penn State had ever collaborated or conspired with Joseph Paterno to present a concocted version of what had occurred, or conspired with him to keep it a secret. Nor have I seen any credible evidence to suggest that Joseph Paterno had feared that there would be a discovery that he himself had acted improperly. Reportedly, upon learning that he had been accused of being one of those "powerful leaders" who had manifested a "total and consistent disregard for the safety and welfare of Mr. Sandusky's child victims," Mr. Paterno had expressed both pain and surprise; hardly the reaction to be expected from a man who had had reason to believe that he had acted wrongfully.

Joseph Paterno's Character:

In contrast to the private nature of sexual desires and behaviors, evidence of one's character is often more publically accessible. In Mr. Paterno's case, his commitment to instilling good values, and the importance of achieving a solid education, into the minds of his football players have all been a matter of public record. As a football coach at Penn State, he had demonstrated for others an outstanding work ethic – devoting his professional life to his players, to his University, and to his community for over 61 of his adult years. He had insisted that all of his players perform well not only athletically, but academically also; the result being that between 80% to 90% of his players had successfully graduated. He and his wife were extremely philanthropic; giving millions of dollars to Penn State University. Many of those dollars were not to support athletics, but to support the building of a new library that now bears his name. His football team had never been involved in any recruiting scandals. His life had been one of dedication and devotion to his family and to his University. As is true of all of us, he was not a perfect person, and like all of us, at times he had likely erred. That said, he was well known to be an honest man of integrity.

In my professional opinion, there is absolutely nothing about the way in which Mr. Paterno had led his life, or about his characterological makeup, that would support the unsupported inference that "in order to avoid the consequences of bad publicity," he had been one of the "powerful

leaders” at Penn State who had “repeatedly concealed critical facts related to Sandusky’s child abuse from the authorities, the University’s Board of Trustees, the Penn State community, and the public at large.” In point of fact, as noted above, Joe Paterno had known very little about the extent of the acts for which Mr. Sandusky had subsequently been convicted. In my judgment, given his history of a life well led, and of good character, and in light of the unsubstantiated nature of the inferences against him, to conclude that for any reason he would have been unconcerned about the wellbeing of children, would require turning a blind eye to the values that he had consistently demonstrated, and to the essence of what his life had been all about.

Concluding Comments:

Preventing child sexual abuse must remain one of society’s most important priorities. Understandably, it is also an issue that generates intense emotion. When thinking about how to deal with it as an abstract concept, devoid of the emotions associated with having to actually face such a situation in real life, it is easy to be confident about one’s ability to handle the matter well. Thankfully, in the life of any given adult, discovering that a colleague, or even a close friend, may have actually acted in such a fashion is a very rare event. Because of that, under real life circumstances, one may easily feel confused and uncertain about what has happened, and about how best to deal with it. Arguably, Coach Paterno may not have handled the situation as well as he himself, having subsequently learned much more, had wished that he had. However, I do not necessarily agree with such an assertion, and in my judgment Coach Paterno is still one of the “good guys.”

The man responsible for Mr. Sandusky’s actions is Mr. Sandusky himself. Although it is reasonable to ask what lessons can be learned about how individuals and institutions can better deal with such situations in the future, in my judgment polarizing the matter to the point where students, and others, wanting to defend Joe Paterno are accused of caring more about football than about child sexual abuse is improper, and doing so serves no useful purpose.

Although the “Freeh Report” may have been a good faith effort to investigate this tragedy, that does not mean that they reached the correct conclusions as to Joe Paterno’s motivations and conduct, particularly in the apparent absence of an appreciation of how persons with pedophilia can be so difficult to recognize. Eventually, as inevitably it does, history will make the final judgment about these matters. I do not doubt that history will support the legitimacy of doing everything possible to protect innocent children. I am less certain that history will conclude that all of the adults involved in this matter were treated fairly.

In my professional opinion, unsupported inferences about Joe Paterno’s motives, and about his alleged actions (or inactions) in this situation, should not trump all of the good that he has done over the course of his lifetime. Such unsupported inferences should not be allowed to redefine, or to otherwise alter, perceptions about his character, nor should they be allowed to unfairly impugn his integrity. Having read the “Freeh Report,” and with the benefit of my extensive experience and knowledge about how difficult it can be for a community to recognize persons with pedophilia, I have not seen evidence supporting a conclusion that Joe Paterno had acted in

bad faith, nor have I seen evidence supporting a conclusion that he has ever been a man who had lacked a genuine concern about the wellbeing of others – including the wellbeing of children.

In the past, there have been instances in which attempts have been made to “rewrite history,” without fair “due process,” by “erasing” records of honors previously received, and of lives well led. During the Joseph McCarthy anti-communism era, many good lives had been unfairly deprecated, and many good reputations had been unjustly tarnished. Historically, whenever that has been done, ostensibly it has been for the sake of some purported greater good. In my judgment, rewriting the history of Joseph Paterno, in the context of unsubstantiated inferences about his purported motives, and in the context of concerns about pedophilia and child sexual abuse (as legitimate as those concerns surely are), is neither fair, nor is it justifiable. Based upon the information currently available to me, and for the reasons detailed above, it is my view that in this instance, Joseph Paterno, his family, and the Penn State community had been deserving of a much better outcome. It will now become the choice of others to determine the extent to which that potentially still fluid outcome should be further addressed.

I trust that this information will prove useful. Should you require any additional information from me at this time, please do not hesitate to let me know. Thank you very much.

Sincerely,

A handwritten signature in cursive script that reads "Fred Berlin". The letters are fluid and connected, with a prominent 'F' and 'B'.

Fred S. Berlin, M.D., Ph.D.
Associate Professor of Psychiatry and Behavioral Sciences,
The Johns Hopkins University School of Medicine
Founder, The Johns Hopkins Sexual Disorders Clinic
Director, National Institute for the Study, Prevention and
Treatment of Sexual Trauma

Enclosure: Dr. Berlin's Professional Vitae

Copy: File

FREDERICK S. BERLIN, M.D., Ph.D. - CURRICULUM VITAE

DEMOGRAPHIC INFORMATION:

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EDUCATION:

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<i>M.A.</i>	<i>1966</i>	<i>Fordham University</i>	<i>Psychology</i>
<i>Ph.D.</i>	<i>1972</i>	<i>Dalhousie University, Canada</i>	<i>Psychology</i>
<i>M.D.</i>	<i>1974</i>	<i>Dalhousie University, Canada</i>	

TRAINING:

Research Assistant, 1961 - 1964, University of Pittsburgh, Department of Psychology.

Research Assistant, 1965 - 1966, Fordham University, Department of Psychology.

Research Assistant, 1966 – 1967, Dalhousie University, Department of Psychology.

Teaching Assistant, 1967 – 1971, Dalhousie University, Department of Psychology.

Clinical Clerkship, 1973 – 1974, Victoria General Hospital, Halifax.

Medical Intern, 1974 – 1975, McGill University School of Medicine, Jewish General Hospital, Children's Hospital, Montreal, Canada.

Psychiatric Resident, 1975 – 1976, The Johns Hopkins Hospital, Baltimore, Maryland.

Exchange Resident, 1977, Maudsley Hospital, London, England.

FREDERICK S. BERLIN, M.D., Ph.D. - CURRICULUM VITAE

Chief Resident, 1977-1978, Department of Psychiatry and Behavioral Sciences, The Johns Hopkins Hospital.

PROFESSIONAL EXPERIENCES:

Assistant Professor, 1978 – 1986, Department of Psychiatry and Behavioral Sciences, The Johns Hopkins University School of Medicine.

Associate Professor, 1986 - Present, Department of Psychiatry and Behavioral Sciences, The Johns Hopkins University School of Medicine.

Attending Physician, 1978 – Present, The Johns Hopkins Hospital.

Founder and Director, 1980 – 1992, The Johns Hopkins Sexual Disorders Clinic.

Founder and Director, 1992 – Present, National Institute for the Study, Prevention and Treatment of Sexual Trauma.

RESEARCH ACTIVITIES:

PUBLICATIONS (PEER REVIEWED):

Berlin F: Pedophilia: Criminal Mindset or Mental Disorder? A Conceptual Review, American Journal of Forensic Psychiatry, Vol. 32, Issue 2, pp. 3 – 25, 2011.

Berlin F: Commentary on Pedophilia Diagnostic Criteria in DSM-5, The Journal of the American Academy of Psychiatry and the Law, Vol. 39, No.2, pp. 242 – 244, April 2011.

Berlin F: Commentary: Risk/Benefit Ratio of Androgen Deprivation Treatment for Sex Offenders, Journal of the American Academy of Psychiatry and the Law, Vol. 37, pp. 59 – 62, November 1, 2009.

Rao V, Handel S, Vaishnavi S, Keach S, Robbins B, Spiro J, Ward J, Berlin F: Psychiatric Sequelae of Traumatic Brain Injury: A Case Report, American Journal of Psychiatry, 164:5, pp. 728-735, May 2007.

Berlin FS: Commentary: The Impact of Surgical Castration on Sexual Recidivism Risk Among Civilly Committed Sexual Offenders, Journal of The American Academy of Psychiatry Law, Vol. 33, No. 1, pp. 37-41, March 2005.

Saleh F, Berlin FS: Sex Hormones, Neurotransmitters, and Psychopharmacological Treatments in Men with Paraphilic Disorders, Journal of Child Sexual Abuse, Vol. 12, No. 3/4, pp. 233-253, 2003. Also published simultaneously in Identifying and Treating Sex Offenders: Current Approaches, Research, and Techniques, (ed: Robert Geffner, et al.), The Haworth Maltreatment & Trauma Press, New York, 2003, pp. 233-253.

Saleh F, Berlin FS: Sexual Deviancy: Diagnostic, Neurobiological, and Psychopharmacological Considerations and Sex Hormones, Neurotransmitters and Psychopharmacological Treatments

FREDERICK S. BERLIN, M.D., Ph.D. - CURRICULUM VITAE

in Men with Paraphilic Disorders, Journal of Child Sexual Abuse, Vol. 12, No. 3/4, pp. 53-74, 2003. Also published simultaneously in Identifying and Treating Sex Offenders: Current Approaches, Research, and Techniques, (ed: Robert Geffner, et al.), The Haworth Maltreatment & Trauma Press, New York, 2003, pp. 53-74.

Berlin FS. Sex Offender Treatment and Legislation, Journal of the American Academy of Psychiatry and the Law, Vol. 31, No. 4, pp.510-513, 2003

Berlin F, Galbreath N, Geary B, McGlone G. The Use of Actuarials at Civil Commitment Hearings to Predict the Likelihood of Future Sexual Violence, Sexual Abuse: A Journal of Research and Treatment, Tucson, Arizona, Vol. 15, No. 4, pp. 377-382, October 2003.

Fagan PJ, Wise TN, Schmidt CW, Berlin FS. Special Communication on Pedophilia, Journal of the American Medical Association, 288, 19, pp. 2458-2465, November 20, 2002.

Berlin FS. Pedophilia: When is a Difference a Disorder? Peer Commentaries on Green (200) and Schmidt (2002), Archives of Sexual Behavior. 31 (6): pp. 1-2, 2002

Berlin F, The Vanderbilt Symposium – In My Opinion, Sexual Addiction & Compulsivity, 8, pp. 187-189, 2001

Berlin FS, Malin HM, Lehne GK, Hunt, WP, Thomas, K, Fuhrmanek, J. The Eroticized Violent Crime: A Psychiatric Perspective with Six Clinical Examples. Journal of Sexual Addiction and Compulsivity, 4, 1, 10-32, 1997.

Berlin FS. Jeffrey Dahmer: Was He Ill? Was He Impaired? Insanity Revisited. American Journal of Forensic Psychiatry, 15, 1, pp. 5-29, 1994.

Federoff JP, Hanson A, McGuire M, Malin HM, Berlin FS. Simulated Paraphilias: A Preliminary Study of Patients Who Imitate or Exaggerate Paraphilic Symptoms and Behaviors. Journal of Forensic Sciences, 37, 3, pp. 902-911, 1992.

Federoff JP, Wisner-Carlson R, Dean S, Berlin FS. Medroxyprogesterone Acetate in the Treatment of Paraphilic Sexual Disorders. Journal of Offender Rehabilitation, 18, pp. 109-123, 1992.

Berlin FS, Hunt WP, Malin HM, Dyer A, Lehne GK, Dean S. A Five-year Plus Follow-up Survey of Criminal Recidivism Within a Treated Cohort of 406 Pedophiles, 111 Exhibitionists and 109 Sexual Aggressives: Issues and Outcome. American Journal of Forensic Psychiatry, 12, 3, pp. 5-28, 1991.

Berlin FS, Malin HM. Media Distortion of the Public's Perception of Recidivism and Psychiatric Rehabilitation. American Journal of Psychiatry, 148, 15, pp. 1572-1576, 1991.

DiGiovanni C, Berlin FS, Casterella P, Redfield R, Hiken M, Falck A, Malin HM, Gagliano S, Schaerf F. Prevalence of HIV Antibody Among a Group of Paraphilic Sex Offenders. Journal of Acquired Immune Deficiency Syndromes, 4, pp. 633-637, 1991.

Berlin FS, Malin HM, Dean S. Effects of Statutes Requiring Psychiatrists to Report Suspected Sexual Abuse of Children. American Journal of Psychiatry, 148, 4, pp. 449-453, 1991.

FREDERICK S. BERLIN, M.D., Ph.D. - CURRICULUM VITAE

Berlin FS. *The Paraphilias and Depo-Provera: Some Medical, Ethical and Legal Considerations.* *The Bulletin of the American Academy of Psychiatry and the Law*, 17, 3, pp. 233-239, 1989.

Berlin FS. *Issues in the Exploration of Biological Factors Contributing to the Etiology of the Sex Offender plus Some Ethical Considerations.* *Annals of the New York Academy of Sciences*, 528, 528, pp. 183-192, 1988.

Chen JJS, Berlin FS, Margolis S. *Effect of Large Dose Progesterone on Plasma Levels of Lipids, Lipoproteins and Apolipoproteins in Males.* *Journal of Endocrinological Investigation*, 9, 4, pp. 281-285, 1986.

Berlin FS. *Men Who Rape: Interviews with Five Rapists.* *American Journal of Forensic Psychiatry*, 7, 4, pp. 11-41, 1986.

Berlin FS, Krout E. *Pedophilia: Diagnostic Concepts, Treatment and Ethical Considerations.* *American Journal of Forensic Psychiatry*, 7, 1, pp. 13-30, 1986.

Chen JJS, Berlin FS, Margolis S. *Short Term Effects of High Dose Progesterone on Plasma Lipids, Lipoproteins and Apoproteins in Men.* *Clinical Research*, 32, 3, p 704, 1984.

Gaffney GR, Berlin FS. *Is There a Hypothalamic-Pituitary-Gonadal Dysfunction in Pedophilia?* *British Journal of Psychiatry*, 145, pp. 657-660, 1984.

Gaffney GR, Lurie SF, Berlin FS. *Is There Familial Transmission of Pedophilia?* *Journal of Nervous and Mental Disease*, 172, 9, pp. 546-548, 1984.

Berlin FS, Bergy GK, Money J. *Periodic Psychosis of Puberty: A Case Report.* *American Journal of Psychiatry*, 139, 1, pp. 119-120, 1982.

Berlin FS, Coyle GS. *Sexual Deviation Syndromes. Psychiatric Clinics at The Johns Hopkins Hospital. (Tune LE, Ed.)* *The Johns Hopkins Medical Journal*, 149, pp. 119-125, 1981.

Berlin FS, Meinecke CF. *Treatment of Sex Offenders with Antiandrogenic Medication: Conceptualization, Review of Treatment Modalities and Preliminary Findings.* *American Journal of Psychiatry*, 138, pp. 601-607, 1981.

Greist JH, Marks IM, Berlin FS, Gournay K, Noshirvani H. *Avoidance Versus Confrontation of Fear.* *Behavior Therapy*, 11, pp. 1-14, 1980.

Berlin FS, Bartlett R, Black J. *Acupuncture and Placebo: Effects on Delaying the Terminating Response to a Painful Stimulus.* *Anesthesiology*, 42, 5, pp. 527-531, 1975.

PUBLICATIONS (NON-PEER REVIEWED) AND POSTER PRESENTATIONS:

Kim C, Saleh F, Dwyer G, & Berlin F, A Female Patient with Multiple Paraphilias: A Case Study, Poster Presentation, American Academy of Psychiatry and the Law 37th Annual Meeting, Chicago, Illinois, October 27, 2006

Berlin F, Compulsive Sexual Behaviors. Proceedings of the 17th Biannual Catholic Bishops Workshop, Addiction and Compulsive Behaviors, The National Catholic Bioethics Center, Boston, Massachusetts, pp. 71-83, 2000.

Murphy DL, Sims K, Eisenhofer G, Greenberg BD, George T, Berlin F, Zametkin A, Ernst M, Breakefield XO. Are MAO-A Deficiency States in the General Population and in Putative High-Risk Populations Highly Uncommon? Presented at The 6th Rappaport Symposium and 7th Amine Oxidase Workshop, Haifa, Israel, June 1996.

Berlin FS. Psychosexual Disorders: Implications for the Impaired Physician. Straight Forward, 5, pp. 5-6, 1994.

Berlin FS: "Use of Chemically Castrating Medications." River Cities' Reader. 8, 1994.

Federoff JP, Berlin FS, Wisner-Carlson R, Dean S. An Open Five Year Follow-up of Paraphilic Men Treated With Psychotherapy and Medroxyprogesterone Acetate. Poster presentation, International Academy of Sex Research, Barrie, Ontario, August 1991.

DiGiovanni C, Berlin FS. Control of Hypersexuality in HIV Carriers. Proceedings of the Third International Conference on AIDS, Washington, D.C., p. 43, June 5, 1987

Frost JJ, Mayberg HS, Berlin FS, et al. Alteration in Brain Opiate Receptor Binding in Man Following Arousal Using C-11 Carfentiniol and Positron Emission Tomography, Proceedings of the 33rd Annual Meeting of the Society of Nuclear Medicine. Journal of Nuclear Medicine, 27, 6, p.1027, 1986.

Berlin FS. Pedophilia. Medical Aspects of Human Sexuality, 19, 2, pp. 8, 79, 82, 85, 88, 1985.

Berlin FS. Treatment of Pedophilia. The Medical-Moral Newsletter, 21, 6, pp. 21-24, 1984.

Berlin FS. The Use of Waking and Hypnotic Suggestions to Change Behavior. Copyrighted Ph.D. Thesis, available through The National Library Scheme on Canadian Thesis, 1972.

EDITORIALS:

Berlin FS, Fagan PJ, Wise TN, Schmidt CW, Medical Research in Pedophilia, Journal of the American Medical Association, 289, 10, p. 1243, March 12, 2003 (letter).

Berlin FS, Treatments to Change Sexual Orientation, The American Journal of Psychiatry, 157, 5, p. 838, May 2000 (letter).

Berlin FS, Thomas K, Congress shouldn't judge value of scientific studies, The Baltimore Sun p. 9A, Letter to the Editor, 7/27/99.

FREDERICK S. BERLIN, M.D., Ph.D. - CURRICULUM VITAE

Berlin, FS. Unpaid Expert Witness. New England Journal of Medicine, 338, 17, p 1233, 1998 (correspondence).

Berlin FS. "Chemical Castration" for Sex Offenders. The New England Journal of Medicine, 336, 14, p 1030, 1997 (correspondence).

Berlin FS. Laws on Mandatory Reporting of Suspected Child Sexual Abuse. American Journal of Psychiatry, 145, p.8, 1988 (letter).

Berlin FS, Money J, Lehne GK. Antiandrogens Plus Counseling in the Treatment of Paraphilias. Journal of Sex Research, 19, 2, pp. 201-202, 1983 (letter).

Berlin FS. "Smoking Decreased After Hypnosis. Factors Relevant to Outcome" Archives of General Psychiatry, 37, pp. 1200-1201, 1980 (letter to the editor).

BOOK CHAPTERS:

Houts F, Taller I, Tucker D, Berlin F: Androgen Deprivation Treatment of Sexual Behavior, in (Balon R. Editor) Sexual Dysfunction: Beyond the Brain-Body Connection. Adv Psychosom Med. Basel, Karger, 2011, vol. 31. pp 149-163.

Berlin FS, Saleh FM, Malin HM: Mental Illness and Sex Offending, In (Saleh FM, Grudzinkas AJ, Bradford JM, Brodsky D, Editors) Sex Offenders: Identification, Risk Assessment, Treatment and Legal Issues, Oxford University Press, New York, New York, In press.

Saleh FM, Berlin FS, Malin HM, Thomas KJ: Paraphilias and Paraphilia-Like Disorders, In (Gabbard GO, Editor) Treatments of Psychiatric Disorders, 4th Edition, American Psychiatric Publishing, Inc., Washington, DC, 671-682, 2007.

Saleh F, Berlin FS: Sexual Deviancy: Diagnostic and Neurobiological Considerations and Sex Hormones, Neurotransmitters and Psychopharmacological Treatments in Men with Paraphilic Disorders, In (Geffner R, Franey K, Geffner T, Falconer R, Eds.) Identifying and Treatment Sex Offenders, Haworth Maltreatment and Trauma Press. To be published in 2005.

Fagan P, Lehne G., Strand J., Berlin FS: Paraphilias in (Gabbard GO, Beck JS, Holmes J, Eds.) Oxford Textbook of Psychotherapy, Oxford University Press, Inc., New York, Chapter 17, pp. 213-225, 2005.

Berlin FS: Child Psychiatrist in (Spitzer RL, First MB, Gibbons M, Williams JBW, Eds.) Treatment Companion to the DSM-IV-TR Casebook, American Psychiatric Publishing, Inc., Arlington, Virginia, 2004, pp. 180-188.

Galbreath, NW, Berlin FS, Sawyer D, Paraphilias and the Internet. In (Cooper A., Ed) Sex and the Internet: A Guidebook for Clinicians, Brunner-Routledge, Philadelphia, Pennsylvania, pp. 187-205, 2002.

FREDERICK S. BERLIN, M.D., Ph.D. - CURRICULUM VITAE

Berlin FS. *Compulsive Sexual Behaviors*. In (Fulton EJ, McLoud-Dort V, Eds) *Addiction and Compulsive Behaviors*, The National Catholic Bioethics Center, Boston, Massachusetts, pp. 79-91, 2000.

Berlin FS: *The Etiology and Treatment of Sexual Offending*. In (Fishbein DH., Ed.) *The Science, Treatment and Prevention of Antisocial Behaviors: Applications to the Criminal Justice System*, Civic Research Institute, Inc., Kingston, New Jersey, pp. 211-215, 2000.

Berlin FS. *How Many People Need to be Eaten in Milwaukee?* In (Whitman C., Zimmerman J., Miller T., Eds.), *Frontiers of Justice, Volume 2: Coddling or Common Sense?*, Biddle Publishing Co., Brunswick, Maine, pp. 302-307, 1998.

Berlin FS: *Hal, Driven by an Invisible Force: A Case of Pedophilia*. In (Haglin R., Krauss Whitbourne S., Eds.), *A Casebook in Abnormal Psychology, From the Files of Experts*, Oxford University Press, pp. 114-126, 1998.

Berlin FS, Malin HM, Thomas K: *Treatment of the Nonpedophilic and Nontransvestic Paraphilias*. In (Gabbard GEO, Ed.), *Treatment of Psychiatric Disorders: The DSM-IV Edition*. American Psychiatric Press, pp. 1941-1958, 1996.

Berlin, FS: *New Theories of Physical Causes of Homosexuality and Moral Behavior*. In (Smith RE, Ed.), *Proceedings of the 1993 Bishops' Workshop entitled "Communicating the Catholic Vision of Life"*. The Pope John XXIII Medical-Moral Research and Education Center, pp. 58-70, 1993.

Berlin FS: "Perfect Relationship". In (Spitzer RL, Gibbon M, Skodol AE, Williams JBW, First MB, Eds.), *DSM-III-R Case Book: A Learning Companion to the Diagnostic and Statistical Manual of Mental Disorders (3rd Edition, Revised)*. American Psychiatric Press, Washington, D.C., pp. 116-117, 1989.

Berlin FS: "Child Psychiatrist." In (Spitzer RL, Gibbon M, Skodol AE, Williams JBW, First MB, Eds.), *DSM-III-R Case Book: A Learning Companion to the Diagnostic and Statistical Manual of Mental Disorders (3rd Edition, Revised)*. American Psychiatric Press, Washington, D.C., pp 135-137, 1989.

Berlin FS: *Special Considerations in the Psychiatric Evaluation of Sexual Offenders*. In (Rosner R, Schwartz HI, Eds.), *Critical Issues in American Psychiatry and the Law. volume 4 (Juvenile Psychiatry and the Law: Victims and Victimiziers)*, Plenum Press, New York, pp. 119-132, 1989.

Berlin FS, Shaerf FW: *Laboratory Assessment of the Paraphilias and Their Treatment with Antiandrogenic Medication*. In (Hall RCW, Beresford TP, Eds.), *A Handbook of Psychiatric Diagnostic Procedures*. New York, Spectrum Publications, pp. 273-305, 1985.

Berlin FS: (1) *Behavior Modification*, (2) *Biological Therapies*. Two sections in (Meyer J, Schmidt CW, Wise TN, Eds.), *Clinical Management of Sexual Disorders*. Williams and Wilkins, Baltimore, Maryland, 1983.

FREDERICK S. BERLIN, M.D., Ph.D. - CURRICULUM VITAE

Berlin FS: *Sex Offenders: A Biomedical Perspective and a Status Report on Biomedical Treatment*. In (Greer JB, Stuart IR, Eds.), *The Sexual Aggressor: Current Perspectives on Treatment*. Van Nostrand Reinhold Co., New York, pp. 83-123, 1983.

INVITED REVIEWS AND EDITORIALS:

Lehne G, Thomas K, Berlin FS. *Treatment of sexual paraphilias: a review of the 1999-2000 literature*, *Current Opinion in Psychiatry*, 13, 569-573, 2000 (invited review requested of Dr. Berlin).

Berlin FS, *Pornography and politics: A case for sane civility*. *The Baltimore Sun*, p. 13F, 2/7/99 (invited editorial).

Berlin FS, *If the Starr Report Were a Psychiatric Case Study, What Kind of Footprint Would It Leave?* *The Baltimore Sun*, Arts & Society, p. 11G, 9/27/98 (invited editorial).

Berlin FS, *Criminal or Patient?* *Culturefront*, 5, 2, pp. 71-75, Summer 1998 (invited article).

Berlin FS. *The Case for Castration, Part 2*. *The Washington Monthly*, 5, pp. 28-29, May 1994 (invited editorial).

Berlin FS, Malin HM, Dean S. *Involuntary Intervention: Does the Benefit Exceed the Cost?* *American Journal of Psychiatry*, 149, 3, 1992 (invited editorial response - letter).

Berlin FS, Malin HM. *Laws on Reporting Sexual Abuse of Children, Dr. Berlin and associates reply*. *American Journal of Psychiatry*. 148, 11, p. 1619, 1991. (invited editorial response - letter).

Berlin FS. *Response to KJ Masters Commentary "Dahmer Case Trivialized by Forensic Psychiatrists"*. *Clinical Psychiatry News*, p. 4, February 1993 (invited editorial).

Berlin FS, Malin HM. *Rape: A Presumption of Guilt? A Presumption of Severe Punishment if Guilty*. *A Journal for the Expert Witness, The Trial Attorney and the Trial Judge*, 5, pp. 7-9, 1990 (invited article).

Berlin FS. *Commentary on "Sexual Addiction and Compulsive Sexual Behaviors" by Eric Griffin-Shelley*. *Medical-Moral Newsletter*, 26, pp. 8-9, 1989 (invited article).

Berlin FS. *Ethical Use of Psychiatric Diagnoses*. *Psychiatric Annals*, 13, pp. 321-331, 1983 (invited article).

Berlin FS. *Ethical Use of Antiandrogenic Medications*. *American Journal of Psychiatry*, 138, 11, p 1516, 1981 (invited editorial response – letter).

Berlin FS. *In Defense of the Disease Model in Psychiatry*. *Psychiatric Annals*, 11, p. 5 - 12, 1981 (invited article).

Berlin FS. *Psychological Therapies for Anxiety*. *Psychiatric Annals*, 9, pp. 41-55, 1974 (invited article).

BOOK REVIEWS:

Sexual Deviation, Third Edition (Rosen I, Ed.), The Journal of Nervous and Mental Disease, 186, No. 4, pp 255-256, 4/98.

Text Book of Homosexuality and Mental Health (Cabaj RP and Stein TS, Eds.), Journal of Nervous and Mental Disease, 185, No. 11, 11/97. .

Handbook of Sexual Assault: Issues, Theories and Treatment of the Offender. (Marshall WL, Laws DR, Barbaree HE, Eds.), Archives of Sexual Behavior, 21, p. 4, 1992.

Treating Perpetrators of Sexual Abuse. (Ingersol SL, Patton S). The Bulletin of the American Academy of Psychiatry and the Law, 18, 4, pp. 429-430, 1990.

OTHER PUBLISHED MATERIALS:

Berlin FS, "Pharmacological Interventions with Sex Offenders." To Be Included in the Interpol Handbook. 2010

Berlin FS. An Interview by the Editor. The Maryland Psychiatrist, 17, pp. 5-7, 1990.

Berlin FS, National Conference of Catholic Bishops Interview, National Conference of Catholic Bishops' Ad Hoc Committee on Sexual Abuse, Published online at usccb.org, Baltimore, Maryland, 09/08/97

Berlin FS Diagnosis and Treatment of Paraphilias. Audio Digest Psychiatry, 17, p. 17, September 5, 1988.

Berlin FS. Treating Sexual Disorders with Medroxyprogesterone Acetate: An Interview with Fred S. Berlin. Currents in Affective Illness, 6, 7, pp. 5-15, 1987.

Berlin FS. Psychiatry Meets the Sex Offender. Audio-Digest Psychiatry, 16, p. 13, July 13, 1987.

Berlin FS, Meinecke CF. Treatment of Sex Offenders with Antiandrogenic Medications. Audio Digest Psychiatry, December 1981. (Audio Cassette).

EXTRAMURAL SPONSORSHIP:

GRANTS AND CONTRACTS:

The Harry Frank Guggenheim Foundation: The Assessment of Compulsive Rapists and Pedophiles for Hormonal, Chromosomal and Neurobiological Pathologies. Grant awarded on July 15, 1985.

FREDERICK S. BERLIN, M.D., Ph.D. - CURRICULUM VITAE

Berlin FS, Conner E, Rider M: *Annotated Bibliographic Review of Literature on Etiology and Treatment of Sex Offenses and Sex Offenders*. Contracted and published by The National Institute of Mental Health, 1982.

EDUCATIONAL ACTIVITIES:

TEACHING:

Classroom Instruction – Yearly lecture, 2nd year medical students, The Johns Hopkins University School of Medicine.

Clinical Instruction – Bedside and didactic teaching, psychiatric residents and students, Meyer-5 ward (currently attending physician 3 months of the academic year), The Johns Hopkins Hospital.

(See also below – “Primary Service Responsibilities”)

CME INSTRUCTION:

Invited Participant, When Sex Offenders are Adolescents, Ministry of the Sick, The Johns Hopkins University School of Medicine Continuing Medical Education Course, Baltimore, Maryland, 4/29/96.

Invited Participant, Positron Emission Tomography and the Chemistry of Mental Illness: Changes in Brain Chemistry During Sexual Arousal, Nuclear Medicine Seminar, The Johns Hopkins University School of Medicine Continuing Medical Education Course, Baltimore, Maryland, 3/13/97.

Course Director, Pedophilia and Rape, 143rd Annual Meeting, American Psychiatric Association, New York, New York, 5/12/90 - 5/17/90.

Course Director, Diagnosis and Treatment of Pedophiles and Rapists, 142nd Annual Meeting, American Psychiatric Association, San Francisco, California, 5/6/89 - 5/11/89.

Course Director, Assessment and Treatment of Adult and Adolescent Sex Offenders, 141st Annual Meeting, American Psychiatric Association, Montreal, Canada, 5/9/88.

Course Director, Diagnosing and Treating Rapists and Pedophiles, 140th Annual Meeting, American Psychiatric Association, Chicago, Illinois, 5/13/87.

Invited Participant, Positron Emission Tomography: Changes in Opiate Receptor Activity on PET Scanning During Sexual Arousal, The Johns Hopkins University School of Medicine Continuing Education Course, Baltimore, Maryland, 4/19/86.

(See also below – “Conferences Organized”)

MENTORING:

Member, Board of Student Advisors, The Johns Hopkins University School of Medicine, 1980-1983.

Member, Ph.D. Thesis Committee, for Dr. Kate Thomas and Dr. Kathy Pilero.

Clinical Supervisor for a Variety of Psychiatric Residents.

Supervisor of Elective Training to a Variety of Pre- and Post-doctoral Students.

EDITORIAL BOARD APPOINTMENTS:

Member, Editorial Board, Family Violence and Sexual Assault Institute, 2003 – present

Member, Editorial Board, Journal of Sexual Addiction and Compulsivity, 2001 - present

Associate Editor, International Journal of Offender Therapy and Comparative Criminology, January 1997 – December 2002

PEER REVIEW PERFORMED FOR THE FOLLOWING JOURNALS:

The American Journal of Bioethics - Neuroscience

The American Journal of Psychiatry

Behavioral Sciences and the Law

Journal of the American Medical Association (JAMA)

Journal of Child Sexual Abuse

The Journal of Nervous & Mental Disease

The Journal of Pediatrics

The Journal of the American Academy of Psychiatry and the Law

The American Journal of Clinical Hypnosis

The Archives of General Psychiatry

Archives of Sexual Behavior

Child Abuse and Neglect: The International Journal

The Journal of Consulting and Clinical Psychology

The Journal of Neuropsychiatry and Clinical Neurosciences

Psychosomatics

Social Psychiatry and Psychiatric Epidemiology

The Harvard Review of Psychiatry

CLINICAL ACTIVITIES:

LICENSURES:

Licensed Physician, State of Maryland, 1975 – Present, ID #D18703.

CERTIFICATIONS AND FELLOWSHIPS:

Diplomat, National Board of Medical Examiners, ID #141770, 1975.

Board Certified in Psychiatry, American Board of Psychiatry and Neurology, ID #21208, 1980.

Distinguished Life Fellow, American Psychiatric Association, 2010.

Diplomat, The American Board of Forensic Examiners, ID #660, 1994.

Diplomat, The American Board of Sexology, ID #1760, 1995.

(have also provided questions for board certification examinations)

Board Certified in Forensic Psychiatry, American Board of Psychiatry and Neurology, ID #504, 1998 to 2008.

PRIMARY SERVICE RESPONSIBILITIES:

Attending Physician, Psychiatry, Meyer-5 Inpatient Service, Currently 2 months per year (previously as much as 12 months per year) – includes periodic weekends on-call

Periodic on-call physician for the Hopkins Access Line (HAL).

Director, Sexual Behaviors Consultation Unit, involves teaching and supervision of Johns Hopkins staff, psychiatric residents and medical students during their outpatient training.

ORGANIZATIONAL ACTIVITIES:

THE JOHNS HOPKINS MEDICAL INSTITUTIONS:

Member, Medical School Counsel, The Johns Hopkins University, 1982 – 1984.

Member, Gender Identity Committee, The Johns Hopkins Hospital, 1980 – 1981.

Member, Utilization Review Committee, The Johns Hopkins Hospital, 1977 – 1978.

Member, Advisory Committee, House Staff Council, The Johns Hopkins Hospital, 1977 – 1978.

Member, House Staff Council, The Johns Hopkins Hospital, 1976 – 1978.

PROFESSIONAL SOCIETIES:

ELECTED POSITIONS:

President, Chesapeake Bay Chapter, American Academy of Psychiatry and the Law, 4/95 - 4/98.

Treasurer, Chesapeake Bay Chapter, American Academy of Psychiatry and the Law, 1993-1995.

Elected Member of Council, Maryland Psychiatric Society, 1993-1996.

APPOINTED POSITIONS:

Appointed Member, Technical Advisory Committee, The Spurwink Institute, 1996.

Appointed Member, Board of Directors, Maryland Foundation for Psychiatry, 1995.

Appointed Member, Task Force on Examinations, Section on Sexological Research, The American Board of Sexology, 8/31/92.

Appointed Member, Legislative Committee, Maryland Psychiatric Society, 1989 - Present.

Appointed Member, Legislative Network, Mental Health Association of Metropolitan Baltimore, 1985.

Appointed Member (by the Governor of Maryland), The Board of Patuxent Institution, 1984 – 1989.

MEMBERSHIPS:

American Academy of Psychiatry and the Law
American Association for the Advancement of Science
American Board of Forensic Examiners
American College of Forensic Psychiatry
American Medical Association
American Professional Society on the Abuse of Children
American Psychiatric Association
Association for the Treatment of Sexual Abusers
Eastern Psychological Association
Greater Baltimore Task Force on Sexual Offenders
Maryland Psychiatric Society
Mental Health Association of Maryland
National Adolescent Perpetrator Network
Society for Scientific Study of Sex
Society of Biological Psychiatry
Southern Medical Association

FREDERICK S. BERLIN, M.D., Ph.D. - CURRICULUM VITAE

CONFERENCES ORGANIZED:

Course Director, *The First Annual Symposium Child Sexual Abuse: A Public Health Perspective*, The Johns Hopkins Bloomberg School of Public Health, Baltimore, Maryland, 04/27/12.

Course Director, *The Cycle of Sexual Trauma: Treating the Victim and Treating the Offender*, The Johns Hopkins University School of Medicine Continuing Medical Education Course, Baltimore, Maryland, 2/10/94 - 2/12/94.

Course Director, *Sex Offenders: Focus on Treatment*, The Johns Hopkins University School of Medicine Continuing Medical Education Course, Baltimore, Maryland, 1/19/88.

Course Director, *Sex Offenders: Criminals or Patients?* The Johns Hopkins University School of Medicine Continuing Medical Education Course, Baltimore, Maryland, 1/19/87 - 2/21/87.

Course Director, *The Sex Offender: Medical and Legal Issues*, The Johns Hopkins University School of Medicine Continuing Medical Education Course, Baltimore, Maryland, 2/20/86 - 2/22/86.

Course Director, *Diagnosis and Treatment of Sex Offenders*, The Johns Hopkins University School of Medicine Continuing Medical Education Course, Baltimore, Maryland 2/21/85 - 2/22/85.

Course Director, *Medical Assessment and Treatment of Sex Offenders*, The Johns Hopkins University School of Medicine Continuing Medical Education Course, Baltimore, Maryland, 2/20/84.

Course Director, *Medical Assessment and Treatment of Sex Offenders*, The Johns Hopkins University School of Medicine Continuing Medical Education Course, Baltimore, Maryland, 2/16/83.

PEER REVIEW GROUPS:

Member, National Institute of Mental Health Special Emphasis Panel, ZMH1 ERB – 1(01), Adult and Adolescent Interventions, 10/29/04.

National Institute of Mental Health Grant Review Panel, Bethesda, Maryland, 03/04/00.

Ad Hoc Member, National Institute of Mental Health Review Group, Violence and Traumatic Stress Research Review Committee, 1997.

External Peer Reviewer of the Psychiatry Program at Shodair Hospital, Helena, Montana, 1996.

Grant Reviews performed for the Mental Health Foundation, Ottawa, Canada, 1984-85, 1996.

FREDERICK S. BERLIN, M.D., Ph.D. - CURRICULUM VITAE

CONSULTANTSHIPS:

Consultation provided to the Ministry of Justice, Republic of Korea, August 30, 2010.

Consultation provided to Gerry Sutcliffe, MP, Under Secretary of State for Criminal Justice and Offender Management, United Kingdom, July 21, 2006.

Consultant, Prison Service Division, Correction Bureau, Ministry of Justice, Japan, September 15, 2005.

First Draft Technical Advisory Research Person, Entertainment Industries Council, 2002

Member, Cardinal's Commission for the Protection of Children, Archdiocese of Boston, 2002

Standing Ethics Committee Member, Association for the Treatment of Sexual Abusers (ATSA), Beaverton, Oregon, 7/2001 – Present.

Standing Advisory Member, Advisory Board, Association for the Treatment of Sexual Abusers (ATSA), Beaverton, Oregon, 12/00 – 12/08.

Standing Advisory Member, Ad Hoc Committee on Sexual Abuse, National Conference of Catholic Bishops, Washington, D.C., 11/13/93 – Present.

Ad Hoc Commentator, The Forensic Psychiatry Echo, New York, NY, 1996 – Present.

Consultant, Wisconsin Department of Corrections regarding the use of antiandrogens. July 2001.

Psychiatric Consultant, State of Maryland Division of Corrections, 1980 – 1994.

Psychiatric Consultant, The Maryland Training School for Boys, 1980 – 1988.

Consultation provided to several state agencies regarding establishment of treatment programs for sex offenders (e.g., Pennsylvania, Tennessee, Virginia, Oregon) 1984 – 1994.

Consultation provided to European Parliament regarding rehabilitation of sex offenders, 1984.

Numerous court appearances as an expert witness on the diagnosis and treatment of paraphilic disorders (and on the insanity defense), 1980 – Present.

RECOGNITION:

AWARDS, HONORS:

Distinguished Fellow, The American Psychiatric Association May 2003

National Institute for the Study, Prevention and Treatment of Sexual Trauma designated as a National "Resource Site" by the United States Department of Justice 1997

FREDERICK S. BERLIN, M.D., Ph.D. - CURRICULUM VITAE

Listed in "The Best 2000 Doctors"	1996 - Present
Listed in "Who's Who in Medicine and Healthcare"	1996 - Present
<u>Presidential Citation</u> , City of Baltimore	December 1996
<u>Citation of Meritorious Achievement</u> , Dictionary of International Biography, Cambridge, England	May 1995
Listed in "The Best Doctors in America"	1994 - Present
Listed in "Who's Who in America"	1990 - Present

INVITED TALKS:

GRAND ROUNDS (VISITING SPEAKER):

Invited Speaker, Sex and the Internet. Psychiatry Grand Rounds, The Johns Hopkins University School of Medicine, Baltimore, Maryland, 01/24/11

Invited Speaker, Sex Offenders: Criminals or Patients, Psychiatry Grand Rounds, George Washington University, Washington, DC, 03/11/10.

Invited Speaker, Sex Offenders: Criminals or Patients, Psychiatry Grand Rounds, Georgetown University Hospital, Washington, DC, 03/27/08.

Invited Speaker, Men Who Rape. Psychiatry Grand Rounds, The Johns Hopkins University School of Medicine, Baltimore, Maryland, 12/12/05.

Invited Speaker, Sex Offenders: Criminals or Patients?, Psychiatry Grand Rounds, University of Massachusetts, School of Medicine, Worcester, Massachusetts, 12/16/04.

Invited Presenter, The Paraphilias: Moral or Medical Problem?, Psychiatry Grand Rounds, Quillen College of Medicine, Johnson City, Tennessee, 08/27/04.

Invited Presenter, Clergy Sexual Abuse: The Crisis in the Catholic Church, Grand Rounds, St. Luke Institute, Silver Spring, Maryland, 11/21/02.

Invited Presenter, Evidence-based Treatment of Sex Offenders, Park Ridge Hospital, Rochester, New York, 10/2/03.

Invited Presenter, Psychiatry and the Law, Charles E. Steinberg Grand Rounds Lecture, University of Rochester Medical Center, Rochester, New York, 10/01/03.

Invited Presenter, Sex Offenders: Criminals or Patients? Grand Rounds, Springfield Hospital Center, Sykesville, Maryland, 04/15/12, 8/22/03.

FREDERICK S. BERLIN, M.D., Ph.D. - CURRICULUM VITAE

Invited Presenter, The Crisis in the Catholic Church, Mendelsohn Lecture Series, The New England Medical Center, Boston, Massachusetts, 09/30/02.

Invited Presenter, Diagnosis and Treatment of Paraphilias, Correctional Mental Health Grand Round Series, Baltimore, Maryland, 11/17/00.

Invited Speaker, The Paraphilias, Grand Rounds, Columbia University College of Physicians and Surgeons, The Psychiatric Institute, New York, New York, 10/27/00.

Invited Speaker, Ethical Issues in the Care and Treatment of Sexual Predators, Grand Rounds, Bronx Psychiatric Center, Albert Einstein College of Medicine, Bronx, New York, 5/7/98.

Invited Speaker, Diagnosis and Treatment of Sexual Offenders, Grand Rounds, St. Luke Institute, Silver Spring, Maryland, 4/9/98.

Fifth Annual Speaker, Diagnosing and Treating Paraphilias, Paul Mendelsohn Memorial Grand Rounds on Psychiatry and the Law, New England Medical Center, Tufts University School of Medicine, Boston, Massachusetts, 4/28/95.

Invited Speaker, Psychiatric and Other Issues in Paraphilias, Grand Rounds, Springfield Hospital Center, Sykesville, Maryland, 2/18/94, 7/24/92, 4/26/91, 3/30/90.

Invited Speaker, The Insanity Plea and the Paraphilias, Grand Rounds, Sheppard Pratt Hospital, Baltimore, Maryland, 5/1/93.

Invited Speaker, The Paraphilias, Adolescent Psychiatry Grand Rounds, University of Maryland, Baltimore, Maryland, 2/23/93.

Invited Speaker, Treating Sexual Disorders, Grand Rounds, Crownsville Hospital Center, Baltimore, Maryland, 1/22/93.

Invited Speaker, Differential Diagnosis and Treatment Strategies in Sexual Perversions, Psychiatric Grand Rounds, West Virginia University School of Medicine, Morgantown, West Virginia, 4/1/92.

Invited Speaker, Interventions for the Paraphilic Patient, Psychiatric Grand Rounds, University of Maryland, Baltimore, Maryland, 3/26/92, 3/19/85.

Invited Speaker, The Paraphilias, Psychiatric Grand Rounds, Bethesda Naval Hospital, Bethesda, Maryland, 1/27/88, 5/20/87.

Invited Speaker, Treating the Paraphilias, Psychiatric Grand Rounds, University of Texas School of Medicine, Dallas, Texas, 10/27/87, 1/17/86.

Invited Speaker, Treating Sex Offenders, Psychiatric Grand Rounds, University of Virginia School of Medicine, Charlottesville, Virginia, 9/12/85.

Invited Speaker, Management of the Paraphilias, Psychiatric Grand Rounds, St. Elizabeth's Hospital, Washington, D.C., 5/23/84.

**INVITED TALKS AND MEMBERSHIP
AT GOVERNMENT SPONSORED ACTIVITIES:**

(FEDERAL GOVERNMENT):

Invited Participant, "Sexual Assault in the Military Part Three: Context and Causes," Subcommittee on National Security and Foreign Affairs, Committee on Oversight and Government Reform, Congress of the United States, House of Representatives, Washington, DC, 06/25/09.

Invited Participant, Judicial Hearing Regarding Sex Offender Legislation, Subcommittee on Crime, Terrorism, and Homeland Security, United States Congress, Washington, DC, 6/9/05.

Invited Speaker, Sexual Addiction and the Fantasy Defense, International Online Child Sexual Victimization Symposium, United States Department of Justice, Federal Bureau of Investigation, Leesburg, Virginia, 06/06/04 – 06/11/04.

Invited Participant, Online Sexual Victimization of Children Working Group, Federal Bureau of Investigation, Quantico, Virginia, 02/04/04 – 02/05/04.

Invited Speaker, Understanding Sex Offenders, Annual In-service Training, Crimes Against Children Unit, Headquarters Federal Bureau of Investigation, Washington, DC, 03/20/2002.

Invited Participant, Second National Summit, Center for Sex Offender Management (CSOM), Office of Justice Programs, U. S. Department of Justice, Washington, D.C., 12/17/00 – 12/19/00.

Member, Office of Justice Programs Planning Group Regarding Safe Management of Sex Offenders in the Community, Center for Effective Public Policy, Center for Sex Offender Management (CSOM), U. S. Department of Justice, Washington, D.C., 9/9/96 - Present.

Invited Participant, National Resource Group Meeting, Center for Sex Offender Management (CSOM), Office of Justice Programs, U. S. Department of Justice, Washington, DC, 10/2/00 – 10/3/00.

Invited Participant, Third Meeting of the Center for Sex Offender Management's National Resource Sites, Boston, Massachusetts, 7/26/99 – 7/31/99.

Invited Participant, Mental Health and the Criminal Justice System Forum, U.S. Department of Justice, Office of Justice Programs and the Center for Mental Health Services, Washington, DC, 7/22/99 – 7/23/99.

Invited Speaker, Safe Management of Sex Offenders in the Community. Center for Effective Public Policy, Office of Justice Programs Symposium, U. S. Department of Justice, Washington, D.C., 11/24/96 - 11/26/96.

Invited Speaker, Treatment of Sex Offenders, United States Parole Commission (Northeastern Region), Baltimore, Maryland, 6/27/89.

FREDERICK S. BERLIN, M.D., Ph.D. - CURRICULUM VITAE

Invited Testimony, presented to members of The Meese Commission on Pornography, Baltimore, Maryland, 5/16/85.

Invited Participant, NIMH Sponsored Conference, Allocation of Grant Funding to Support Training on Research Related to Sex Offenses and Sexual Disorders, St. Louis, Missouri, 3/2/85 - 3/8/85.

Invited Speaker, Subcommittee on Juvenile Justice Hearings, United States Senate, Washington, D.C., 9/18/84.

Invited Participant, White House Conference on Child Sexual Abuse, Washington, D.C., 4/1/83.

INVITED PRESENTATIONS:

(STATE GOVERNMENT and STATE BAR ASSOCIATIONS):

Keynote Speaker, Sex Offenders: Criminals or Patients? Clinical Evaluation of Sex Offenders, Treatment of Sex Offenders, Legislative Issues, Civil Commitments and "Cyber-Sex," Massachusetts District Attorneys Association, Boston, Massachusetts, October 25, 2007.

Invited Speaker, Watching and Restricting Dangerous Offenders, Annual Meeting, National Conference of State Legislatures, Nashville, Tennessee, 08/16/06.

Invited Speaker, Treatment of Sexual Offenders, State House Judiciary Committee, Annapolis, Maryland, 10/18/04.

Invited Speaker, Treatment of Sexual Offenders, Specialized Treatment Committee, New Jersey Study Commission on Parole, Trenton, New Jersey, 4/22/96; 10/23/96.

Invited Speaker, Megan's Law: Community Notification. Justice Committee, New Jersey State Legislature, Trenton, New Jersey, 2/22/95.

Invited Participant, Assessing Dangerousness and Treatment Potential, Conference of the Superior Court of California, San Diego, California, 1/15/95 - 1/17/95.

Invited Speaker, Designing a Model Sex Offender Treatment Program for the State of Texas, 2nd Round House Conference, Child Abuse and Texas Families, Austin, Texas, 9/24/93.

Invited Speaker, Cause and Elements of Pedophilic Behavior, Child Abuse Seminar, The New Jersey Institute for Continuing Legal Education, The New Jersey State Bar Association, Fairfield, New Jersey, 4/25/92.

Invited Speaker, Sentencing Alternatives and the Developmentally Handicapped Sex Offender, Wisconsin State Public Defender Service, Milwaukee, Wisconsin, 11/14/91.

Invited Speaker, Treatment of Sex Offenders with Depo-Provera, Seminar for South Carolina Judges and Penal Officers, Columbia, South Carolina, 4/17/90.

FREDERICK S. BERLIN, M.D., Ph.D. - CURRICULUM VITAE

Invited Speaker, Rapist and Sex Offender Rehabilitation, Subcommittee on Crime and Corrections, New York State Senate, Albany, New York, 6/15/89.

Invited Speaker, Men Who Rape: Profiles of Rapists, Criminal Law and Sentencing Institute Conference, Supreme Court of Wisconsin, Oshkosh, Wisconsin, 5/17/89.

Invited Speaker, The Sex Offender and the Criminal Justice System, Cook County Circuit Court Judges Seminar, Chicago, Illinois, 9/24/88.

Invited Speaker, Sentencing Alternatives, Judicial Education Conference, District Court of Maryland, Baltimore, Maryland, 10/5/88.

Invited Speaker, Sex Offender Treatment, Annual Meeting, Pennsylvania State College of Judges, Hershey, Pennsylvania, 7/25/87.

Invited Speaker, Treating the Incarcerated Sex Offender, Special Conference, State of Maryland Division of Correction, Baltimore, Maryland, 11/16/87

Invited Speaker, Paraphilic Disorders and the Criminal Justice System, Annual Conference, Kansas State College of Judges, 10/14/86 - 10/16/86.

Invited Speaker, Treatment of Sex Offenders, Annual Conference, State of Utah Department of Corrections, Salt Lake City, Utah, 9/28/86 - 9/30/86.

Invited Speaker, Sex Offenders: Treatment and Sentencing Alternatives, Annual Meeting, Vermont Judicial College, Burlington, Vermont, 6/4/86 - 6/6/86.

Invited Speaker, Medical Assessment and Treatment of Sex Offenders, Annual Meeting, Maryland States Attorneys Association, Ocean City, Maryland 6/4/85.

Invited Speaker, Community Setting Programs for the Treatment of Sex Offenders, South Carolina Department of Parole and Community Corrections, Columbia, South Carolina, 5/10/85.

Invited Speaker, Issues in the Rehabilitation of Sex Offenders, Maryland State Parole Board, Baltimore, Maryland, 3/9/84.

Invited Speaker, Rape and Sexual Assault, Governor of Maryland's Task Force on Rape and Sexual Violence, Baltimore, Maryland, 10/4/83.

Invited Speaker, Rehabilitation of Sex Offenders, Somers Treatment Program, State of Connecticut Department of Corrections, Somers, Connecticut, 7/8/83.

FREDERICK S. BERLIN, M.D., Ph.D. - CURRICULUM VITAE

INVITED PRESENTATIONS:

(LOCAL GOVERNMENTS and LOCAL BAR ASSOCIATIONS)

Invited Speaker, Mandatory Reporting of Child Sexual Abuse, Forum on Child Abuse and Confidentiality: Privacy Protection and Accountability, Association of the Bar of the City of New York, Committees on Family Court and Family Law and Children and the Law, New York, New York, 10/13/92.

INVITED PRESENTATIONS TO NATIONAL CONFERENCES OF JUDGES:

Invited Speaker, Sexual Offenders and the Criminal Justice System, National Conference of Juvenile Court Judges, Burlington, Vermont, 8/20/85 - 8/21/85.

Invited Speaker (as a National Leader in Law and Health), National Symposium on the Child Victim of Sexual Abuse, National Counsel of Juvenile and Family Court Judges, Burlington, Vermont, 2/24/85 - 2/27/85.

INVITED PRESENTATIONS TO LAW ENFORCEMENT AGENCIES:

Invited Speaker, Evaluation and Treatment of Sex Offenders, Annual Child Sexual Exploitation Seminar, Baltimore County Police Academy, Baltimore County, Maryland, 10/14/98; 10/15/97; 8/30/96; 7/20/95; 7/16/93; 6/14/91; 8/23/90; 9/15/89; 7/15/88; 6/15/87, 10/6/99, 10/13/00, 10/10/01, 10/11/02, 10/15/04, 10/25/05, 10/27/06. 10/23/07.

Invited Speaker, Profiling the Rapist, Violent Crimes Task Force, Baltimore City Police Department, Baltimore, Maryland, 9/22/97

Invited Speaker, The Mind of the Sex Offender, Violent Crimes Task Force, Baltimore City Police Department, Baltimore, Maryland, 12/6/96.

Invited Speaker, Clinical Perspectives and Profiles of Sexual Offenders, Colorado Association of Sex Crimes Investigators, Lakewood, Colorado, 9/8/94 - 9/10/94.

Production of a Training Film, Psychosexual Disorders as They Relate to Law Enforcement, Maryland State Police, Baltimore, Maryland, 3/25/86.

Invited Speaker, Sex Offenders and the Law, Educational Seminar, Baltimore City Police Department, Baltimore, Maryland, 12/17/85.

PRESENTATIONS AT NATIONAL TREATMENT CONFERENCES:

Invited Lecturer, Diagnosis and Treatment of Paraphilias/Pedophilia, Society for Sex Therapy and Research (SSTAR) 2011: 36th Annual Meeting, Palm Beach, Florida, 04/02/11.

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Invited Speaker, Pre-Conference Seminar, Differential Diagnosis of Rapists, Plus a Conceptual overview of the Paraphilias, Association for the Treatment of Sexual Abusers (ATSA) 29th Annual Research and Treatment Conference, Phoenix, Arizona, 10/20/10 – 10/23/10.

Invited Panelist, Confrontation, Compassion, and Forgiveness: A Triangle for Transformation, Association for the Treatment of Sexual Abusers (ATSA) 29th Annual Research and Treatment Conference, Phoenix, Arizona, 10/20/10 – 10/23/10.

Invited Participant, A Case of Auto-eroticism, 34th Annual Meeting, Society for Sex Therapy and Research (SSTAR), Arlington, Virginia, 04/04/09.

Keynote Speaker, 2008 National Conference of The Society for the Advancement of Sexual Health (SASH), Cambridge, Massachusetts, 09/19/08.

Invited Participant, Child Pornography Roundtable: Toward a Shared Understanding of the Problem & Prevention Strategies, National Center for Missing and Exploited Children, Alexandria, Virginia, 02/07/08.

Invited Speaker, The Assessment and Etiology of Paraphilias & The Rationale for Treatment, and Treating Paraphilias, ValueOptions Postgraduate Institute for Medicine, Behavioral Health Update 2006, Phoenix Arizona, 03/04/06.

Invited Speaker, Sex and the Nursing Home Resident: Pharmacological Enhancement of Sexual Control, American Association for Geriatric Psychiatry, 17th Annual Meeting, Baltimore, Maryland, 02/21/04 – 02/24/04.

Invited Speaker, Sex Offenders: Criminals or Patients? National Defense Investigators Association, Federal Public Defenders Office, National Training Conference, Ft. Lauderdale, Florida, 4/23/03 – 4/25/03.

Keynote Speaker, Sex Offenders: Criminals or Patients? Annual Meeting of the Minnesota Association for the Treatment of Sexual Abusers, Minneapolis, Minnesota, 3/21/03.

Invited Participant, Law and Disorder: SVP, Mock Trial, American Academy of Psychiatry and the Law Annual Meeting, Newport Beach, California, 10/24/02 – 10/27/02.

Keynote Speaker, Sex Offenders: Criminals or Patients? National Council on Sexual Addiction and Compulsivity (NCSAC) Conference, Nashville, Tennessee, 10/6/02 – 10/8/02.

Invited Speaker, The Diagnosis and Treatment of Sex Offenders, SAPEN Conference, Pittsburgh, Pennsylvania, 9/6/01.

Invited Keynote Speaker, Sex Offenders: Criminals or Patients (and also The Use of Actuarials at Civil Commitment Hearings), Association for the Treatment of Sexual Abusers (ATSA), San Diego, California, 11/1/00 – 11/4/00.

Invited Speaker, Diagnosis and Treatment of Sexual Disorders, Sexual Abuse Prevention and Education Network (S.A.P.E.N.) Annual Conference, Harrisburg, Pennsylvania, 10/10/00.

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Invited Speaker, Diagnosis and Treatment of Sex Offenders, American Academy of Psychiatry and the Law (AAPL) Annual Meeting, Baltimore, Maryland, 10/15/99.

Invited Participant, Diagnosing and Treating Sexual Offenders From a Medical Perspective, Association for the Treatment of Sexual Abusers (ATSA) 18th Annual Research and Treatment Conference, Lake Buena Vista, Florida, 9/22/99 – 9/25/99.

Invited Speaker, Diagnosis and Treatment of Sex Offenders, Specialized Training Services – Assessing and Treating Sex Offenders, Chicago, Illinois, July 8, 1999.

Keynote Speaker, Sex Offenders: Criminal or Patient? The National Council on Sex Addiction and Compulsivity 1999 National Conference, St. Louis, Missouri, 4/9/99.

Invited Panelist, Toward a Whole Systems Approach to Sex Abuse, 22nd Annual Family Therapy Network Symposium, Washington, D.C., 3/20/99.

Invited Panelist, The Missing Face in Sex Abuse Prevention, The International Society for Traumatic Stress Studies and The Dartmouth-Hitchcock Medical Center XIV Annual Meeting, Washington, D.C., 11/22/98.

Invited Panelist, A Serial Murderer: From Competency to Sentencing, American Academy of Psychiatry and the Law, New Orleans, Louisiana, October 23, 1998.

Invited Speaker, Sex Offenders: Criminals or Patients? National Council on Sexual Addiction and Compulsivity, Louisville, Kentucky, 3/26/98 - 3/28/98.

Invited Panelist, Sex Offenders: Criminals or Patients? 150th Annual Meeting, American Psychiatric Association, San Diego, California, 5/20/97.

Invited Speaker, Forensic Evaluation of the Accused Sexual Offender: Can He Be Treated? 12th Annual Symposium, American College of Forensic Psychiatry, Montreal, Canada 5/8/94 - 5/15/94.

Invited Speaker, Jeffrey Dahmer: Was He Ill? Was He Impaired? 11th Annual Symposium, American College of Forensic Psychiatry, Santa Fe, New Mexico, 4/23/93.

Invited Panelist, Jeffrey Dahmer: A Case Study, Annual Meeting, American Academy of Psychiatry and the Law, San Antonio, Texas, 10/15/92 - 10/18/92.

Invited Panelist, Diagnosis and Treatment of Sex Offenders, Annual Meeting, American Academy of Psychiatry and the Law, Washington, D.C., 10/19/89 - 10/20/89.

Invited Speaker, Evaluating and Treating Sex Offenders, 3rd Annual Meeting, American College of Forensic Psychiatry, Newport Beach, California, 4/18/85 - 4/21/85.

Invited Speaker, Behavioral Medicine Seminar, Medical Evaluation and Treatment of the Paraphilias, 136th Annual Meeting, American Psychiatric Association, 5/18/83.

ADDITIONAL SIGNIFICANT LECTURES:

Invited Participant (via teleconference), "Chemical Castration" and its limits for crime recidivism prevention, International Conference on the Treatment of Sexual Offenders, International Academy of Forensic Sciences, Rome, Italy, October 1, 2009.

Invited Participant, Mentally Ill/Problematic Sexual Behavior Summit Conference, University of Massachusetts Medical School, Beechwood Hotel, Worcester, Massachusetts, November 17, 2006

Invited Speaker, Sexual Offense and Sexual Offenders: An Overview, Reading Specialists Offender Treatment Services, The Delaware County Association of Criminal Defense Lawyers, and The Criminal Legal Education Committee of the Delaware County Bar Association, Sexual Offenders & the Law: Issues and Process in Treatment, Defense & Prosecution of Sexual Offenders, Reading, Pennsylvania, October 4, 2006

Invited Speaker, Sexually Violent Predators: Medical Issues and Trends, National Association of State Mental Health Program Directors, Alexandria, Virginia, 08/07/06.

Invited Presenter, Understanding Paraphilias: The Place for Research Findings, Topics in Psychiatry, Sixth Annual Course, Johns Hopkins Continuing Medical Education, Department of Psychiatry and Behavioral Sciences, Baltimore, Maryland, November 18, 2005.

Invited Speaker, Sex Offender Treatment, Massachusetts Psychiatric Society, Third Annual Genetics Update and Fall Seminar, Newton, Massachusetts, October 29, 2005.

Invited Speaker, Sexually Dangerous Persons: Issues and Controversies, Forensic Health Services, Boston, Massachusetts, June 24, 2005.

Invited Speaker, Sex Offenders: Criminals or Patients?, Massachusetts Psychiatric Society, Worcester, Massachusetts, 12/16/04.

Panel Member, The Need for a New Sexual Disorders Diagnosis in DSM-V, Annual Conference, The Society for the Advancement of Sexual Health (NCSAC / SASH), Washington, DC, 10/07/04.

Invited Speaker, Sex: Victims and Victimizers, Tristate American Academy of Psychiatry and the Law, Annual Meeting, New York University School of Medicine, New York, New York, 01/24/04.

Invited Speaker, Rehabilitation of Sex Offenders, Maryland Mensa, Baltimore, Maryland, 10/17/03.

Invited Speaker, Evaluating and Treating Sexual Disorders, Judicial Process Commission, Rochester, New York, 02/17/03.

Invited Speaker, Sexual Disorders and The Catholic Church Crisis, Diocese of Rochester, Rochester, New York, 2/17/03.

Invited Speaker, Sex Offenders: Criminals or Patients, Criminal Justice Seminar, Rochester Institute of Technology, Rochester, New York, 2/17/03.

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Invited Speaker (full day), Diagnosing and Treating Sexual Offenders, Colorado Association for the Treatment of Sexual Abusers, Denver, Colorado, 2/23/01.

Invited Presenter, Diagnosis and Treatment of Sex Offenders, Association of Paroling Authorities International, 15th Annual Training Conference, Biloxi, Mississippi, 4/19/99.

Invited Speaker, Diagnosis and Treatment of "Sexually Violent Predators", Atascadero State Hospital, Atascadero, California, 2/26/99.

Invited Speaker, Sex Offenders: Criminals or Patients?, Tristate AAPL Annual Conference, New York, NY, 1/23/99.

Invited Speaker, Treatment of Sex Offenders, Center for Sex Offender Management Conference, Washington, D.C., 12/8/98

Invited Speaker, The Diagnosis and Treatment of Sex Offenders, Arizona State Hospital, Arizona Community Protection and Treatment Center, Phoenix, Arizona, 11/17/98.

Invited Speaker, Understanding Deviant Sexual Behavior, Effective Sex Offender Management Conference, Sponsored by the Arizona Supreme Court and the Center for Sex Offender Management, Phoenix, Arizona, 11/16/98.

Invited Speaker, Assessing and Treating Sex Offenders, Specialized Training Services and The National Association for the Development of Work With Sex Offenders (NOTA), London, England, 7/3/98.

Invited Speaker, Sexual Aggression: Treatment or Punishment, 2nd Biennial Meeting, American Psychiatric Association - French Federation of Psychiatry, Carre' des Sciences, Paris, France, 6/10/98.

Invited Speaker, Diagnosis and Treatment of Sex Offenders, First Annual Conference on Violence and Aggression, Centre de Recherche Phillippe Pinel de Montreal, Montreal, Canada, 11/1/96.

Distinguished Lecturer, The Evaluation and Treatment of Sex Offenders, Distinguished Lecturer Series, Poplar Springs Hospital, Petersburg, Virginia, 9/27/96.

Distinguished Lecturer, Differential Diagnosis and Treatment of Sexual Offenders, The Spurwink Foundation Distinguished Lecture Series, Nashua, New Hampshire, Portland, Maine, 3/15/95; 3/17/95.

Invited Panelist, Understanding Paraphilias and Sexual Offenders, 29th American Society of Hospital Pharmacists Annual Mid-year Meeting, Miami, Florida, 10/5/94.

Invited Lecturer, Understanding and Treating Sexual Trauma in Children and Adolescents, Devereux Glenholme Professional Resource Center, Windsor Locks, Connecticut, 10/31/94 - 11/2/94.

FREDERICK S. BERLIN, M.D., Ph.D. - CURRICULUM VITAE

Visiting Professor, A Forensic Perspective on the Jeffrey Dahmer Case and Overview of the Paraphilias, Visiting Professor Seminar, Pennsylvania Hospital, Philadelphia, Pennsylvania, 7/29/93.

Invited Speaker, Reassignment of Priest Pedophiles, Cardinal's Commission on Sex Abuse, Archdiocese of Chicago, Chicago, Illinois, 4/30/93.

Invited Speaker, Theories on the Physical Causality of Homosexuality, Annual Meeting, Bishops of North America, Central America and the Caribbean, Dallas, Texas, 2/5/93.

Invited Speaker, Sexual Addiction, Research Seminar, National Institute on Alcohol and Drug Abuse, Rockville, Maryland 1/12/93.

Invited Lecturer, Treatment of the Paraphilias, 4th Annual Forensic Psychiatry Symposium on Sexual Misconduct in the Military, Walter Reed Army Hospital, Washington, D.C., 11/23/92.

Distinguished Lecturer, Jeffrey Dahmer and Other Sexual Offenders: Diagnosis and Treatment, Distinguished Lecturer Series, Poplar Springs Hospital, Petersburg, Virginia, 7/15/92.

Invited Speaker, Rehabilitation and Reassignment for the Errant in the Clergy, Annual Meeting, National Conference of Catholic Bishops, University of Notre Dame, West Bend, Indiana, 6/20/92.

Invited Speaker, How to Deal With Priest Pedophiles, Cardinal Bernardin's Commission on Sexual Misconduct, Archdiocese of Chicago, Chicago, Illinois, 3/19/92.

Invited Lecturer, Diagnosis and Treatment of the Paraphilias, Tenth Annual Columbia Hospital Psychiatry Conference, Medical College of Wisconsin, Milwaukee, Wisconsin, 3/10/92.

Invited Speaker, Paraphilia, Personality and Sex Offending Behavior, Annual Meeting, Society for Sex Therapy and Research, Baltimore, Maryland, 3/17/90.

Invited Panelist, Sexual Abuse: Research and Solutions, Child Help U.S.A. Forum, Capital Hill, Washington, D.C., 11/9/89.

Invited Panelist, Human Sexual Aggression and Dominance: Biological Clues, Differential Diagnosis and Pharmacological Treatment of Sex Offenders, Annual Meeting, American Association for the Advancement of Science, San Francisco, California, 1/14/89 - 1/19/89.

Invited Speaker, Diagnosis and Treatment of the Paraphilias, Northeast Ohio Psychiatric Association, Columbus, Ohio, 1/11/89.

Invited Lecturer, Diagnosis and Treatment of Paraphilic Disorders, Continuing Medical Education Program, Eastern State Hospital, Williamsburg, Virginia, 11/14/88.

Invited Speaker, Diagnosis and Treatment of Sex Offenders, Midwest Conference on Child Sexual Abuse and Incest, Madison, Wisconsin, 9/26/88 - 9/27/88.

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Invited Lecturer, Diagnosing and Treating Sex Offenders, Education Program in Psychiatry, The Institute of Living, University of Connecticut Health Center Consortium, Hartford, Connecticut, 11/12/87 - 11/13/87.

Invited Panelist, Etiology and Treatment of Sexual Disorders, Conference on the Management of Sex Offenders, University of Illinois College of Medicine, Peoria, Illinois, 10/30/87.

Keynote Speaker, The Paraphilias, Annual Meeting, Scientific Society for the Study of Sex. Philadelphia, Pennsylvania, 4/3/87 - 4/5/87.

Invited Panelist, Evaluation and Treatment of Paraphilic Disorders, Annual Conference, National Association of Forensic Social Workers, Charleston, South Carolina, 3/26/87.

Invited Panelist, Issues in the Exploration of Biological Factors Contributing to the Etiology of the Sex Offender, Plus Some Ethical Considerations, Human Sexual Aggression Conference, New York Academy of Sciences, 1/7/87 - 1/9/87.

Invited Speaker, Coordinating Treatment for Sex Offenders With Parole and Probation, Annual Conference, National Association of Parole and Probation, Baltimore, Maryland, 8/5/86.

Invited Speaker, Paraphilic Coercive Disorder, Board of Trustees, American Psychiatric Association, Washington, D.C., 6/24/86.

Invited Speaker, The Paraphilias: Forensic Issues, The Ohio Forensic Society, 6/7/86.

Invited Speaker, Inclusion of Paraphilic Coercive Disorder as a DSM-III-R Diagnosis, Hearing on Rapism, American Psychiatric Association, Washington, D.C., 10/4/85.

Invited NIMH Panelist, Rehabilitating Sex Offenders, 37th Annual Meeting, American Society of Criminology, San Diego, California, 11/13/85 - 11/17/85.

Invited Speaker, Assessment and Treatment of Incarcerated Sex Offenders, Annual Meeting, National Association of Prison Administrators, Philadelphia, Pennsylvania, 11/14/85.

Invited Speaker, The Paraphilic Disorders, Annual Meeting, Kansas Mental Health Association, Kansas City, Kansas, 8/17/85.

Invited Speaker, Changes to be Made in DSM-III-R Related to the Paraphilic Disorders, Educational Seminar, New York Division, American Academy of Psychiatry and the Law, New York, New York, 1/19/85.

Invited Speaker, Sex Offenders: Differential Diagnoses and Treatment, Centrocare Symposium, Sex Offender Treatment in Canada, St. John, New Brunswick, 10/17/84 - 10/18/84.

Invited Speaker, Treating Sex Offenders in the Community, Annual Meeting, National Association of Parole and Probation, Boston, Massachusetts, 8/24/84 - 8/27/84.

Invited Speaker, Treating Rapists, District of Columbia Conference on Rape and Sexual Violence, Washington, D.C., 5/8/84.

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Invited Speaker, Diagnosing and Treating Incest, Third National Conference, Sexual Victimization of Children, Arlington, Virginia, 4/26/84.

Invited NIMH Panelist, Biological Factors Related to Rape, 35th Annual Meeting, American Society of Criminology, Denver, Colorado, 11/9/83 - 11/13/83.

Invited Speaker, Medical-Legal Issues in the Treatment of Sex Offenders, Georgetown University Law School Symposium, Washington, D.C., 1/20/83.

Invited Speaker, Pharmacological Treatment of Sexual Deviation, Psychiatric Symposia Series, Taylor Manor Hospital, Ellicott City, Maryland, 3/25/92, 3/21/86, 5/19/82.

Invited Speaker, Antiandrogenic Medication in the Treatment of Sex Offenders, Third National Conference, Evaluation and Treatment of Sexual Aggressives, Avila Beach, California, 3/15/81 - 3/18/81.

Invited Speaker, Victims Turned Victimizers, First World Congress of Victimology, Washington, D.C., 8/20/80 - 8/24/80.

OTHER TALKS AND PRESENTATIONS:

Invited Speaker, Addressing Pedophilia and Other Sexual Disorders. Urology Nursing Society, Inc. Baltimore, Maryland, October 4, 2012.

Invited Speaker, Evaluating and Treating Sexually-Disordered Patients, St. Luke Institute, Washington, DC, July 26, 2012.

Invited Speaker, Sex Offenders: Evaluation and Treatment, Discover Hopkins class, National Institute for the Study, Prevention and Treatment of Sexual Trauma, Baltimore, Maryland, July 11, 2012.

Keynote Speaker, Understanding Pedophilia and Other Paraphilias from a Psychiatric Perspective, B4U-ACT Symposium, Pedophilia, Minor-Attracted Persons, and the DSM: Issues and Controversies, BWI Airport, Maryland, August 17, 2011.

Invited Speaker, Sex Offenders: Evaluation and Treatment. Abnormal Psychology and Forensic Cases, The Johns Hopkins University, Baltimore, Maryland, July 11, 2011.

Invited Speaker, Sex Offenders: Evaluation and Treatment, Forensic Fellowship Lecture, University of Maryland School of Medicine, Courthouse East, Baltimore, Maryland, June 3, 2011, June 1, 2012.

Keynote Speaker, Sex Offenders: Criminals or Patients? Undergraduate Research Symposium, The Johns Hopkins University, Baltimore, Maryland, April 5, 2010.

Invited Speaker, Sex Offenders: Criminals or Patients? Forensic Fellowship Lecture, University of Maryland School of Medicine, Courthouse East, Baltimore, Maryland, March 19, 2010.

FREDERICK S. BERLIN, M.D., Ph.D. - CURRICULUM VITAE

Invited Speaker, A Critical Appraisal of Proposed DSM-V Paraphilic Diagnoses (panel), 40th Annual Meeting, American Academy of Psychiatry and the Law, Baltimore, Maryland, October 29, 2009.

Invited Speaker, Provided Full-Day Statewide Training Session on Chronic Mentally Ill Patients with Comorbid Problematic Sexual Behaviors, University of Massachusetts Medical School, Worcester, Massachusetts, 06/20/08.

Invited Panelist, Contemporary Perspectives on Sexual Paraphilias, American Association of Sexuality Educators, Counselors and Therapists (AASECT), Baltimore, Maryland, 05/18/08.

Invited Speaker, Sex Offenders: Criminals or Patient? University of Maryland Baltimore, Department of Psychiatry, Series on Forensic Psychiatry, Baltimore, Maryland, 02/14/08, 02/29/09, 02/04/10, 01/13/11, 01/19/12, 01/03/13.

Invited Speaker, Sex Offenders: Criminals or Patients? University of Maryland Baltimore, Department of Psychiatry, Series on Forensic Psychiatry, Baltimore, Maryland, 04/19/07.

Invited Speaker, Sex Offenders: Criminals or Patients? Roland Park Place Men's Club, Baltimore, Maryland, 01/08/07.

Invited Speaker, Using Actuarial Tables, New Perspectives on Youth Sexual Behavior, Sponsored by the Maryland Association of Resources for Families and Youth, Linthicum Heights, Maryland, 05/05/06.

Invited Speaker, Evaluating and Treating Paraphilic Disorders, Baltimore/DC Cluster of the Fielding Graduate University, Baltimore, Maryland, 01/07/06.

Invited Speaker, Evaluating and Treating Paraphilic Disorders, Baltimore County Department of Social Services, Towson, Maryland, 06/07/05.

Invited Speaker, Diagnosis and Treatment of Sexual Disorders, Topics in Psychiatry, The Johns Hopkins University, Department of Psychiatry and Behavioral Sciences, Baltimore, Maryland 11/05/04 – 11/06/04.

Invited Speaker, Sexuality Facts vs. Religious Responses, United Religious Initiative, Episcopal Cathedral, Baltimore, Maryland, 02/17/04.

Invited Speaker, Sexual Relations Between Adults and Children, Social and Community Psychiatry Seminar, The Johns Hopkins Hospital, Baltimore, Maryland 09/24/03.

Invited Speaker, Evaluating and Treating Paraphilic Disorders, Baltimore County Department of Social Services, Baltimore, Maryland, 04/15/03.

Invited Speaker, Sex Offenders: Criminals or Patients, Third Annual Henry L. Hartman Forensic Psychiatry Conference, Medical College of Ohio, Toledo, Ohio, 11/8/02.

Invited Speaker, The Crisis in the Catholic Church, Adult Night at St. John the Evangelist Catholic Church, Phoenix, Maryland, June 2, 2002.

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Invited Chair, Vanderbilt Symposium on "Sexual Addiction," American Foundation for Addiction Research, Vanderbilt University, Nashville, Tennessee, 3/22/01 – 3/23/01.

Invited Speaker, Treatment of Adolescent Sex Offenders, Reading Specialists, Reading, Pennsylvania, 05/05/00.

Invited Lecturer, Sexuality Issues/Disorders Training, Maryland Department of Health and Mental Hygiene – Sponsored by DDA Central Regional Office, The Community College of Baltimore County – Catonsville Campus, Catonsville, Maryland, 03/24/00.

Invited Participant, The Neurobiology of Compulsive Sexual Behavior and Sexual Addiction – A Planning Meeting, Sponsored by Vanderbilt Addiction Center and The American Foundation for Addiction Research, Vanderbilt University Medical Center, Nashville, Tennessee, 2/3/00 – 2/4/00

Invited Speaker, Diagnosis and Treatment of Sexual Disorders, Regional Training Seminar Worcester County Department of Social Services, Salisbury State College, Salisbury, Maryland, 1/28/00

Invited Lecturer, Sex Offenders and the Law, course on Law and Psychiatry, University of Baltimore School of Law, Baltimore, Maryland, 11/1/99, 10/23/00.

Guest Lecturer, Diagnosis and Treatment of Sexual Disorders, Villa Julie College, Baltimore, Maryland, 7/14/99.

Invited Speaker, Evaluations and Etiology of Sex Offenders, Charter Psychosexual Rehabilitation and Education Program, Understanding, Assessing and Treating Male Adolescent Sex Offenders, Pittsburgh, Pennsylvania, 7/9/99.

Invited Speaker, Sex Offenders: Criminals or Patients, Chesapeake Bay Chapter of AAPL, Bethesda, Maryland, 6/30/99.

Invited Speaker, Diagnosis and Treatment of Sex Offenders, Allegany County Health Department, Cumberland, Maryland, 6/1/99.

Invited Lecturer, Sex Offenders: Criminals or Patients, Course on Psychiatry and the Law, University of Baltimore School of Law, Baltimore, Maryland, 3/17/99.

Invited Participant, The Use of Triptorelin in Paraphilia Management, DebioPharm S.A. Developpements Biologiques et Pharmaceutiques, Lausanne, Switzerland, 2/8/99.

Invited Speaker, Sexual Compulsivity, The National Catholic Bioethics Center, Dallas, Texas, 2/4/99.

Invited Participant, Mixing of Sex Offenders in Custodial Drug Treatment Therapeutic Community Units: Problems and Potential Solutions, A Gathering of Leading Experts, University of California, San Diego, School of Medicine, San Diego, California, 1/19/99 - 1/20/99.

Invited Presenter, Sexual Misconduct by Clergy, Case Conference at St. Luke Institute, Silver Spring, Maryland, 11/5/98.

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Invited Speaker, Rape and Child Sexual Abuse, University of Baltimore, Baltimore, Maryland, 9/17/98.

Invited Speaker, Sexual Offenders: Criminal or Patients?, Loudon County Mental Health Center, Loudon County, Virginia, 9/15/98.

Invited Speaker, Sexual Offenders - Registration Statutes and Treatment Alternatives, Maryland Criminal Defense Attorney's Association Annual Meeting, Baltimore, Maryland, 6/6/98.

Invited Speaker, Treating the Paraphilias with Depo-Lupron, Maryland Health Administration, State-wide Pharmacy and Therapeutics Committee, Spring Grove Hospital, Baltimore, Maryland 5/29/98.

Invited Speaker, Diagnosis and Treatment of Sex Offenders, Utah Correctional Association Conference, St. George, Utah, 3/30/98 - 4/2/98.

Invited Speaker, Paraphilias in the Developmentally Disabled, The Kennedy-Krieger School, Baltimore, Maryland 12/10/97.

Invited Speaker, The Paraphilias, Sexual Offender Assessment, Risk Management and Treatment, Continuing Education Seminar, Psychiatry Department, The University of California School of Medicine, San Diego, California, 8/20/97 - 8/22/97.

Invited Speaker, Diagnosis and Treatment of Sex Offenders, Conference, Sexual Abuse Prevention and Education Network, New Cumberland, Pennsylvania, 8/6/97 - 8/8/97.

Invited Speaker, Evaluation, Etiology and Treatment of the Sex Offender, Educational Seminar, Forensic Hospital, Trenton, New Jersey, 6/23/95.

Invited Speaker, Reporting Sexual Abuse of Adult Survivors, Educational Seminar, Central Maryland Sexual Abuse Treatment Task Force, Baltimore, Maryland, 11/18/94.

Invited Speaker, The Etiology of Sexual Disorders: The Damaged Child Grows Up, Clinical Seminar Series on Infancy, University of Maryland School of Medicine, Baltimore, Maryland, 11/16/94.

"Guest Professor", Rape and Pedophilia, Course on Psychology of Criminal Behavior, Georgetown University, 11/14/94, 10/25/93, 2/2/93, 11/12/90, 4/2/90, 4/24/89, 4/9/87, 3/24/87.

Invited Speaker, Child Sexual Abuse, Conference on Domestic Violence: Sexual Trauma, Elder Abuse, Child Abuse, Doyelstown, Pennsylvania, 10/14/94.

Invited Speaker, Rape and Pedophilia, Forensic Mental Health Associates, Salt Lake City, Utah, 8/24/94; St. Petersburg, Florida, 7/1/94; Denver, Colorado, 8/31/88 - 9/1/88; Chicago, Illinois, 5/11/88 - 5/12/88; Boston, Massachusetts, 10/1/87 - 10/2/87; Denver, Colorado, 8/31/87 - 9/1/87; Fargo, South Dakota, 7/16/87 - 7/17/97; Chicago, Illinois, 5/11/87 - 5/12/87; Orange County, California, 1/21/87 - 1/23/87; Phoenix, Arizona, 10/30/86 - 10/31/86; Detroit, Michigan, 9/11/86 - 9/12/86; Cleveland, Ohio, 7/31/86 - 8/1/86; Dallas, Texas, 3/27/86 - 3/28/86; Lake

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Buena Vista, Florida, 8/29/85 - 8/30/85; San Francisco, California, 3/21/85 - 3/22/85; Dallas, Texas, 10/11/84 - 10/12/84.

Invited Speaker, Sentencing Sex Offenders, Annual Meeting, National Association of Sentencing Advocates, Baltimore, Maryland, 6/9/94 - 6/11/94.

Invited Lecturer, The Paraphilias, Criminal Justice Class, The American University, The Johns Hopkins Center, Baltimore, Maryland, 4/22/94.

Invited Speaker, Paraphilic Development and Treatment, Educational Seminar, National Center on Institutions and Alternatives, Alexandria, Virginia, 10/15/93.

Invited Speaker, Treatment of Sexual Disorders and Sexual Trauma, Annual Symposium, Virginia Correctional Counseling Association, Charlottesville, Virginia, 6/2/93.

Invited Speaker, Rehabilitation and Reassignment for the Errant in the Clergy, Catholic Bishops of Indiana, Fort Wayne, Indiana, 9/3/92.

Invited Speaker, Treatment of Sex Offenders, Maryland Association of Private Practice Psychiatrists, Baltimore, Maryland, 4/23/92.

Invited Speaker, Issues of Pedophilia in the Developmentally Handicapped, Rosewood Hospital Center, Baltimore, Maryland, 12/18/91, 05/09/97.

Invited Speaker, Pharmacological Treatment of Juvenile Sex Offenders, Mathom House Residential Facility for Adolescents, Philadelphia, Pennsylvania, 9/20/91.

Invited Speaker, Diagnosis and Treatment of Sex Offenders, Community Mental Health Conference, Howard County Health Department, Columbia, Maryland, 9/17/91.

Invited Speaker, Paraphilias: Evaluation and Treatment, Psychiatric Staff Meeting, St. Joseph's Hospital, Towson, Maryland, 5/21/91.

Invited Speaker, Sexual Psychopath Laws, Medical Service, Circuit Court for Baltimore City, Baltimore, Maryland, 12/19/90.

Invited Speaker, Aspects of the Diagnosis and Treatment of Sexual Disorders, Educational Seminar, University of Maryland, College Park, Maryland, 11/16/90.

Invited Speaker, Diagnosis and Treatment of Paraphilias, Educational Meeting, Suburban Maryland Psychiatric Society, Greenbelt, Maryland, 10/11/90.

Invited Speaker, Working with Paraphilic Individuals, Educational Seminar, Counseling Associates, Hollywood, Florida, 10/5/90.

Invited Speaker, Forensic Issues of the Sex Offender, University of Maryland Forensic Fellowship Program, Baltimore, Maryland, 12/13/89.

Invited Speaker, Adolescent Sex Offenders, Conference on the Treatment of Adolescent Sex Offenders, Regional Institute for Children and Adolescents (RICA), Rockville, Maryland, 12/6/89.

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Invited Speaker, Managing the Sex Offender on Probation, Annual Conference, Middle Atlantic States Correctional Association, Atlantic City, New Jersey, 5/22/88 - 5/25/88.

Invited Speaker, Treatment of the Sex Offender, Child Sexual Abuse - Adult Substance Abuse Connection Conference, St. Elizabeth's Hospital, Washington, D.C., (Rape Crises Center and Drug Abuse Center), 2/17/88.

Invited Speaker, Treating the Adolescent Sex Offender, State-wide Clinicians Network of Services for Adolescent Sex Offenders, Ellicott City, Maryland, 1/29/88.

Invited Speaker, Mandated Reporting of Child Sexual Abuse, People Against Child Abuse (PACA) Conference, Anne Arundel Community College, Anne Arundel, Maryland, 11/7/87.

Invited Speaker, Treating Sex Offenders in the Community, Annual Meeting, Allegheny County Health Department, Hagerstown, Maryland, 10/2/86.

Invited Speaker, Treating Incarcerated and Paroled Sex Offenders, Special Symposium, South Carolina Association for the Treatment of Sexual Aggressives, Columbia, South Carolina, 4/24/86 - 4/25/86.

Invited Speaker, The Paraphilias, Maryland Association of Private Practice Psychiatrists, Baltimore, Maryland, 1/23/86.

Invited Speaker, Victims and Victimizers, Maryland Conference on Child Victimization, Baltimore, Maryland, 1/6/86.

Invited Speaker, Sexual Offenders: Treatment Issues for the Social Worker, University of Maryland School of Social Work, Baltimore, Maryland, 9/17/85, 9/10/85.

Invited Speaker, Paraphilic Disorders and the Clergy, St. Luke's Institute, Suitland, Maryland, 8/23/85.

Invited Speaker, Protecting Children from Sexual Abuse, Annual Meeting, Montessori Society of Central Maryland, Baltimore, Maryland, 5/13/85.

Invited Speaker, Forensic Issues in Evaluation Sex Offenders, Clifton T. Perkins Hospital, Baltimore, Maryland, 1/14/85.

Invited Speaker, Differential Diagnosis of Sex Offenders, Annual Conference, Psychiatric Associates, Virginia Beach, Virginia, 11/9/84.

Invited Speaker, Use of Antiandrogenic Medications, Patuxent Institution, Baltimore, Maryland, 10/25/84, 5/29/84, 1/20/83.

Invited Speaker, Treating the Abuser, Community Seminar on Child Sexual Abuse, Carroll County, Maryland, 10/23/84.

Invited Speaker, Treatment of Sex Offenders, Symposium, Howard County General Hospital, Howard County, Maryland, 5/15/84.

OTHER PROFESSIONAL ACCOMPLISHMENTS:

Appointed Member, Subcommittee on the Paraphilias, American Psychiatric Association Committee to Review the 3rd Edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM-III-R), 1984-1989.

President, Board of Directors, National Institute for the Study, Prevention and Treatment of Sexual Trauma

Chairman, Board of Directors, Foundation for the Study, Prevention and Treatment of Sexual Trauma (a nonprofit foundation supporting clinical care, teaching and research)

MAJOR NATIONAL MEDIA INTERVIEWS (PARTIAL LIST):

Face the Nation

Sixty Minutes

Nightline

Larry King Show

Anderson Cooper Show

Dianne Rehm Show (National Public Radio)

Emmy Winning Group W Documentary (Child Molesters: Please Make Them Stop)

Good Morning America

Today Show

20/20

48 Hours

NBC Dateline

Johnnie Cochran Show (Court TV)

Alan Dershowitz Show (Court TV)
