

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

GRAHAM B. SPANIER

Plaintiff,

v.

LOUIS J. FREEH,
FREEH SPORKIN & SULLIVAN, LLP,
FREEH GROUP INTERNATIONAL
SOLUTIONS, LLC, and
PENNSYLVANIA STATE UNIVERSITY

Defendants.

) Docket No. 2013-2707

) Type of Case:

) Defamation

) Tortious Interference

) Breach of Contract

) Type of Pleading: **COMPLAINT**

) Filed on behalf of: Plaintiff

) Counsel of record for this party:

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NOTICE TO DEFEND

YOU HAVE BEEN SUED IN COURT. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and Notice are served, by entering a written appearance personally or by attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you

by the Court without further notice for any money claimed in the Complaint or for any other claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE TO FIND OUT WHERE YOU CAN GET LEGAL HELP:

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COMPLAINT

NATURE OF THE ACTION

1. This is a defamation, tortious interference, and breach of contract action brought by Dr. Graham B. Spanier (“Dr. Spanier”) against Louis J. Freeh (“Freeh”), his law firm Freeh Sporkin & Sullivan, LLP (“FSS”), his consulting

firm Freeh Group International Solutions, LLC (“FGIS”), and Pennsylvania State University (“Penn State” or “University”). The lawsuit arises out of false and defamatory statements about Dr. Spanier in the “Freeh Report” commissioned by Penn State, as well as disparaging statements made by certain members of the University’s Board of Trustees — as well as other breaches of contract by Penn State — in the wake of the Jerry Sandusky scandal.

2. Dr. Spanier brings defamation claims against Freeh and FSS for false and defamatory statements published in a highly publicized report authored and issued by Freeh after a self-described “independent, full, and complete” investigation into the role of Penn State in the events leading to allegations of sexual abuse being lodged against Gerald Sandusky, who was later convicted of having committed such crimes.

3. In a July 12, 2012 written report entitled “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” (the “Freeh Report” or “the Report”), Freeh and FSS knowingly and maliciously published numerous false and defamatory statements concerning Dr. Spanier, who served as President of the University from 1995 to 2011.

4. Among other false and defamatory statements, Freeh and FSS falsely stated in the Freeh Report that Dr. Spanier acted in “consistent disregard ... for the

safety and welfare of Sandusky’s child victims,” that Dr. Spanier “empowered Sandusky to attract potential victims to the campus,” that Dr. Spanier “repeatedly concealed ... Sandusky’s child abuse,” that Dr. Spanier “granted Sandusky a license to bring boys to campus for ‘grooming’ as targets for his assaults,” that Dr. Spanier made “[a] decision ... to allow Sandusky to retire in 1999, not as a suspected child predator, but as a valued member of the Penn State football legacy,” that Dr. Spanier “failed to protect against a child sexual predator harming children for over a decade,” and that Dr. Spanier “fail[ed] ... to adequately report and respond to the actions of a serial sexual predator.”

5. Freeh and FSS compounded their deliberate defamation of Dr. Spanier by conducting a planned, nationally televised press conference designed and intended to convince the broader public of Dr. Spanier’s purported guilt. The press conference was carefully orchestrated and produced with the assistance of a New York City-based, national public relations firm to ensure that Freeh and FSS’s “findings” of “concealment” by “the most powerful men at the University” (including Dr. Spanier and head football coach Joseph V. Paterno (“Paterno”)) struck a devastating reputational blow while achieving maximum publicity for Freeh and his enterprising private law firm.

6. At the press conference, Freeh deliberately expanded on the defamatory statements in his Report, falsely stating that Dr. Spanier exhibited

“total disregard for the safety and welfare of Sandusky’s child victims,” “failed to take any steps for 14 years to protect the children who Sandusky victimized,” “never demonstrated, through actions or words, any concern for the safety and well-being of Sandusky’s victims,” and “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.”

7. After its release, the Freeh Report was widely criticized by professional investigators and others with knowledge of the relevant facts. Despite these criticisms and the substantial body of evidence demonstrating the falsity of the Report’s conclusions about Dr. Spanier, Freeh and FSS “doubled down” on their defamatory statements regarding Dr. Spanier. On February 10, 2013 Freeh issued a press release expanding on the defamatory statements in his Report and press conference, stating that “four of the most powerful officials at Penn State agreed not to report Sandusky’s activity to public officials,” and “stand[ing] by” his earlier conclusion that “four of the most powerful people at Penn State failed to protect against a child sexual predator harming children for over a decade.”

8. Freeh and FSS’s defamatory statements regarding Dr. Spanier are demonstrably false. During his tenure as President of Penn State, Dr. Spanier never received any information that Sandusky had abused a child. Dr. Spanier was never provided information that would lead him to conclude that Sandusky had

ever committed a criminal act directed at a child until *after* Sandusky's criminal indictment.

9. Freeh and FSS's defamation of Dr. Spanier was done with actual malice and reckless disregard for the truth. Freeh and FSS reached their predetermined "findings" and "conclusions" regarding Dr. Spanier long before their "investigation" was concluded — and long before relevant evidence had been considered. Freeh and FSS's preconceived outcome for the report is evidenced by the fact that their 267-page report was drafted and largely finalized *before* Freeh even interviewed Dr. Spanier.

10. Freeh and FSS knew that there was no evidence to support their assertions that Dr. Spanier knew about and concealed child sexual abuse by Sandusky. As an experienced investigator, Freeh knew that his own investigation was glaringly deficient and grossly inadequate to substantiate such sweeping denunciations of Dr. Spanier. Moreover, prior to publication of the defamatory statements, Freeh and FSS discovered exculpatory testimony, facts, evidence, and documents refuting his false statements regarding Dr. Spanier. Freeh and FSS also purposefully avoided interviewing the most critical individuals with most relevant knowledge. Had they done so, such witnesses would have told them that Freeh's conclusions regarding Dr. Spanier were false. But having already determined to transform Dr. Spanier from a preeminent academic administrator to a conspirator

who enabled a serial pedophile, Freeh and FSS recklessly disregarded the truth, purposefully avoided contradictory information to minimize doubt about the veracity of the accusations he planned to make, and pressed ahead with the decision to defame Dr. Spanier.

11. As a direct result of the Freeh Report and the substantial publicity efforts by Freeh and FSS surrounding the Report, national and international news outlets have republished and reported Freeh's and FSS's false and defamatory statements as fact. As Freeh and FSS knew when they issued the Report, Freeh's professional credentials and experience as a former federal judge and a former Director of the FBI caused the public and the news media to conclude, incorrectly, that the "findings" in the Freeh Report are entitled to the same weight, credibility and hallmarks of impartiality that are commonly afforded to a judicial opinion or neutral trier-of-fact.

12. In truth, and although he built his credentials in the public sector, Freeh was — at the time of the Penn State engagement — simply a private citizen whose duties run only to the private clients who hire him for their specific purposes. Freeh and his affiliated law and consulting firms have developed a lucrative business model — predicated on Freeh's name recognition and FBI credentials — that depends on conducting so-called "independent investigations" and producing "investigative reports" custom tailored with preconceived storylines

to meet his clients' objectives. Clients facing crises are willing to pay enormous fees to Freeh and his firms in order to demonstrate that they are responsibly addressing their duties. Specifically, at the client's request, Freeh performs an "independent investigation" to produce an "investigative report" to identify one or more "wrongdoers" (never Freeh's clients) who can be blamed publicly for the crisis. These kinds of "independent investigations" and "reports," burnished by Freeh's experience and professional credentials, allow Freeh's clients to "move on" and publicly declare the scandal resolved.

13. As a direct and proximate result of the false statements in the Freeh Report about Dr. Spanier — and the public pressure placed on the Attorney General of Pennsylvania by the media and others who read and believed Freeh's false statements — the Attorney General criminally charged Dr. Spanier for his alleged role in covering up Sandusky's crimes. Dr. Spanier has pleaded "not guilty" to the charges. Although nearly two and a half years have elapsed since he was charged, Dr. Spanier is still awaiting trial and enduring the consequences of criminal charges stemming directly from the false statements contained in the Freeh Report. Dr. Spanier denies the allegations in the criminal proceedings and has aggressively and continuously sought justice and a timely opportunity to clear his name. The criminal case's protracted start has exacerbated and continued Dr.

Spanier's ongoing reputational damage and the pain associated therewith, all of which are a direct result of Freeh's and FSS's intentionally false statements.

14. Dr. Spanier also brings tortious interference claims against Freeh and FGIS for their knowing and intentional interference with Dr. Spanier's contractual and prospective business relations following his separation as president of Penn State. Freeh and FGIS intentionally interfered with Dr. Spanier's post-Presidency work for the federal government on national security issues, a field in which Dr. Spanier is a recognized expert. During his engagement with Penn State, Freeh intentionally interfered with Dr. Spanier's existing and prospective employment, and caused Dr. Spanier to lose these employment opportunities.

15. Specifically, in April 2012 Freeh learned from conversations with certain Trustees that Dr. Spanier had been hired to work on national security issues for the federal government. Freeh told these Trustees that he and FGIS had "done [their] job" and contacted federal officials. Soon thereafter, Dr. Spanier's assignments were terminated.

16. Dr. Spanier also brings breach of contract claims against Penn State, his former employer, for multiple breaches of his separation agreement with the University. Upon his resignation from the Presidency of Penn State in November 2011, Dr. Spanier and Penn State entered into a contract setting forth the terms of the separation ("Separation Agreement"). The contract prohibited Penn State from

making any negative comments about Dr. Spanier, and required Penn State to take actions to ensure that no members of the Board of Trustees made negative comments about Dr. Spanier. In addition, Penn State was (and remains) required to provide Dr. Spanier administrative support commensurate with that received by other tenured Penn State professors and former presidents, including an office location, a secretary, and IT support. The contract also requires Penn State to pay all expenses and legal fees incurred by Dr. Spanier arising out of any alleged acts or omissions occurring during his time as President, specifically including all such legal fees and expenses arising out of the Grand Jury's indictments, criminal charges, and/or Dr. Spanier's resignation from his position as President.

17. Penn State has repeatedly breached the Separation Agreement in several material respects. Penn State has breached the contract's prohibition on negative statements regarding Dr. Spanier by publicizing, permitting, encouraging, and facilitating Freeh and FSS's multiple negative public statements about Dr. Spanier, including those contained in the Freeh Report, which is published on Penn State's own website. Moreover, as part of the media strategy for the release of the Freeh Report, Penn State scheduled two press conferences in which Penn State's President and two members of the Board of Trustees repeatedly made negative comments about Dr. Spanier. Penn State also organized separate media

appearances for members of its Board of Trustees to make negative comments about Dr. Spanier in breach of the contract.

18. Dr. Spanier brings this action to vindicate his rights under civil law, to restore his reputation as a highly-regarded educator and university administrator, to establish Freeh's and FSS's liability for the irreparable harm that they have caused to Dr. Spanier's reputation by the false and defamatory statements published in the Freeh Report and in Freeh's nationally televised press conference, to obtain redress for Freeh's and FGIS's tortious interference with Dr. Spanier's prospective employment, and to obtain redress for Penn State's repeated breaches of Dr. Spanier's Separation Agreement.

19. Dr. Spanier seeks an award of compensatory damages for the reputational and economic harm caused by Freeh's and FSS's defamatory statements, the harm caused by Penn State's breach of the Separation Agreement, and the harm caused by FGIS tortious interference with Dr. Spanier's future employment. Given the willful and malicious nature of Defendants Freeh's and FSS's conduct in knowingly publishing defamatory falsehoods about Dr. Spanier, FGIS's knowingly and maliciously using that false narrative to intentionally interfere with Dr. Spanier's future employment, coupled with the clear financial motive of Freeh and his law and consulting firms to damage Dr. Spanier in

furtherance of a highly lucrative business model, Dr. Spanier also seeks an award of punitive damages.

THE PARTIES AND OTHER RELEVANT THIRD PARTIES

20. Plaintiff Graham B. Spanier is an individual residing in Centre County in the Commonwealth of Pennsylvania. Between 1995 and 2011, Dr. Spanier was the President of Pennsylvania State University. Dr. Spanier has resided in Centre County, Pennsylvania for over 28 years and continues to do so today.

21. Defendant Louis J. Freeh is an individual who resides in Wilmington, Delaware. He founded FSS in 2007, became the head of Pepper Hamilton after FSS joined Pepper Hamilton, and is now a partner and chairman emeritus of Pepper Hamilton. Freeh is also the founder and Chairman of FGIS, which is a wholly-owned subsidiary of Pepper Hamilton. Trading on his professional background as a former federal judge and the former Director of the FBI, Freeh and his affiliated firms have been retained to conduct internal investigations into some of the highest profile organized or corporate investigations in the past decade, including an investigation of possible misconduct in the administration of the BP settlement fund following the Deepwater Horizon oil spill, and an investigation on behalf of Wynn Resorts that led to the ousting of the company's largest shareholder.

22. In November 2011, the Board of Trustees for Penn State retained Freeh and FSS to conduct an internal investigation into matters surrounding the handling of Sandusky's behavior. Approximately eight months later, on July 12, 2012, Freeh released his defamatory "findings" in a 267-page report, in a written press release, and during a nationally televised press conference.

23. Defendant Freeh Sporkin & Sullivan, LLP ("FSS") is a limited liability partnership registered in Washington, D.C. FSS participated directly in publishing the defamatory statements in the Freeh Report. Freeh is one of two partners of FSS.

24. Defendant Freeh Group International Solutions, LLC ("FGIS") is a limited liability company formed under the laws of the State of Delaware, with its principal place of business in Wilmington, Delaware. In August 2012, as part of the joining of Pepper Hamilton and FSS, FGIS became a wholly owned subsidiary of Pepper Hamilton LLP, a Pennsylvania limited liability partnership. FGIS employees actively participated in the Penn State engagement and publication of the Report.

25. Defendant Pennsylvania State University is a nonprofit corporation organized under the laws of the Commonwealth of Pennsylvania, with its principal place of business at 201 Old Main, University Park, Pennsylvania 16802. Following his resignation as President of Penn State, Penn State contracted with

Dr. Spanier to govern the terms of his resignation and continuing employment. A task force created by Penn State's Board of Trustees retained Freeh and FSS to produce the Freeh Report.

26. Gerald A. "Jerry" Sandusky was an assistant football coach at Penn State from 1969 to 1999. In 1977 Sandusky founded The Second Mile, a Pennsylvania non-profit organization that supported at-risk and underprivileged youth. Before his indictment, Sandusky was generally lauded for his charity work and efforts on behalf of youth, receiving awards and praise from politicians, famous athletes, and others. Following a three-year investigation, Sandusky was indicted in November 2011 and subsequently arrested and charged with dozens of counts relating to alleged sexual crimes involving underage youth. On June 22, 2012 a jury found Sandusky guilty of 45 of 48 counts. On October 9, 2012 Sandusky was sentenced to serve 60 years in prison.

27. The Second Mile was a Pennsylvania non-profit charity organization that served underprivileged youth. Headquartered in State College, Pennsylvania, it was founded by Sandusky in 1977 and claimed to serve up to 100,000 Pennsylvania kids a year. By 2009, The Second Mile had revenues of \$3 million per year. Several Penn State trustees also had relationships with the organization. The Second Mile ceased operations following the fallout from the Sandusky scandal.

28. The Special Investigations Task Force was a working group convened by the Penn State Board of Trustees in November 2011. Penn State Trustee Kenneth Frazier served as Chair of the task force, and Trustee Ronald Tomalis was Vice Chair. In November 2011, the Special Investigations Task Force engaged FSS to investigate and prepare a written report regarding “the recently publicized allegations of sexual abuse at the facilities and the alleged failure of the Pennsylvania State University (“PSU”) personnel to report such sexual abuse to appropriate police and government authorities.”

29. Kenneth C. Frazier is currently the Chairman, President, and Chief Executive Officer of Merck & Co., Inc. He was elected to the Penn State Board of Trustees as a business and industry Trustee for a three-year term beginning in July 2009, and was reelected in 2012. Frazier served as Chair of the Special Investigations Task Force.

30. Ronald Tomalis was nominated by former Governor Tom Corbett to serve as Pennsylvania’s Secretary of Education in January 2011. He was confirmed in April 2011 and served in the position until he resigned in May 2013. By virtue of his position as Secretary of Education of the Commonwealth, Tomalis served on the Penn State Board of Trustees in an ex officio capacity. Tomalis was the Vice Chair of the Special Investigations Task Force.

31. Keith Masser is currently the Chairman and Chief Executive Officer of Stermann Masser, Inc. He was elected to the Penn State Board of Trustees by delegates from agricultural societies effective July 2008, and was subsequently reelected for a second term. He was elected Chair of the Board in January 2013.

32. Karen Peetz is currently the President of BNY Melton. Peetz was elected to the Penn State Board of Trustees in 2010 as a business and industry Trustee and became Chairman of the Board of Trustees in 2012. Peetz resigned from the Board of Trustees effective January 15, 2015.

33. Pepper Hamilton LLP is a large national law firm founded in Philadelphia that today has 13 U.S. offices, including offices in Philadelphia, Harrisburg, Pittsburgh, and Berwyn. In September 2012, Pepper Hamilton combined with FSS, and also acquired FGIS as a wholly owned subsidiary. Following the combination of FSS and Pepper Hamilton, Freeh became Chairman of Pepper Hamilton and held that position until October 2014. On October 1, 2012 Penn State Board of Trustees Chairman Karen Peetz signed an updated engagement letter formally memorializing an agreement that Pepper Hamilton would continue to represent Penn State in the “Task Force” engagement.

34. Omar McNeill is currently the Head of Compliance, Regulatory Relations, and Government Affairs for Barclaycard US. From September 2009 through September 2012, he was General Counsel and Secretary of FGIS. McNeill

became a partner of Pepper Hamilton after the combination of FSS, FGIS, and Pepper Hamilton in September 2012 prior to joining Barclaycard.

35. Michael J. McQueary was a quarterback for the Penn State football team from 1994 through 1997. He returned to Penn State in 2000 as a graduate assistant coach for the football team and held positions as an administrative assistant, wide receivers coach, and recruiting coordinator before being placed on indefinite leave in November 2011. He was not retained on the staff when Bill O'Brien took over as head coach in 2012. McQueary told investigators in November 2010 that he witnessed an incident between Sandusky and a male youth in the Lasch Building showers in 2002 (later corrected to February 2001).

36. Dr. Jonathon Dranov is a prominent State College physician. In 2001, Dr. Dranov employed Michael McQueary's father, John Sr., and was a friend of the McQueary family. On the night of February 9, 2011, McQueary met with his father and Dr. Dranov to tell them about the alleged incident he witnessed in the Lasch Building showers.

37. The National Collegiate Athletic Association ("NCAA") is a non-profit association headquartered in Indianapolis, Indiana that organizes and regulates college athletics. Its membership is comprised of over 1,000 schools, universities, conferences, and affiliate organizations organized into three divisions. Member schools pledge to follow the rules promulgated by the NCAA, and the

NCAA maintains an investigative staff and a Committee on Infractions to investigate and punish violations of NCAA rules. The NCAA claims broad authority to mete out punishment to institutions that violate NCAA rules, up to and including banning schools from participating in a particular sport — the so-called “death penalty.” Mark Emmert is the current President of the NCAA and has served in that role since 2011.

JURISDICTION AND VENUE

38. The Defendants are subject to personal jurisdiction in this Commonwealth because they have significant contacts with, and regularly transact business in, Pennsylvania, they caused harm or tortious injury by acts or omissions in Pennsylvania, and breached a contract executed and performed in Pennsylvania. Specifically, Freeh and FSS were retained by a Pennsylvania institution to supply services within Pennsylvania, and conducted interviews and purported fact-gathering within Pennsylvania that form the basis of Freeh’s and FSS’s false and defamatory statements. The statements were published in Pennsylvania. In addition, Freeh’s and FSS’s false and defamatory statements were directed at Dr. Spanier, who Freeh and FSS knew to be a Pennsylvania resident, and which caused harm within Pennsylvania. FGIS was also retained to conduct interviews and purported fact-gathering within Pennsylvania, and the tortious acts described herein were directed at Dr. Spanier, who FGIS knew to be a Pennsylvania resident.

39. This Court has original subject matter jurisdiction over this action pursuant to 42 Pa.C.S. § 931 because no other Pennsylvania court has exclusive original jurisdiction over this action.

40. Venue is proper in Centre County pursuant to Pennsylvania Rules of Civil Procedure 1006, 2179, and 2130 because the causes of action described herein arose in Centre County and transactions and occurrences from which the causes of action arose took place in Centre County.

FACTUAL BACKGROUND

Dr. Spanier Serves As President Of Penn State

41. Between 1995 and 2011, Dr. Spanier served as the President of The Pennsylvania State University and worked primarily in University Park, Centre County, Pennsylvania.

42. Penn State is one of the largest and most comprehensive universities in the United States. Penn State's academic, research, and athletic operations are highly decentralized; the university operates in more than 140 locations, with 24 campuses, more than 97,000 students and approximately 47,000 employees. It was founded in 1855 and has enjoyed an excellent worldwide reputation for academic excellence.

43. Penn State is not only a national leader in academics, it is also a national leader in a broad range of endeavors, including intercollegiate athletics,

with its sports teams participating in NCAA Division I and the Big Ten Conference. Among its 31 teams competing at the highest levels of NCAA competition, Penn State is particularly known for the tradition and success of its football program, which represents the University as a member of the Big Ten Conference. Joe Paterno became head coach of the Nittany Lions in 1966, after 16 years as an assistant coach, and remained head coach until 2011. As head coach, Paterno led the Nittany Lions to 409 victories, two national championships, and 24 bowl victories. Although Penn State had not been previously punished in its 156-year existence for athletic infractions by the NCAA, on July 23, 2012 the NCAA removed 112 of those victories, based solely and directly on the Freeh Report's conclusions. The NCAA restored these wins in January 2015 as part of a settlement of a lawsuit filed by officials of the Commonwealth of Pennsylvania. Paterno's motto of "Success with Honor" was, in fact, practiced by the football program, which graduated 85% of its players during Paterno's tenure, with many named Academic All Americans.

44. Penn State is also an important center of research in dozens of disciplines, including national defense-related research. The University is home to the Applied Research Laboratory ("ARL"), a Department of Defense-designated, University Advanced Research Center. The ARL was established at Penn State in 1945 and maintains a long-term strategic relationship with the U.S. Navy in

addition to providing support for other government agencies. The ARL performs basic and applied research, exploratory development, advanced development in systems engineering, and manufacturing technology in support of national security. The ARL is also the largest research unit within Penn State, with more than 1,000 faculty and staff. It was in the context of overseeing such research that Dr. Spanier was first required to maintain a top-secret security clearance.

45. Before becoming President, Dr. Spanier had been Chancellor of the University of Nebraska-Lincoln, Provost and Vice President for Academic Affairs at Oregon State University, Vice Provost for Undergraduate Studies at the State University of New York at Stony Brook, and had held faculty and administrative posts at Penn State.

46. Dr. Spanier is a family sociologist, demographer, and marriage and family therapist. He earned his Ph.D. from Northwestern University, where he was a Woodrow Wilson Fellow. He is the author of more than 100 publications in his field, including 10 books. His scholarship has focused on children, youth, and families. He is a clinical member and fellow of the American Association for Marriage and Family Therapy and former president of the National Council on Family Relations. He was the founding editor of the Journal of Family Issues. He is considered a leading scholar in his field and is the recipient of three honorary doctorates.

47. A national leader in higher education, Dr. Spanier was the first university president to receive the TIAA–CREF Theodore M. Hesburgh Award for Leadership Excellence. Dr. Spanier has chaired the Association of American Universities, the National Association of State Universities and Land-Grant Colleges, the Big Ten Conference Council of Presidents/Chancellors, and the NCAA Division I Board of Directors. He led the Kellogg Commission on the Future of State and Land-Grant Universities, was a founding member of the Internet2 Board, U.S. Chair and international Vice Chair of the Worldwide Universities Network, and co-chair, with the President of the Recording Industry Association of America, of the Committee on Higher Education and the Entertainment Industry. Spanier served as chair of the Bowl Championship Series (BCS) Presidential Oversight Board.

48. Much of Dr. Spanier’s professional career has been dedicated to the social and emotional development of children and youth, advocacy for the well-being and protection of children, and national and international initiatives to foster improvement in the lives of children and youth. He has served on the boards of several child development and youth development organizations, including the Board of Directors of 4-H and the Board of Governors of Junior Achievement Worldwide. He was also Chair of the Board of Christian Children’s Fund (now known as Child Fund International).

49. Dr. Spanier has served on the boards of numerous not-for-profit organizations, community groups, and charities. He has also served on the boards of directors of three corporations overseen by regulatory bodies such as the Security and Exchange Commission and the Federal Reserve.

50. As President of Penn State, Dr. Spanier oversaw one of the nation's largest and most comprehensive universities, with 47,000 employees on 24 campuses, annual revenues approaching \$5 billion, and a physical plant of 1,700 buildings. He led two capital campaigns for Penn State and enhanced the resources of the University by managing to raise approximately \$3.5 billion in philanthropic contributions.

51. During his presidency, Dr. Spanier created the Penn State World Campus, the Schreyer Honors College, and the Presidential Leadership Academy. He led the creation of numerous academic units, including the College of Information Sciences and Technology, the School of International Affairs, and programs in forensic sciences and security and risk analysis. He launched the International Center for the Study of Terrorism. Dr. Spanier also oversaw the merger with the Dickinson School of Law.

52. During his tenure, applications soared to more than 120,000 per year, enrollments grew to 97,000, and the academic standing of dozens of programs rose in national and international rankings. His goals were to make Penn State the “top

student-centered research university in America” and for the university to lead the nation in “the integration of teaching, research, and service.” The theme of the recently-completed, \$2 billion fund raising campaign was “For the Future: The Campaign for Penn State Students.” He oversaw the design and construction of dozens of new buildings, adding millions of square feet of space for instruction, research, recreation, and community support. He was recognized with the American Institute for Architects award for outstanding contributions by a non-architect, and received the Elizabeth Holtzman Award for his improvements to campus landscaping, master planning, and community relations.

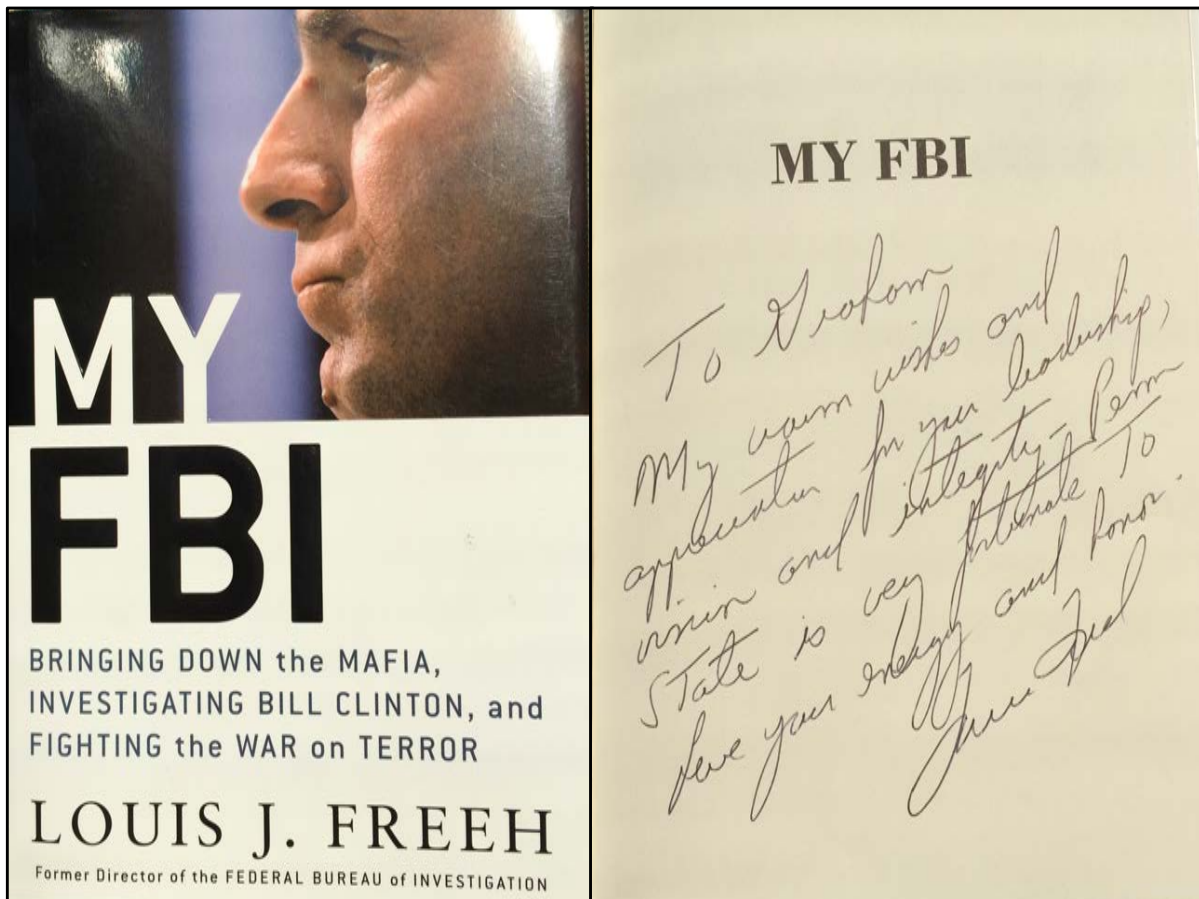
53. Dr. Spanier’s work as President of Penn State was supported by 12 vice presidents and more than 40 vice provosts, deans, and chancellors, whose work was in turn supported by several hundred department heads and administrative staff. As is common for chief executives of institutions of the size and complexity of Penn State, Dr. Spanier substantially relied on normal administrative processes to address issues in the University community as they arose.

54. Dr. Spanier has worked with the federal government on various projects pertaining to law enforcement, defense, homeland security, intelligence, and national security, and — until Freeh and FSS published their defamatory Report — Dr. Spanier had held several high-level security clearances dating back

to 1995. The federal government has accordingly performed numerous investigations into Dr. Spanier's conduct over the years — including a four-month investigation lead by the Federal Investigative Service after the Sandusky scandal broke publicly (but before Freeh and FSS published the defamatory Report) that reconfirmed Dr. Spanier's fitness to continue to hold a Top Secret security clearance. Special clearances he has held require a polygraph administered by highly trained federal specialists.

55. Dr. Spanier served as chair of the National Security Higher Education Advisory Board, a member of the National Counterintelligence Working Group, and a member of the Board of Advisors of the Naval Postgraduate School and the Naval War College. He has received numerous recognitions for his contributions to national security, including being honored as one of the “Most Influential People in Security,” the “Wings of Law” Award from the Respect for Law Alliance, and the award for “Exceptional Public Service” presented by the FBI. He has been a frequent speaker at FBI and other governmental and educational conferences and seminars throughout the nation on topics related to national security. He is the recipient of the Warren Medal “for outstanding contributions to the national security of the United States of America.”

56. By all accounts, until Freeh published his defamatory Report to a world-wide audience, Dr. Spanier had a stellar reputation for honor, integrity and public service — a reputation that even Freeh has lauded and praised. Indeed, on September 30, 2005, when Freeh visited Penn State, Freeh gave Dr. Spanier a copy of his book, “My FBI,” with a personal message to Dr. Spanier applauding Dr. Spanier’s “leadership, vision and integrity,” and celebrating the fact that “Penn State [wa]s very fortunate to have [Dr. Spanier’s] energy and honor.”



Louis Freeh Develops A Lucrative Business Model Trading On His Background In Law Enforcement

57. Louis Freeh is a former Special Agent for the Federal Bureau of Investigations, Deputy United States Attorney, United States District Court Judge, and Director of the FBI. Following his resignation as FBI Director in 2001, Freeh moved to the private sector, joining MBNA (later MBNA Bank America) as Vice Chairman and General Counsel, and also serving on the Board of Directors of Bristol-Meyers Squibb Company.

58. In 2007, Freeh founded FSS, along with FGIS. In the wake of corporate scandals such as Enron and WorldCom, and subsequent corporate governance legislation such as Sarbanes-Oxley Act of 2002, Freeh and FSS focused on the practice of internal corporate governance investigations, proclaiming “an unmatched ability to provide key strategic counsel to obtain optimum results for its clients in myriad situations,” and offering “practical crisis management solutions.”

59. Conducting internal investigations was a lucrative business for FSS. The business model relied in part on conducting highly publicized “investigations” meant to help institutions and corporations diffuse and manage crisis situations. By hiring Freeh’s law firm, an institution under fire from media and public

scrutiny resulting from a scandal could publicize its hiring of Louis Freeh and FSS as evidence that concrete steps were being taken to remedy the situation.

60. Much of the appeal of Freeh and his firms' services was and is based on his reputation and background as a former prosecutor, judge, and FBI Director.

61. The Freeh brand is marketed by the oft-repeated claim that his investigations and resulting reports are "independent," theoretically free from influence or bias. As is typical for any private law firm, and as in this case, Freeh's group is retained and compensated by a specific client with a specific need. Freeh, FSS and FGIS work for that client in the course of their engagement.

62. Moreover, despite claims that his investigations are "objective," Freeh typically approaches internal investigations more as a zealous prosecutor than an independent pursuer of fact. As evidenced by the reports he has authored, Freeh draws conclusions, points fingers, and ultimately assigns blame.

63. Trading on his background and reputation, Freeh commands hefty fees for his services. Organizations under pressure pay Freeh's oversized fees because a Freeh investigation and report is seen as an important step in addressing a crisis. By commissioning a "Freeh Report," an organization can say it has identified the problem and — more importantly — identified the individuals responsible.

64. Because Freeh trumpets his findings to the public as complete, comprehensive, and independent, his investigations serve a ceremonial and symbolic role as a cathartic corporate cleansing process, in effect allowing his client to say that it has identified and removed the wrongdoers and is ready to move forward free from the stain of scandal.

65. Freeh's work has been called into question repeatedly, and his investigation results frequently criticized for being predetermined and for sweeping conclusions not supported by the facts presented.

66. In 2011, Freeh was hired to investigate allegations of corruption within FIFA, an international governing body for soccer. Freeh was to examine allegations that a Qatari official running for the presidency of the organization had offered bribes to other officials in exchange for their support. After Freeh reported his findings, the official was slapped with a lifetime ban from FIFA. However, in 2012, the official had the ban reversed by the Court of Arbitration for Sport, which resoundingly concluded that Freeh's investigation failed to prove the bribe accusations. With respect to Freeh's investigation, the Court said that "[i]t [was] a situation of 'case not proven,' coupled with concern on the part of the panel that the FIFA investigation was not complete or comprehensive enough to fill the gaps in the record." The official's lifetime ban was later overturned.

67. In 2012, Wynn Resorts Ltd. forcibly redeemed the shares of a former director, the company's largest shareholder, after Freeh was retained by the company's board and issued a report accusing the shareholder of bribery. Critics viewed the entire investigation as a transparent attempt by Steve Wynn to consolidate power in the company and viewed Freeh's role as knowingly advancing that agenda. In a critique of Freeh's efforts on the Wynn investigation, former U.S. Circuit and District Court Judge and Homeland Security Secretary Michael Chertoff called Freeh's investigation "structurally deficient, one-sided, and seemingly advocacy-driven" and criticized Freeh's firm for "view[ing] itself as an advocate first and an impartial investigator second."

68. Recent media reports revealed that Freeh was hired to conduct an "independent investigation" by Minnesota businessman Nasser Kazeminy into 2008 allegations that he had bribed former Senator Norm Coleman. In a press release, Freeh "completely vindicated" his client, noting that although Kazeminy had provided Coleman more than \$75,000 in gifts, there was no quid pro quo. According to media reports, just nine days after Freeh exonerated Kazeminy, Kazeminy deeded one half interest of his \$3 million beachfront home to Freeh's wife, Marilyn Coyle. *See* <https://firstlook.org/theintercept/2014/12/31/winner-war-terror-financed-dream-home-2014-giveaway/>.

69. Recently, a New Orleans attorney named Christine Reitano sued Freeh and FGIS for defamation, alleging that a report issued by Freeh and FGIS regarding potential fraudulent claims in the BP oil spill falsely accused her of engaging in fraud, money laundering, conspiracy, perjury, and ethical violations. Ms. Reitano alleges that she provided Freeh and FGIS with sworn and credible evidence showing that their claims were false, but that they nevertheless refused to retract the claims about Ms. Reitano — and in fact later repeated them. In February, 2015 United States District Court Judge Carl Barbier issued an order regarding Freeh and FGIS’s accusations of misconduct by attorneys handling claims related to the Gulf of Mexico oil spill. Unlike Freeh and FGIS, Judge Barbier found no evidence of wrongdoing by Ms. Reitano, did not impose any sanctions on her, and did not direct Freeh or FGIS to lodge complaints about her with state or federal disciplinary agencies.

Gerald (“Jerry”) Sandusky

70. Gerald “Jerry” Sandusky was an assistant coach for the Penn State football team from 1969 to 1999, and separately managed the charity organization he founded called The Second Mile. He held the position of defensive coordinator from 1977 until his retirement.

71. Before his criminal indictment and conviction, Sandusky was a man with a reputation for helping young people. As noted, he was founder of The

Second Mile, an organization devoted to the social development of disadvantaged youth. He and his wife served as foster-parents to numerous children and themselves adopted six children.

72. Dr. Spanier did not interact with Sandusky personally. Dr. Spanier had spoken with Sandusky in only one formal meeting and encountered him only in passing at football games, events, and the like, but Dr. Spanier has never had a personal conversation with Sandusky.

73. In 1998, Sandusky retired from Penn State after being informed by head coach Joe Paterno that Sandusky was not being considered as Joe Paterno's replacement. He coached one additional season following his 1998 retirement. By 2001, Sandusky was no longer employed in any capacity by Penn State. Sandusky did, however, retain his leadership role at The Second Mile.

74. Dr. Spanier had no direct relationship with The Second Mile. He never served on its board, never attended a meeting, and had no awareness of its operations, staff, or the many young people served by The Second Mile organization.

75. In sharp contrast to Dr. Spanier, The Second Mile personnel, including child psychologists, had extensive contact with Sandusky over the many years of his leadership of The Second Mile and actually regularly observed Sandusky's interactions with The Second Mile youth.

The Sandusky Scandal

76. On information and belief, during the fall of 2008, the Pennsylvania Attorney General's Office began investigating allegations that Sandusky had sexually abused boys whom he had supervised as an employee of The Second Mile.

77. In November 2011, multiple criminal charges were brought against Sandusky alleging that he had sexually abused a number of minors associated with The Second Mile organization over the years.

78. In November 2011 Tim Curley ("Curley"), the former Athletic Director at Penn State, and Gary Schultz ("Schultz"), the former Senior Vice-President for Finance and Business at Penn State, were criminally indicted for failing to report Sandusky's crimes. Curley and Schultz were each charged in connection with an incident reported to have occurred in 2002 — later found to have been 2001 ("the 2001 incident" or "the McQueary/Sandusky incident") — in which an assistant coach, Michael McQueary ("McQueary"), observed Sandusky taking a shower and allegedly engaging in inappropriate contact with a 10- or 12-year-old boy in one of the Penn State athletic facilities.

79. Notwithstanding the Attorney General's comprehensive investigation into Sandusky's sexual abuse of children, the Attorney General found no evidence to bring charges against Dr. Spanier in November 2011.

Dr. Spanier Enters Into A Separation Agreement With Penn State

80. In the immediate aftermath of the November 2011 criminal charges against Sandusky, Curley and Schultz, Dr. Spanier offered to resign as President of Penn State if he would be a distraction for the University as it dealt with the crisis. On November 9, 2011 the Penn State Board of Trustees voted to accept Dr. Spanier's resignation as President of Penn State under the "Termination Without Cause" provision of his employment contract.

81. At the time of his resignation, Dr. Spanier and Penn State were parties to a July 1, 2010 Employment Agreement that set forth the terms of Dr. Spanier's employment with Penn State. The 2010 Employment Agreement stated that Penn State "wishes to continue the employment of Dr. Spanier as President of the University in recognition of his extraordinary achievements," and that "[t]he University desires to make further arrangements which will suitably recognize the extraordinary responsibilities and duties of Dr. Spanier and will reward him for his many unique accomplishments thus far during his time as President of the University."

82. By 2011 Dr. Spanier had received 16 consecutive exceptionally positive annual reviews and the 2010 Employment Agreement was his fifth consecutive such multi-year contract, a highly unusual and affirming circumstance in higher education.

83. In the 2010 Employment Agreement, there were three provisions under which Dr. Spanier's position as President could have been terminated, including "For Cause," "Without Cause," and by "Resignation." Under either the "For Cause" or "Resignation" provisions of the 2010 Employment Agreement, Dr. Spanier would have foregone any future compensation and/or benefit from Penn State. Under the termination "Without Cause" provision, Dr. Spanier was entitled to certain ongoing compensation and benefits.

84. Contrary to media reports, Dr. Spanier was not fired from his position as President. Indeed, Dr. Spanier offered to resign his position. After offering his resignation on November 8, 2011, and being encouraged not to resign, on November 9 the Board of Trustees accepted his resignation. Far from firing Dr. Spanier, the Penn State Board of Trustees determined Dr. Spanier's resignation would be treated as a termination "Without Cause" for purposes of the 2010 Employment Agreement. Accordingly, Dr. Spanier was entitled to future compensation and continued employment with the University.

85. Nevertheless, in subsequent public statements and media statements, members of the Board of Trustees shifted their commentary to reflect the notion that Dr. Spanier was fired, further disparaging Dr. Spanier, suggesting the appearance of wrongdoing, and setting the stage for Freeh's defamation of Dr.

Spanier and the disrepute that would follow Dr. Spanier professionally and in the court of public opinion.

86. To memorialize the terms of his separation as President of Penn State, Dr. Spanier and Penn State entered into a Confidential Separation Agreement on November 15, 2011 (“Separation Agreement”).

87. Under the terms of the Separation Agreement, Dr. Spanier relinquished his position on the University’s Board of Trustees, the presidency of the Corporation for Penn State, and other duties tied specifically to his presidency. At the same time, however, Dr. Spanier remained a tenured member of the Penn State faculty in the Department of Human Development and Family Studies of the College of Health and Human Development, with the titles of President Emeritus, University Professor, and Professor of Human Development and Family Studies, Sociology, Demography, and Family and Community Medicine.

88. The Separation Agreement incorporates the terms of Sections E.5 and E.6 of Dr. Spanier’s 2010 Employment Agreement, which provides for a one-year post-Presidency sabbatical transition period, after which Dr. Spanier would continue to hold a position as a tenured faculty member. Section 4(d) of the Separation Agreement states:

(d) During the post-Presidency transition period referred to in Section E.5 of the Employment Agreement, the University will provide Dr. Spanier with administrative support to assist him with his responsibilities, including computer access and

IT support, in the manner previously provided to past presidents of the University, in addition to all support referred to in the last paragraph of Section E.6 of the Employment Agreement. Following the post-Presidency transition, the University will provide Dr. Spanier with administrative support commensurate with that provided with other tenured faculty members and University Professors, and will continue to provide the administrative support referred to in the last paragraph of Section E.6 of the Employment Agreement.

89. The last paragraph of Section E.6 of the 2010 Employment Agreement states: “The University *shall* provide Dr. Spanier with administrative support, including an office and a staff assistant to assist him with his responsibilities following the conclusion of the presidency. The terms of Section E.6 shall survive the expiration of this Agreement.”¹

90. The Separation Agreement also provides that Penn State will reimburse Dr. Spanier for all attorneys’ fees and all expenses he incurs in connection with “matters relating to the grand jury presentment and his termination from the position of President of the University.” The Separation Agreement further provides that Penn State will continue to indemnify Dr. Spanier in accordance with the terms of Section J of the 2010 Employment Agreement. Section J of the 2010 Employment Agreement provides that Penn State shall indemnify Dr. Spanier for all legal fees, expenses, judgments, and other financial

¹ Emphasis added unless otherwise noted.

amounts incurred while serving in his capacity as President of the University. Section J further provides that Dr. Spanier shall continue to be indemnified subsequent to termination of his employment as President with respect to acts or omissions occurring while he was serving as President.

91. Paragraph 13 of the Separation Agreement contains a non-disparagement clause. Paragraph 13 states:

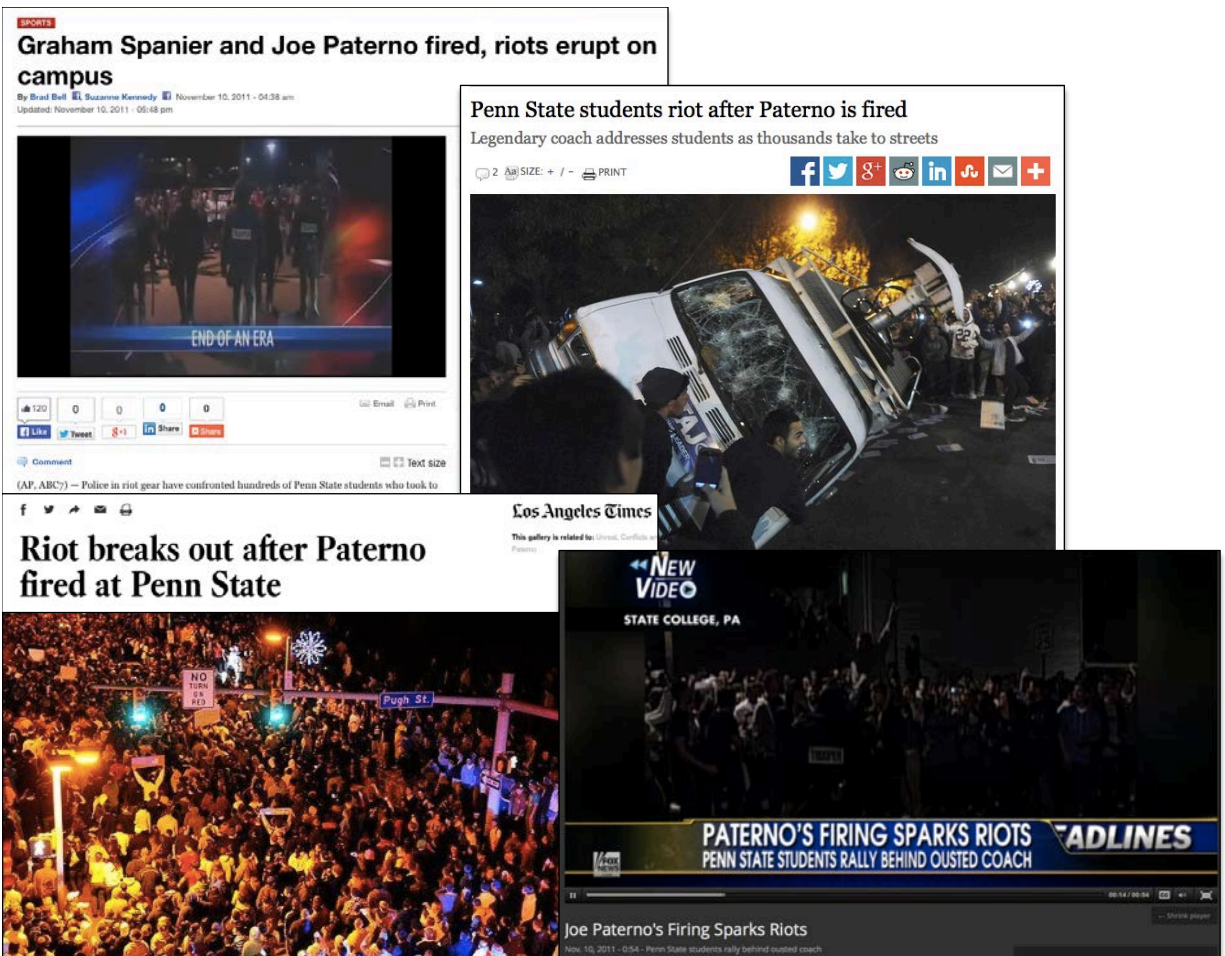
The University will not, and will use reasonable efforts to cause the members of the Board of Trustees not to, make any negative comments about Dr. Spanier to the media, to their professional colleagues or to any other members of the public, unless required by law or to comply with legal obligations and/or to provide truthful information in connection with ongoing or forthcoming investigations.

92. Paragraph 14 of the Separation Agreement states that in the event of a breach of any provision of the Separation Agreement, the prevailing party in any litigation over such breach shall be entitled to an award of reasonable counsel fees and expenses incurred in investigating and litigating such breach.

93. The Separation Agreement does not in any way provide that the Agreement shall be terminated or cease to operate in the event that Dr. Spanier is criminally charged. Accordingly, the Separation Agreement survives and remains in effect to this day.

The Freeh Engagement

94. On the same day that Dr. Spanier's presidency ended, the Board of Trustees fired Joe Paterno as the head coach of the Penn State football team. Thousands of Penn State students took to the streets of Penn State's campus, riots erupted, and the national media feverishly reported the growing controversy:



95. The Board of Trustees premature and careless firing of Coach Paterno created a full-scale media and public relations disaster.

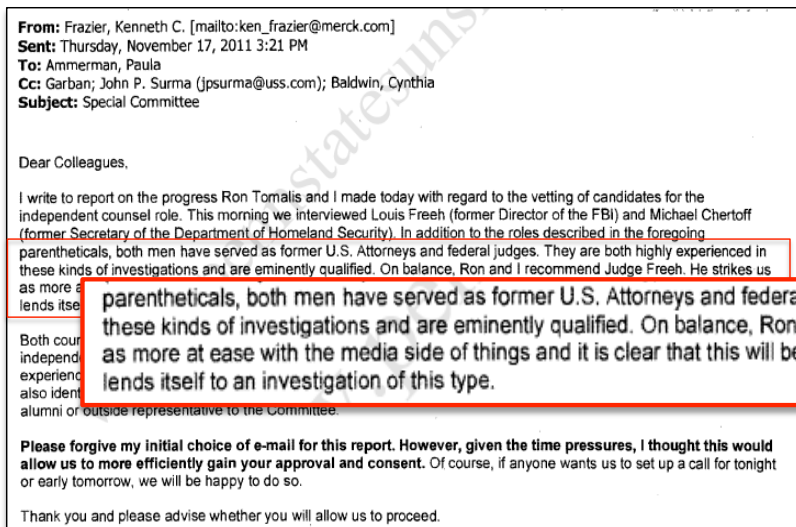
96. To address the growing media frenzy — and to vindicate its hasty decision to terminate Coach Paterno — Penn State’s Board of Trustees retained Louis Freeh and FSS on or about November 21, 2011 to conduct a purportedly “independent, full, and complete” investigation of “the alleged failure of Penn 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.”

97. Freeh’s firm was not the only option that Penn State officials considered. In fact, Penn State officials were concerned that FSS was too small and simply did not have the manpower to conduct a complete and comprehensive investigation. There was also concern about the close association between FSS and Pepper Hamilton LLP, a Philadelphia-based law firm, because Pepper Hamilton has many attorneys that are active and involved in Pennsylvania politics.

98. In the end the Penn State Board of Trustees chose Freeh principally because of his personal experience with, and ability to navigate, the media and public relations aspects of such investigations. The fact that Freeh was known as being very focused on the media narrative was a deciding factor in his retention.

99. Upon information and belief, Freeh knew that his media savvy was a principal reason that the Penn State Board of Trustees chose him for this

engagement, and that his attention to maximizing and leveraging the media on behalf of his client would “be his #1 priority.”



100. Penn State paid Freeh and FSS over \$8.3 million for their work to date on the Sandusky matter. Moreover, the University indemnified Freeh and FSS, thus pre-insuring Freeh against the risk of the adverse legal consequences arising from his defamatory Report, and effectively giving him carte blanche to make statements he deemed necessary to accomplish the Board’s objectives.

101. Freeh and FSS issued the Freeh Report on the Sandusky matter on July 12, 2012, at which time he described his work on the Penn State engagement as “largely completed.” Thus, Freeh and FSS were paid more than \$8 million dollars for less than 8 months of work.

The Task Force Secretly Directs Freeh To Use His Investigation To Placate The NCAA

102. On November 17, 2011, shortly after the Sandusky presentment became public and just days before Penn State hired Freeh, National Collegiate Athletics Association (“NCAA”) President Mark A. Emmert sent a letter to new Penn State President Rodney Erickson. Emmert informed Erickson that the NCAA believed, based on the Sandusky presentment, that there may have been “failures in the management of athletics programs [at Penn State] — both real and perceived.” Therefore, the NCAA threatened to initiate an investigation and punish Penn State for lack of “institutional control” over the football program.

103. Penn State officials, including President Rod Erickson, were deeply concerned that the NCAA might impose the “death penalty” on the Penn State football program. This draconian sanction would have meant that the football program would cease to exist for an extended period of time, eliminating an indispensable source of pride — and revenue — for the University. In fact, the NCAA explicitly threatened Penn State officials with the death penalty, informing them that a majority of NCAA voting members favored it, and that it was a likely result unless Penn State kowtowed to the NCAA entirely.

104. Penn State officials were also deeply concerned about an NCAA investigation because of the potential that unknown violations, unrelated to

Sandusky, could be discovered during such an investigation, further harming the football program or other athletics programs. Penn State officials had reservations about whether the NCAA had any jurisdiction to investigate or punish Penn State for the criminal acts of a former employee but worried that questioning the NCAA's authority might anger NCAA officials and result in even harsher sanctions. Penn State Trustees and other officials were frightened and thus highly motivated to prevent a hands-on NCAA investigation at Penn State, and to avoid the NCAA threat to impose the death penalty.

105. Kenneth Frazier and Ronald Tomalis, Penn State Board of Trustees members appointed by the Business and Industry trustees and then-Governor Corbett, respectively, both led the Special Investigations Task Force, which reached an agreement with the NCAA designed to meet NCAA objectives. The NCAA and the Big Ten Conference agreed to forego performing their own investigation into Penn State and to defer punishment of Penn State until after Freeh's investigation was finished. In return, the NCAA and Big Ten were to collaborate with Freeh, receiving regular briefings on the investigation and, at times, directing the investigation.

106. Freeh thus understood that in order to meet the Trustees' objectives, he needed to tailor his investigation in a way that would also satisfy the NCAA, as well as absolve the existing trustees of direct responsibility. Thus, Freeh agreed to

collaborate with the NCAA and to allow the NCAA to participate in the overall coordination of his investigation. He also understood that the NCAA's only jurisdictional basis for imposing sanctions would be to find "lack of institutional control," meaning Freeh would need to find that noteworthy individuals such as Dr. Spanier and Coach Joseph Paterno — not the Trustees — were ultimately responsible for the actions of former employee Sandusky. Freeh understood that this would also need to be characterized as an "athletic scandal" related to the football program.

107. Frazier and Tomalis arranged a conference call with Freeh and NCAA President Emmert just a week after Freeh and FSS were retained. On December 7, 2011, Freeh met with the NCAA's General Counsel and Vice President of Enforcement in State College, at which time the NCAA made it clear to Freeh that they expected to have a say in how the investigation was conducted, and that they expected him to target former Penn State officials for failing to "control" Sandusky.

108. On December 28, 2011, the NCAA's General Counsel Donald Remy sent FGIS employee Omar McNeill a list of 32 questions and topic areas it wanted FGIS and FSS to investigate. These questions underscored and reinforced the NCAA's goal, which was for Freeh to find that Sandusky was intentionally permitted to continue his criminal activities because, in the NCAA's view, the

preeminence of the football culture at the University, an elevation of “winning” over integrity, and the fear that bad publicity from Sandusky’s behavior would harm the football program and Coach Paterno.

109. On January 7, 2012, Julie Roe, the NCAA’s Vice President of Enforcement, travelled to State College to give a PowerPoint presentation to over a dozen FSS, FGIS, and Pepper Hamilton employees. Referred to by the NCAA as an “education session,” for these governance experts the presentation was essentially an investigative blueprint where the NCAA informed Freeh’s investigators what they were expected to find and therefore conclude.

110. Thereafter and throughout the course of the investigation, McNeill held regular conference calls with NCAA representatives to discuss the progress of the investigation.

111. Freeh, FSS, and FGIS tailored their investigation to find and manufacture the “lack of institutional control” the NCAA needed. For example, writing about his own interview with Freeh’s investigators, including FSS partner Eugene Sullivan, Jay Paterno said: “It was obvious they had an agenda. Very few of the questions were about Jerry Sandusky. There were a lot of questions about Joe Paterno and the power relationships as they related to president Graham Spanier and athletic director Tim Curley.”

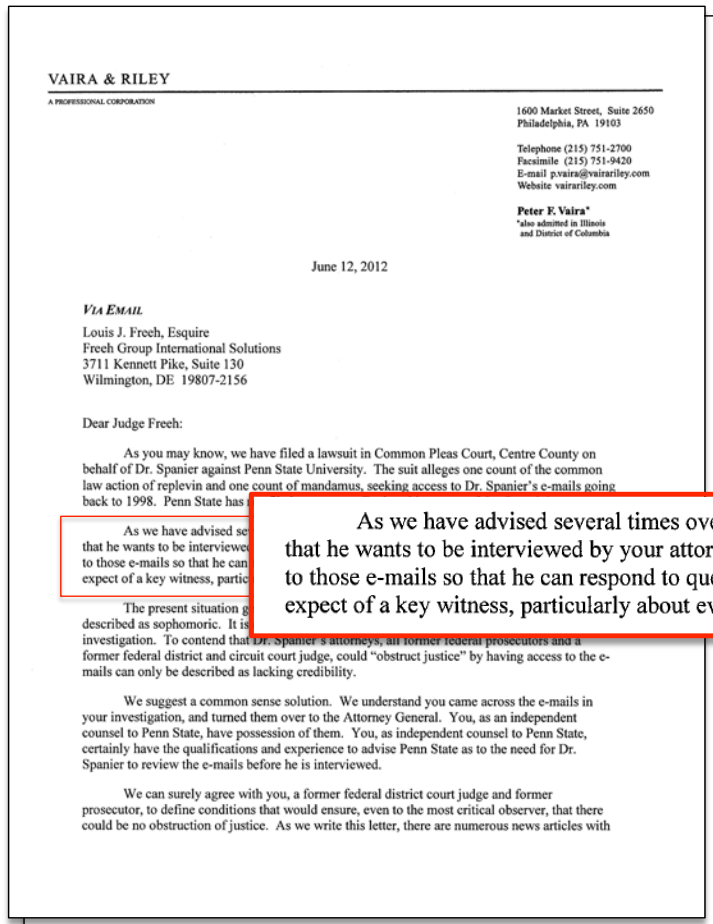
112. Shortly after the release of the Freeh Report, the NCAA contacted Penn State officials and stated that they intended to sanction Penn State, using the Freeh Report as a justification. Although the football program was targeted for severe penalties, Penn State avoided the death penalty. The sanctions were essentially removed two years later. Freeh and FSS thus successfully achieved the Trustees' goal of placating the NCAA by following its suggested agenda and concluding Sandusky's crimes were abetted by "a lack of institutional control" stemming from administrators who valued winning football games above all else.

**Freeh Determines He Is Going To Point The Finger At
Dr. Spanier Even Before Interviewing Him**

113. Prior to meeting with Freeh, Dr. Spanier originally thought that Freeh and FSS had been retained to conduct what he believed and expected to be a good faith and independent investigation of the Sandusky scandal. Having nothing to hide and quite anxious to help to the investigation, Dr. Spanier and his attorneys reached out to Freeh's investigative team, and Dr. Spanier was quite eager to be interviewed as part of the investigation. Freeh and his investigators delayed interviewing Dr. Spanier, saying he would be the *last* person to be interviewed.

114. During the course of Freeh's eight-month engagement, snippets of an email were leaked to the media. Being decade-old correspondence, and without any background or context for their substance, Dr. Spanier requested that Freeh

provide him access to these documents — just as Freeh would be required to do during discovery in civil litigation.



115. Freeh and FSS refused to provide Dr. Spanier's the emails.

116. Freeh and FSS did provide these emails to the Penn State Board of Trustees.

117. Freeh and FSS did exchange these emails with the Pennsylvania Attorney General.

118. Upon information and belief, Freeh, FSS and FGIS did provide these emails to the U.S. Attorney's Office.

119. Upon information and belief, Freeh, FSS and FGIS shared their pre-conceived conclusions about Dr. Spanier's involvement in a "cover up" with federal prosecutors and/or investigators, to prevent Dr. Spanier from obtaining other employment with the federal government.

120. Eventually, one of Freeh's investigators informed Dr. Spanier that he would be the last witness interviewed for the investigation — and that Dr. Spanier's interview would be conducted sometime in late July 2012, a month or more prior to the then-expected release date of Freeh's Report. This meant that instead of interviewing Dr. Spanier earlier, Freeh and his investigative team had already interviewed scores of other witnesses — and already had interviewed some of those witnesses multiple times.

121. Upon information and belief, Freeh, FSS and FGIS made the affirmative decision to make Dr. Spanier, who had volunteered to be interviewed much earlier in the investigation, the last witness interviewed for the investigation in an effort to purposely avoid hearing the exculpatory evidence that Dr. Spanier would provide, and instead, conduct Dr. Spanier's interview merely as a "check-the-box" exercise before publishing the Report.

122. According to public statements by the University, Freeh originally had planned to complete his investigation and report in late August or early September 2012 before or to coincide with the beginning of the Fall academic semester.

Freeh and FSS, however, suddenly accelerated that schedule in late June 2012 when Sandusky was convicted of 45 of 48 counts related to his abuse of children — notwithstanding the fact that Freeh, FSS and FGIS had not interviewed the most essential witnesses with relevant knowledge. Although legal commentators expected that the Sandusky trial would last at least three weeks, the timing of the verdict came quickly and caught the Penn State community, the media, and, upon information and belief, Freeh by surprise.

123. With the Penn State Board of Trustees' July 2012 meeting less than three weeks away, Freeh and FSS accelerated the release of the Report to ensure that his client, the 32 member Penn State Board of Trustees, was not the subject of critical media scrutiny in the absence of another villain bearing responsibility for the Penn State scandal during the months following Sandusky's conviction. Thus, instead of finishing the investigation and releasing the Report in late August or early September as originally planned, Freeh and FSS determined that the investigation would be concluded and that they would issue the final written report — ahead of schedule — on July 12 to coincide with the first day of the Board of Trustees' July meeting.

124. Freeh and his investigators informed Dr. Spanier on or about Monday, July 2, 2012 that, if he still wished to be interviewed for the investigation, the

interview would need to be conducted no later than on Friday, July 6, 2012 — just four days later and coupled with the intervening July 4th holiday.

125. Notwithstanding the short notice and Freeh's and the University's refusal to provide Dr. Spanier access to his own documents to prepare, Dr. Spanier agreed to be interviewed on July 6, 2012.

126. On July 6, 2012, Freeh and two members of his staff interviewed Dr. Spanier. Dr. Spanier answered every single one of Freeh's questions. He did not refuse to answer any. Dr. Spanier also provided Freeh and FSS with a written statement addressing in detail his knowledge — or, more accurately, lack thereof — regarding the two incidents involving Sandusky that had been heavily reported in the news media.

127. Although Freeh's investigative team directed Dr. Spanier to set aside a full day and a half for the interview, Freeh's interview of Dr. Spanier lasted little more than four-and-a-half hours on a single half-day. Indeed, the only reason that the interview went past the lunch hour is because Dr. Spanier insisted that he provide Freeh with additional information and discuss topics that Freeh clearly had chosen not to ask Dr. Spanier about.

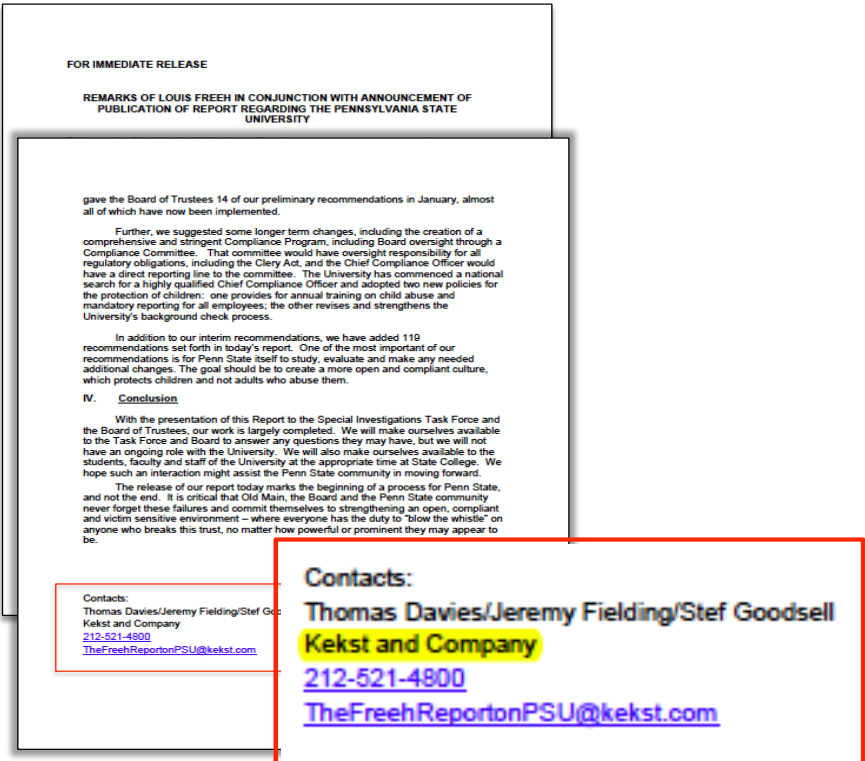
128. The manner in which Freeh and FSS suddenly accelerated the timetable for completing the Report, the begrudging manner in which Freeh allowed Dr. Spanier to be interviewed as the final witness in the investigation after

Dr. Spanier's repeated requests, and the cursory manner in which Freeh conducted the truncated half-day interview of Dr. Spanier on July 6, 2012 — only four business days before issuing his report and holding a press conference to announce his "findings" — are clear evidence that Freeh and FSS approached the Report and investigation with a preconceived notion of Dr. Spanier's culpability for the matters under investigation and viewed Dr. Spanier's interview and account of the facts as a formality.

129. On information and belief, Freeh and FSS deliberately refused or ignored Dr. Spanier's repeated requests to be interviewed and to be provided with access to email earlier in the investigation — and intentionally deferred Dr. Spanier's interview until the final days of the investigation — because Freeh and FSS determined early in the engagement that the Report would be authored to vindicate the Board of Trustees' handling of the scandal (including the Board's false and disparaging public statements that it had fired Dr. Spanier as President), and that Dr. Spanier would be one of the principal "wrongdoers" identified in his Report, regardless of the evidence (or lack thereof) supporting that accusation. From that early point forward, Freeh and FSS designed the investigation to align with that preconceived storyline regarding Dr. Spanier's culpability. Evidence and witnesses that undercut that narrative, including Dr. Spanier himself, were rejected, willfully ignored, and downplayed by the investigative team.

130. By the time Freeh and his investigators finally interviewed Dr. Spanier on July 6, 2012 — immediately before his final, 267-page report was issued to a worldwide audience — Freeh had already reached his defamatory and false determinations regarding Dr. Spanier’s involvement and culpability in the matters under investigation. All substantial portions of the Report regarding Dr. Spanier’s alleged culpability had already been written before Freeh had interviewed Dr. Spanier, including those portions of the Report containing the defamatory statements that are the subject of this Complaint. Indeed, the University’s public relations firm had started to draft talking points weeks before Freeh’s interview with Dr. Spanier.

131. Only days after Freeh interviewed Dr. Spanier, the final Freeh Report was released to the media, on July 12, 2012. To maximize his media exposure, Freeh held a nationally televised press conference and issued a press release that, upon information and belief, was drafted by Freeh’s nationally known public relations firm and timed to coincide with the release of the Report.



132. The very same morning Freeh and FSS issued the Report, the leaders of Penn State’s Board of Trustees also issued a press release adopting the conclusions in the Freeh Report.

133. Upon information and belief, Freeh shared with his and/or Penn State’s public relations firm Freeh’s conclusions about Dr. Spanier’s purported culpability long before interviewing Dr. Spanier in an effort to coordinate the public relations and media campaign associated with the Freeh Report, Freeh’s nationally televised press conference, Freeh’s press release, and the Board of Trustees’ July 2012 meeting.

134. Freeh's and FSS's true purpose in conducting the July 12, 2012 press conference — in addition to using that press conference to amplify and further hype the defamatory statements in the Report to an even broader audience — was to advance and promote their own commercial interests by using the publicity as a means to attract potential clients.

**Freeh Acted With Actual Malice And With Reckless Disregard
For the Truth When He Labeled Dr. Spanier A Pedophile-
Enabler Based On A 1998 Incident In Which Authorities Cleared
Sandusky Of Any Wrongdoing**

135. The Freeh Report largely focuses on the response of Penn State officials — including Dr. Spanier — to two incidents involving Sandusky. The first occurred in 1998, when Sandusky was employed by The Second Mile and still employed by Penn State. The second incident occurred in 2001, long after Sandusky had retired, and while Sandusky was employed by The Second Mile.

136. According to the Freeh Report, on May 4, 1998, a State College woman called the University Police Department — the police agency for the Penn State campus — to report that Sandusky had apparently showered with her 11-year-old son in an athletic facility on the Penn State campus following a workout. The mother did not allege that Sandusky sexually abused or assaulted her son.

137. The Penn State Police Department immediately launched an investigation, and the detective assigned to the case interviewed the boy that same

day. In addition to the Police Department, the Department of Public Welfare, Centre County Children and Youth Services, and the Centre County District Attorney's Office also investigated the matter.

138. Over the course of that month, officials would interview the boy multiple times, question Sandusky, interview a friend of the boy who also had contact with Sandusky, and actually eavesdrop on two different conversations Sandusky had with the boy's mother about the matter.

139. As the Freeh Report notes, a report by a Counselor for Children and Youth Services who interviewed the boy found that *nothing* sexual occurred between Sandusky and the boy. The Freeh Report quotes from the Counselor's written opinions, which stated that "there seems to be no incident which could be termed as sexual abuse, nor did there appear to be any sequential pattern of logic and behavior which is usually consistent with adults who have difficulty with sexual abuse of children." The Counselor informed the University Police detective investigating the case that he too found no evidence of sexual abuse.

140. Soon after, the same detective and a Department of Public Welfare caseworker named Jerry Lauro interviewed Sandusky. The detective's notes from the interview state that both he and the caseworker agreed after interviewing Sandusky that *no sexual assault* had occurred.

141. The last entry in the detective's report of the investigation, dated June 3, 1998, states: "As a result of the investigation it could not be determined that a sexual assault occurred and SANDUSKY was advised of such. LAURO also advised that he agreed with Reporting Officer that no sexual assault occurred. Reporting Officer advised Sandusky not to shower with any child. Sandusky stated he wouldn't. CASE CLOSED."

142. In late May or June 1998, the Centre County District Attorney's Office decided it would not press any charges against Sandusky regarding the incident. The Freeh investigators did not interview anyone involved with that decision, but acknowledged that it was due to the fact that the report issued by the Youth Services Counselor explicitly found that nothing sexual occurred between Sandusky and the boy that night. Therefore, there was no crime to prosecute.

143. Ultimately, the records of the 1998 investigation were even expunged from Pennsylvania's statewide "ChildLine" database of suspected child abuse reports. This was because, pursuant to Pennsylvania's Child Protective Services Law, the 1998 report regarding Sandusky was classified as "*unfounded*."

144. The Freeh Report also notes that certain Penn State officials were aware of and kept informed of the investigation. In particular, Athletic Director Tim Curley, Senior Vice President of Finance and Business Gary Schultz, and the University Police Chief, Tom Harmon, corresponded regarding the course of the

investigation. On June 1, 1998, Harmon emailed Schultz to tell him that the police had informed Sandusky that no criminal behavior had been established, and the investigation was closed.

145. According to the Freeh Report itself, there was no evidence of any awareness by Dr. Spanier of the 1998 report other than the possibility that he could have seen two emails between others on which Dr. Spanier was merely copied. The first, from May 5, 1998, is an email from Curley to Schultz, which does not mention Sandusky's name, and simply states, without any additional context or background: "I have touched base with the coach. Keep us posted. Thanks." Schultz responds, again merely copying Dr. Spanier, "Will do. Since we talked tonight I've learned that the Public Welfare people will interview the individual Thursday." The Report claims that because Dr. Spanier was copied on this email, Dr. Spanier was necessarily aware of the 1998 investigation of Sandusky. But there is no evidence that this email even involved Sandusky at all.

146. Then, on June 9, 1998, Schultz emailed Curley, copying Dr. Spanier, and wrote that investigators "met with Jerry on Monday and concluded there was *no criminal behavior and the matter was closed as an investigation....* I think the matter has been appropriately investigated and I hope it is behind us."

147. Dr. Spanier has no recollection of receiving or reviewing these emails. But Dr. Spanier's detailed calendar entries from 1998 show that he was out of the

country on an international trip to the United Kingdom from June 8 to June 16, 1998. This occurred at a time before BlackBerry-type devices were available, and during a trip when Dr. Spanier was moving each day from one U.K. university to another. Dr. Spanier was without email access and could not have possibly seen the June 9 email until he returned to the United States a week later, if he saw it at all, at which time it would have been among a thousand emails waiting in his inbox. At the time, Dr. Spanier received approximately 25,000 emails a year. Moreover, Dr. Spanier's calendar shows he turned right around and left town on the morning of June 17 for a board meeting in Washington, D.C. for two days. Furthermore, there is no record of any response to or acknowledgment of receipt of such emails.

148. Freeh and FSS had access to and made copies of Dr. Spanier's calendars. Freeh was aware that Dr. Spanier had been travelling internationally at the time the June 9, 1998 email was sent, that he would have had up to a thousand emails waiting for him when he got back, and that he therefore may have never even seen the June 9 email, or may have skimmed past it quickly without an understanding of who or what the email referred to.

149. Accordingly, Freeh and FSS knew it was likely that Dr. Spanier did not see the June 9, 1998 email, and that even if he did, he was merely copied on an exchange between others on an email expressly stating that there was "*no evidence*

of criminal behavior.” Freeh recklessly and intentionally minimized the import of this information to reinforce his claim that Dr. Spanier knew Sandusky was a pedophile and chose to conceal that information.

150. Thus, the Freeh Report details an incident in 1998 in which (1) Sandusky allegedly showered with a boy in a locker room after a workout; (2) numerous agencies of the State and County were informed of the situation by appropriate law enforcement authorities who conducted investigations; (3) trained professionals concluded that no sexual abuse or impropriety took place, and the report was determined to be “unfounded,” (4) the authorities declined to prosecute, finding no crime; and (5) Dr. Spanier was copied on two emails; the first with a vague reference and no name mentioned, and the second of which was sent while he was out of the country and may never have seen, and consisted of his subordinate — who was following the investigation — stating that the matter was appropriately investigated and that the case was closed.

151. The Freeh Report then claims that Dr. Spanier’s failure to act on this information renders him a pedophile enabler. The Report rails that Dr. Spanier “took no action to limit Sandusky’s access to Penn State facilities or [] any measures to protect children on their campuses.” And despite begrudgingly acknowledging that Sandusky was effectively cleared of any wrongdoing, the

Freeh Report then faults Dr. Spanier, who was not involved in any way, for not declaring Sandusky a “persona non grata” on the Penn State Campus.

152. Finally, the Freeh Report, after concluding that the 1998 incident had nothing to do with Sandusky’s retirement, then accuses Dr. Spanier of actively deciding “to allow Sandusky to retire in 1999, not as a suspected child predator, but as a valued member of the Penn State football legacy....” This Report, authored by a former federal prosecutor and judge, makes this accusation with absolutely no explanation as to how or why Dr. Spanier could have or should have considered Sandusky a “suspected child predator” in 1999, after law enforcement officials determined that Sandusky *did not* abuse the boy or commit any other criminal act.

153. Freeh and FSS’s accusation that Dr. Spanier knowingly failed to protect potential sexual abuse victims, and his faulting of Dr. Spanier for affirmatively choosing to allow Sandusky to retire in 1999 without labeling him a “suspected child predator” — even though Freeh and FSS knew no sexual abuse was alleged or occurred, and that Dr. Spanier likely did not even know of the investigation — are false, defamatory, and were made with actual knowledge of falsity or, at a minimum, a reckless disregard for the truth.

**Freeh Acted With Actual Malice And With Reckless Disregard
For the Truth When He Accused Dr. Spanier Of Conspiring To
Cover Up A Sexual Assault By Sandusky In 2001**

154. The second Sandusky incident that the Freeh Report focuses on is a 2001 incident in which a Penn State football staffer reported witnessing Sandusky and a male in the showers of an athletic facility on the Penn State campus. Graduate assistant Mike McQueary is believed to have reported to Joe Paterno on February 10, 2001 that on the evening before, Friday, February 9, 2001, he witnessed something that made him uncomfortable. More than a decade later McQueary testified that he entered the locker room of the Lasch Building between 9:00 p.m. and 9:30 p.m. and heard what he described as “sexual sounds.” McQueary’s story about what he saw that night has been inconsistent at best.

155. McQueary says he saw Sandusky — who by that time was employed solely by The Second Mile — with a boy McQueary believed to be between 10 and 12 years old. Exactly what McQueary saw that night may never be known. As multiple news outlets have reported, McQueary’s stories of what he saw and what he reported varied widely and changed multiple times.

156. According to McQueary, the first persons he informed immediately after the alleged incident were his father, John McQueary, and a family friend and colleague of his father’s, a prominent local physician named Dr. Jonathon Dranov at John McQueary’s home. During Sandusky’s criminal trial, Dr. Dranov — who

under Pennsylvania law is *required* to report suspected child abuse — testified under oath that McQueary reported that he was upset by the incident, but, when pressed by Dr. Dranov three times, said that he *did not witness anything sexual*.

157. Acting on his father and Dr. Dranov’s suggestions, McQueary then set up a meeting with head coach Joe Paterno. Both McQueary and Paterno later testified that McQueary told Paterno nothing specific, but rather advised that he saw something that he felt was inappropriate.

158. On Sunday, February 11, Paterno spoke with Athletic Director Curley and Senior Vice President Schultz. Paterno passed along substantially the same information that was related to him by McQueary, and Curley later testified that all he understood was that the graduate assistant saw something in the shower area that made him uncomfortable. Schultz said Paterno described the events very generally, and speculated that the incident may have involved “wrestling around” activity. Schultz came away with the impression that the incident was inappropriate, but not a crime.

159. On February 12, 2001 Schultz and Curley met briefly with Dr. Spanier to give him a “heads up” regarding the situation. During his interview with Freeh and two of his investigators, Dr. Spanier related that this was a short meeting, and that he was told of Sandusky and a youth “horsing around” in the showers. Dr. Spanier specifically asked if that is how the incident was described to

Curley and Schultz, and they answered affirmatively. Dr. Spanier was and is adamant that neither Curley or Schultz told him that there was anything abusive, criminal or sexual that occurred between Sandusky and the young male. Curley and Schultz independently have verified Dr. Spanier's account. Dr. Spanier was told the shower was after a workout and the witness was unsure what he saw because it was "indirect and around a corner." McQueary's name was not mentioned. Dr. Spanier was not aware of the witness, the specific location, or time of day and did not know that The Second Mile youth might be below high school age.

160. Dr. Spanier explained to Freeh that he recalled an agreed-upon plan for Curley to advise Sandusky that (1) he was being directed to not shower again with youth, and (2) that the head of The Second Mile should be advised of this directive.

161. On February 25, 2001, after Schultz and Curley themselves met with McQueary to discuss the incident, calendars show that Dr. Spanier, Curley, and Schultz may have met for a brief follow-up report. On February 27, 2001, Curley emailed Schultz and Dr. Spanier to say that he believed the best course of action was to meet with Sandusky and tell him that bringing young men into the campus facilities was inappropriate. Moreover, Curley would meet with the head of The Second Mile, the youth charity that employed Sandusky, to inform the organization

of the allegations. Dr. Spanier responded to this email to say that this approach was acceptable and a reasonable way to proceed. Dr. Spanier explained to Freeh, to the best of his ability, what he was likely trying to convey in his email reply.

162. Dr. Spanier told Freeh investigators that several days later, he saw Curley, who informed him that both the meeting with Sandusky and the meeting with The Second Mile had occurred and gone well. Dr. Spanier considered this to have been an appropriate response to what he understood to be mere horseplay between a Second Mile employee and a youth that took place on campus. Dr. Spanier considered the matter closed at that time.

163. Dr. Spanier did not hear whatsoever of any other incidents involving Sandusky, including any allegations of abuse by Sandusky, until Sandusky was criminally indicted a decade later.

Freeh Recklessly And Willfully Disregards Overwhelming Proof That Dr. Spanier Was Never Informed Of A Sexual Assault In 2001

164. The Freeh Report makes numerous sweeping and defamatory statements regarding Dr. Spanier and his actions in 2001. Freeh charges that nothing indicates that Dr. Spanier “made any effort to identify the child victim or determine if he had been harmed.” Freeh accuses Dr. Spanier of “total and consistent disregard ... for the safety and welfare of Sandusky’s child victims,” and of “fail[ing] to protect against a child sexual predator harming children for

over a decade.” Freeh further accuses Dr. Spanier of “conceal[ing] Sandusky’s activities from the Board of Trustees, the University community and authorities,” and of “exhibit[ing] a striking lack of empathy for Sandusky’s victims by failing to inquire as to their safety and well-being, especially by not attempting to determine the identity of the child who Sandusky assaulted in the Lasch Building in 2001.” Finally, Freeh claims that by knowingly failing to alert the Board of Trustees of “child sexual abuse allegations against Sandusky,” Dr. Spanier is guilty of intentionally “empower[ing] Sandusky to attract potential victims to the campus.”

165. Freeh and his colleagues made these severe, irreparably harmful allegations despite a lack of any evidence whatsoever that Dr. Spanier was informed of any allegations of sexual assault or child abuse in 2001 or at any other time. Not only did Freeh know that his investigation was glaringly deficient and far too inadequate to allow him a basis to make such accusations, he in fact willfully ignored, purposefully avoided, or downplayed actual evidence regarding exactly what Dr. Spanier knew — evidence that uniformly shows that Dr. Spanier was *not* informed of any allegation of sexual abuse of any child by Sandusky.

166. Because Freeh made these serious accusations based on his claim that Dr. Spanier knew of and concealed a sexual assault on a minor, exactly what information Dr. Spanier knew about the 2001 McQueary/Sandusky episode —the

precise manner in which the episode was described and reported to him — is of critical and obvious importance.

167. Specifically, Freeh knew there were material inconsistencies among the various accounts given of the McQueary/Sandusky episode, including material inconsistencies as to how the 2001 episode was described and reported by McQueary, as well as material inconsistencies casting doubt on McQueary's after-the-fact retelling of the episode. Accordingly, it was reckless to rely on any one of McQueary's prior statements as a truthful source of information.

168. Most importantly, Freeh knew that Dr. Spanier himself never spoke to McQueary. At best, Dr. Spanier's information about the incident was learned second or third-hand. Further, Freeh had no evidence showing that Dr. Spanier was ever informed by anyone that McQueary witnessed a sexual assault by Sandusky on a minor.

169. Freeh recklessly disregarded his lack of evidence, recklessly disregarded and purposefully avoided contrary evidence that shows Dr. Spanier was never so informed, and recklessly or purposefully chose not to interview key witnesses who would have related as much to Freeh.

170. Freeh's decision not to interview these critical first-hand witnesses, and his decision to make perfidious and defamatory accusations against Dr. Spanier without these witnesses' testimony, reflects a reckless disregard for the

truth. Freeh purposefully avoided the contradictory information these witnesses would have provided because he understood the statements he planned to make concerning Dr. Spanier were untrue.

171. In his interview with Freeh investigators, Dr. Spanier was unequivocal in stating that he was only told by Schultz and Curley that Sandusky was seen in the shower with “one of his kids, horsing around,” or engaging in “horse play,” which Dr. Spanier assumed meant splashing water or snapping towels. Dr. Spanier gave the same account under oath before the grand jury, testifying that he was told of “horsing around,” and that “what was reported was not a report of any activity that was sexual in nature.”

172. Aside from Dr. Spanier, who had to request to be interviewed by Freeh and his team, Freeh and FSS did not interview any of the key individuals associated with the 2001 incident. For example, Freeh failed to interview:

- Athletic Director Tim Curley: One of the two individuals who informed Dr. Spanier of the incident, and the only individual aside from Dr. Spanier and Gary Schultz who can attest to what Dr. Spanier was told about the incident.
- Penn State Senior Vice President Gary Schultz: The other of two individuals who informed Dr. Spanier of the incident and the only individual aside from Dr. Spanier and Tim Curley who can attest to what Dr. Spanier was told about the incident.

- Jerry Sandusky: The individual observed in the shower with a young male by Mike McQueary on February 9, 2001. The only individual besides “Victim #2” and Mike McQueary who knows what occurred in the Lasch Building showers that night.
- “Victim #2”: The young male seen with Sandusky in the Lasch Building showers by Mike McQueary on February 9, 2001.
- Mike McQueary: The individual who saw Sandusky and “Victim #2” in the Lasch Building shower on February 9, 2001. McQueary spoke with his father, John McQueary, family friend Dr. Jonathan Dranov, Joe Paterno, Tim Curley, and Gary Schultz about what he saw, but he never spoke with Dr. Spanier about it.
- John McQueary, Sr.: The father of Mike McQueary who was told of the incident by his son on the night of February 9, 2001.
- Dr. Jonathan Dranov: A prominent State College physician and friend of the McQueary family who also spoke with Mike McQueary on February 9, 2001 regarding what he witnessed in the Lasch Building showers that night.
- Joe Paterno: Former Penn State head football coach, who spoke with McQueary on February 10, 2001 regarding what he saw in the Lasch Building shower the day before.
- Jack Raykovitz: Then-Executive Director of The Second Mile. Like Dr.

Spanier, Raykovitz was informed of and given a description of the incident by Curley.

- Katherine Genovese: The wife of Jack Raykovitz and an official with The Second Mile.
- Bruce Heim: A member of The Second Mile Board of Directors who spoke with Raykovitz shortly after Raykovitz's meeting with Curley about the 2001 incident. On information and belief, Freeh did not interview any of the other Second Mile board members and staffers known to have spoken with Raykovitz about what he was told by Curley.
- Wendell Courtney: Outside counsel for Penn State who, according to the Freeh Report, discussed the McQueary/Sandusky incident with Gary Schultz shortly after it occurred.

173. The failure of professional investigators to interview any of these individuals — and to recklessly accuse Dr. Spanier of concealing child sexual abuse without having interviewed any of these individuals — is intentional and not an oversight, particularly light of the fact that all of the available evidence omitted from the report *supports* Dr. Spanier's account of what he was told by Curley and Schultz.

174. Freeh knew, recklessly disregarded, or purposefully avoided the fact that Gary Schultz’s attorney has publicly stated that “Mr. Schultz never told Dr. Spanier that Mr. Sandusky sexually abused a boy.”

175. Freeh knew, recklessly disregarded, or purposefully avoided the fact that, in an interview with a federal investigator regarding Dr. Spanier’s federal security clearance conducted prior to the release of the Freeh Report, Schultz recounted the February 12 meeting between Schultz, Curley, and Dr. Spanier, stating that “Curley told [Dr. Spanier] that there was a graduate student that observed Jerry Sandusky in the shower at the Lasch Building with a kid [] and they were horsing around or wrestling in the shower.”

176. Freeh knew, recklessly disregarded, or purposefully avoided the fact that Tim Curley’s attorney has publicly stated that “there is one thing about which there is no doubt ... Tim Curley did not tell Dr. Spanier that Mr. Sandusky sexually abused a young boy in 2001.”

177. Freeh knew, recklessly disregarded, or purposefully avoided the fact that Dr. Jonathan Dranov testified at Sandusky’s criminal trial that he asked Mike McQueary *three times* whether he had actually seen a sexual act committed by Sandusky.

178. Freeh knew, recklessly disregarded, or purposefully avoided the fact that, as a physician, Dr. Dranov is a mandatory reporter under Pennsylvania law

and is required to report suspected instances of child sexual abuse. Freeh knew that Dr. Dranov did not make any report regarding the 2001 incident. Indeed, Freeh made only a passing reference to Dr. Dranov in a footnote of his Report, noting that he was present at the McQueary house, but deliberately failing to mention his testimony that McQueary told Dr. Dranov he had seen no overt sexual acts.

179. Freeh knew, recklessly disregarded, or purposefully avoided the fact that, Jack Raykovitz, the former Executive Director of The Second Mile, was informed of the 2001 Sandusky incident by Tim Curley — the same individual who informed Dr. Spanier. According to the Freeh Report, Curley told Raykovitz only that Sandusky had been observed in the locker room with a young boy, and that the observer was uncomfortable with the situation.

180. Raykovitz and his wife, Katherine Genovese, have stated through their attorney: “Raykovitz met with Curley in 2001. Tim Curley told Raykovitz that someone (McQueary was not named) was made uncomfortable by Sandusky being in a University shower with a youth. Curley stated that the incident was investigated, and no sexual misconduct was alleged or found.”

181. Freeh knew, recklessly disregarded, or purposefully avoided the fact that Curley also told Raykovitz that nothing inappropriate had occurred. Freeh did not interview Raykovitz for his investigation, despite knowing full well that

Raykovitz's information regarding the incident came from the same source as Dr. Spanier's.

182. According to Bruce Heim, a former member of The Second Mile Board of Directors, Raykovitz informed Heim and other Second Mile officials that Curley told him only that Sandusky had been seen in the showers on campus with a young male. Raykovitz told Heim that nothing sexually inappropriate happened, based on the description of the incident he received from Curley. Freeh did not interview Heim in his investigation.

183. In addition to Dr. Spanier and Raykovitz, Sandusky himself also received a report of the incident from the same source — Curley. Freeh's Report acknowledges that both Curley and Sandusky agree that when Curley met with Sandusky to discuss the February 9 incident with him, Curley did not suggest that any child abuse or sexual abuse had occurred, and did not accuse Sandusky of anything of the sort. Instead, Curley told Sandusky that there was a report that Sandusky was seen showering with a child, and that this was inappropriate.

184. Wendell Courtney, a longtime attorney for Penn State who Schultz consulted with regarding the incident, advised Schultz that based upon what Schultz told him about the incident, *the incident did not need to be reported* under the Pennsylvania statute requiring certain individuals to report suspected incidences of child abuse.

185. Freeh knew, recklessly disregarded, or purposefully avoided the fact that Courtney stated in a November 2011 interview that he was not told of allegations of “Jerry Sandusky engaging in sexual misconduct with young children,” and that if he had been told of such misconduct he would have reported it to the police immediately.

186. Freeh’s Report does not identify any testimony or any document that indicates when, where or how Dr. Spanier was informed that Mike McQueary witnessed Sandusky sexually assaulting, molesting, or abusing an underage male in the Lasch Building showers on February 9, 2001. He cites no evidence for his false and defamatory conclusions about Dr. Spanier.

187. Freeh’s Report also does not identify any testimony or any document that contradicts the testimony and/or statements of five officials: Dr. Spanier, Schultz, Curley, Raykovitz, and Heim, all of which show or tend to show that Curley merely informed Dr. Spanier of a report of horseplay in a shower.

188. Freeh’s decision to press forward with accusing Dr. Spanier of knowingly concealing a sexual assault on a minor, in the face of all actual evidence to the contrary, shows that Freeh’s false and defamatory statements regarding Dr. Spanier were made with knowledge of actual falsity or, at a minimum, a reckless disregard for the truth.

**Freeh Acted With Actual Malice And With Reckless Disregard
For The Truth When He Rejected Dr. Spanier's Request To
Consider The Results Of A More Complete Federal Investigation**

189. At the beginning of the July 6, 2012 interview with Freeh and his investigative team, Dr. Spanier told Freeh that the federal government had completed a four-month investigation into Dr. Spanier's continued fitness to hold a Top Secret clearance, including questions about his role, if any, in the Sandusky matter, and that the investigation exculpated Dr. Spanier and reaffirmed Dr. Spanier's fitness to keep his Top Secret security clearance. Dr. Spanier told Freeh that he had made a Freedom of Information Act request for a copy of the federal investigative report and offered to provide a copy of the report to Freeh upon his receipt of it.

190. During the July 6, 2012 interview, Dr. Spanier specifically asked Freeh not to reach any conclusions, and to defer finalizing and issuing his own report, until Freeh took the opportunity to review and take into account the findings of the federal government.

191. Dr. Spanier also specifically told Freeh that Schultz and Curley — the two most knowledgeable individuals with regard to what Dr. Spanier knew about the McQueary/Sandusky incident — had been interviewed by, and had given statements to, the federal investigator performing the security clearance investigation. Dr. Spanier also told Freeh that the security clearance investigation

interviews included some members of the Board of Trustees, University administrators, Penn State General Counsel Cynthia Baldwin, and others.

192. At that time Freeh knew that he had not interviewed Schultz and Curley and knew he would issue his Report without interviewing them. Freeh also knew that it would be reckless to make any conclusions regarding what knowledge Dr. Spanier had of the McQueary/Sandusky incident without interviewing Schultz and Curley about what they told Dr. Spanier.

193. Freeh also knew that there was no legitimate pressing need to publish his Report without reviewing the federal investigative report. He knew that his investigation to that point was grossly inadequate. Freeh knew that the information in the federal investigative report would conflict with and cast doubt on the truth of the statements he planned to make concerning Dr. Spanier.

194. Freeh rejected Dr. Spanier's request. Instead of deferring the release of his Report until his receipt of the security clearance investigation, a process with which Freeh was intimately familiar, Freeh accelerated the publication of his Report — intentionally and maliciously defaming Dr. Spanier — by proceeding with his choreographed, nationally televised press conference just four business days later, on July 12, 2012.

195. By issuing his Report on July 12, 2012, Freeh recklessly disregarded and purposefully avoided the findings of the federal investigation. In rushing to

judge and publicly condemn Dr. Spanier, Freeh knowingly and intentionally issued his Report in contradiction to the conclusion and assessments he knew were likely contained in the federal security clearance report.

196. The thoroughly researched analysis conducted in the federal security clearance report, when later made available to Dr. Spanier, indeed included statements by Schultz, Curley, members of the University administration and trustees, former Penn State General Counsel Cynthia Baldwin, and many other witnesses with information relevant to Freeh's investigation. The inclusion of statements by Schultz and Curley in the federal security clearance report is especially significant because, as Freeh certainly knew when he issued his Report, Schultz and Curley were among the individuals who Freeh did not interview. Had Freeh waited for the federal report to be issued before finalizing or issuing his Report — as Dr. Spanier specifically requested — Freeh would have had this crucial information.

197. The report compiled by the federal investigator includes records of interviews with numerous Penn State officials and others in the community, including many with direct knowledge of the matters addressed in the Freeh Report. *Not a single individual* interviewed by federal investigators recommended against renewing Dr. Spanier's security clearance. Indeed, the federal report states: "The circumstances surrounding [Dr. Spanier's] departure from his position

as PSU President do not cast doubt on [Dr. Spanier's] current reliability, trustworthiness or good judgment and do not cast doubt on his ability to properly safeguard national security information.”

198. The federal investigative report also directly addresses the circumstances surrounding the 2001 McQueary/Sandusky incident, specifically contradicting Freeh's claim that Dr. Spanier was aware of and covered up a sexual assault by Sandusky.

199. Gary Schultz told the federal investigator that Curley told Dr. Spanier that the incident involved horseplay, not sexual abuse or any other criminal activity.

200. The federal investigative report also contains notes of an interview with Dr. Thomas G. Poole, Vice President for Administration at Penn State, who recounted a meeting with Dr. Spanier after the Sandusky grand jury presentment became public. Schultz walked in on the meeting, and, speaking of the grand jury presentment, stated that the witness never told Schultz that he saw anything sexual. This is yet another statement by Schultz confirming that Dr. Spanier was not told that the 2001 incident involved sexual abuse of a minor by Sandusky.

201. Considering the gravity of the charges Freeh planned to level against Dr. Spanier, Freeh had no pressing need to publish his Report immediately, and no legitimate investigative reason not to wait to see the report conducted by highly

trained and independent members of the Federal Investigative Service. Freeh, being a former federal employee himself, knew that the federal investigation (itself similar in length to the Freeh Report) would be comprehensive and credible. Similarly, Freeh had no legitimate investigative reason for not verifying the interview statements made by Dr. Spanier just days before the release of the Report. Instead, Freeh chose to rush his Report to publication to meet the Board's public relations needs and his own commercial interests.

202. As an experienced investigator and a former Director of the FBI, Freeh knew and recklessly disregarded the fact that the federal security clearance report would include information and statements from witnesses who had declined to participate in Freeh's own private investigation.

**Freeh Acted With Actual Malice And With Reckless Disregard
For The Truth By Conducting A Rushed And Biased
Investigation**

203. Freeh went to great lengths in his Report and accompanying press conference to stress that his investigation was comprehensive, complete, and independent. Freeh and the Penn State Board of Trustees knew that, to serve the Report's intended purpose to convince the public that the "bad apples" had been rooted out, that "closure" had been achieved, and so they could "move on," it was essential that Freeh be viewed as an impartial and disinterested neutral, with no stake in the ultimate outcome of the investigation.

204. One way Freeh perpetrated this illusion was by trumpeting the claim that the final Freeh Report was released to the public and the Penn State Board of Trustees at the same time. The fact that the Board did not get an advance copy of the Report was held up as an example of the independence of Freeh's investigation.

205. But in fact Freeh had ongoing discussions with selected Board members regarding the course of the investigation, and its likely outcome, long before the release of the final Report. Emails between Freeh and Board members show that Freeh regularly briefed Board members on the status of the investigation.

206. For example, in April 2012 — three months before Freeh even interviewed Dr. Spanier, and three months before the Report was released — Freeh and two members of the Board openly discussed targeting Dr. Spanier. When a media outlet reported that Dr. Spanier had been asked to take on a national security position with a government agency, Freeh and Board members plotted to deny Dr. Spanier this employment opportunity. Freeh went so far as to refer to the coordinated targeting of Dr. Spanier by the Board and FSS as “our job.”

From: Frazier, Kenneth C. <ken_frazier@merck.com>
Sent: Thursday, April 12, 2012 8:31 AM
To: Louis Freeh
Cc: Tomalis, Ronald; Omar McNeil -- Freeh Group
Subject: Re: Former Penn State University president Graham Spanier to begin new job for federal government

Oh brother...

Sent from my iPad

On Apr 12, 2012, at 8:22 AM, "Louis Freeh" <freeh@freehgroup.com> wrote:

Very interesting--we have done our job notifying the Federal prosecutors regarding the latest information.

Sent from my iPhone

On Apr 12, 2012, at 8:18 AM, "Tomalis, Ronald" <<mailto:rtomalis@pa.gov>rtomalis@pa.gov> wrote:

Seems someone might not have done their homework...

Former Penn State University president Graham Spanier to begin new job for federal government

Sara Ganim

Patriot News

April 11, 2012

Former Penn State University president Graham Spanier said he will soon begin working for the federal government on projects related to national security.

"For the next several months, as I transition to my post-presidential plans, I will be working on a special project for the U.S. government relating national security. This builds on my prior positions working with federal agencies to foster improved cooperation between our nation's national security agencies and other entities," Spanier said in an Email.

Spanier was ousted as the university's leader on Nov. 9, less than a week after former assistant football coach Jerry Sandusky was charged with child sex abuse.

207. Through such discussions, which are not revealed in Freeh's "independent" Report, Freeh kept his client aware of his intentions, and Freeh's client communicated its desires to Freeh. The claim that Freeh released his Report to the Board at the same time as it was released to the public was a public relations

ploy meant to create the illusion that the Board had no involvement at all in Freeh's "independent" investigation. In fact some members of the Board knew the ultimate accusations the Report would contain before it was released.

208. Indeed, the primary goal of the Freeh investigation was to assign blame to specific individuals, which is evidenced by the engagement letter memorializing the agreement between FSS and the "Special Investigations Task Force," a group formed by the Board of Trustees to oversee the Freeh investigation.

209. The engagement letter states that the express purposes of Freeh's investigation, and the Report that would follow, would be to make findings concerning: "i) failures that occurred in the reporting process; ii) the cause for those failures; iii) who had knowledge of the allegations of sexual abuse; and iv) how those allegations were handled by the Trustees, PSU administrators, coaches, and other staff." Thus, Freeh's investigation from the outset *assumed* that certain individuals at Penn State were aware of and concealed evidence of sexual abuse by Sandusky, and Freeh's charge was to identify those individuals and explain why they failed to report suspected child abuse.

210. The engagement letter also makes clear that Freeh and FSS were to "act under the sole direction of the Task Force in performing the [above-described]

services,” and that Freeh and FSS would perform these services “for the Task Force’s benefit.”

211. Freeh also knew that, at the time he was retained, a media narrative was forming that suggested Penn State officials, particularly Schultz, Curley, and Paterno, had been aware of allegations regarding Sandusky but had not done enough to intervene. In particular, Schultz and Curley were indicted in connection with the investigation along with Sandusky, before Freeh was retained.

212. On June 16, 2012 — a month before the Report was published — the Associated Press published an interview with Penn State University trustee Keith Masser, in which Masser defended the Board of Trustees’ purported decision to oust Dr. Spanier as President of the University. Masser was quoted as saying that Dr. Spanier was “involved in a cover-up,” and that “top administration officials and top athletic officials were involved in making the decision to not inform the proper authorities” of Sandusky’s criminal activities.

213. The Masser interview was published by the Associated Press and widely circulated by other media outlets nearly three weeks before Freeh interviewed Dr. Spanier, and nearly a month before the Freeh Report was released.

214. Before Freeh interviewed Dr. Spanier and before he issued his Report, Freeh knew that his client had publicly accused Dr. Spanier of participating in a cover-up of Sandusky’s sexual abuse. Freeh knew that his client expected the

Report to echo the public position of the Board of Trustees. Freeh thus determined before interviewing Dr. Spanier that he was going to issue a Report accusing Dr. Spanier of actively participating in a cover-up and actively deciding to conceal Sandusky's criminal activities.

215. Freeh also knew that in addition to securing the resignation of Dr. Spanier, the Board of Trustees had also fired Paterno, returned Schultz to retirement, and determined that they would not renew Curley's contract. Freeh knew that by accusing Dr. Spanier of being a "wrongdoer" along with Schultz, Curley, and Paterno, he could release a report that not only justified the Board's actions, but that also reinforced then-Vice Chair Masser's preexisting media narrative. By claiming that Dr. Spanier joined Schultz, Curley, and Paterno in a "cover up" of Sandusky's actions, Freeh knew that he could advance his client's interests by scapegoating a discrete set of individuals and providing a reason — a supposed cover-up — for why the Board should be considered substantively blameless by the public.

216. Freeh also knew that the NCAA expected him to target the University's highest-level officials like Dr. Spanier and Coach Paterno to justify the NCAA's highly dubious claim to have jurisdiction to punish Penn State for Sandusky's actions. Freeh's Report, which claims that the investigation was entirely independent, intentionally omits mention of the fact that Freeh and his

investigators held multiple meetings and at least 15 conference calls with NCAA officials, that NCAA officials provided the blueprint for the investigation, or that NCAA officials provided Freeh with 32 questions the NCAA expected Freeh to investigate. Nor does the Report mention that it was understood that Freeh's "independent" investigation was expected to substitute for an NCAA investigation, and that the prospect of a separate, additional NCAA investigation loomed unless the NCAA was satisfied with Freeh's conclusions.

217. Freeh also had ongoing discussions with prosecutors that belie his claim to be an impartial and independent investigator. Freeh and his firm went far beyond merely sharing information with prosecutors; in fact, they became advocates, even cheerleaders, for the criminal investigation, lauding announcements of criminal charges in private correspondence with the Attorney General's Office.

218. Although the Board of Trustees still has not done any meaningful examination of the credibility of the Freeh Report, others have; it has been the subject of numerous critiques, and many of its claims have since been heavily scrutinized. On June 19, 2014, Hearing Examiner Michael Bangs of the Pennsylvania State Employees Retirement System issued an opinion recommending that Sandusky's state pension be restored. Bangs's findings and conclusions addressed the Freeh Report, and specifically rebutted the Report's

claim that “Penn State made 71 separate payments to Sandusky for travel, meals, lodging, speaking engagements, camps and other activities from January 5, 2000 through July 22, 2008.”

219. Hearing Examiner Bangs’s opinion found that “there is no factual support whatsoever that Penn State made 71 separate payments to [Sandusky] between 2000 and 2008, as set forth in the Freeh Report.” Instead, “an examination of [Sandusky’s] tax records and the records provided by Penn State’s legal counsel reveal[ed] that there were no more than six payments made to [Sandusky], with several being reimbursement for travel expenses.” Noting that the Freeh Report was “based on significant hearsay and was mostly ruled inadmissible,” Bangs found that “[t]he *terrifically significant disparity between the findings in the Freeh Report and the actual truth is disturbing.*” He went on to opine that “the use of this remarkably incorrect statistic by the Freeh Report, which was then relied upon to form the basis for a number of its other conclusions, calls into question the accuracy and veracity of the entire report.”

220. Former Penn State President Rodney Erickson, who was President during the investigation and when the Report was released, has also stated that aspects of the Freeh Report are “inaccurate and unfortunate,” and that the Report will “never be a complete record in the sense that not everyone who was involved had an opportunity to or was able to be interviewed.”

221. Indeed, even the current President of Penn State, Eric Barron, has recently said that “[t]here are significant problems with the Freeh Report,” “Freeh did not have subpoena power” and thus he did not “interview many of the most salient individuals,” “Freeh expressed his personal opinions and conclusions about the motivation of individuals, rather than simply presenting factual information,” and finally that “*the limitations of the Freeh report prevent it from being the basis of any decision facing Penn State.*” (Emphasis in original.) Of course as this Complaint details, the Freeh Report has been and continues to be the basis for many important decisions made by the Trustees and the NCAA.

222. In a commentary on ESPN.com following a settlement between Penn State and the NCAA regarding the sanctions that followed the release of the Freeh Report, college football reporter Ivan Maisel stated, “The Freeh Report, as it turned out, carried all the factual gravitas of a high school term paper.”

223. Amazingly, Freeh himself has criticized the very investigative techniques and practices of drawing broad conclusions based on plainly insufficient evidence that he widely used in the Freeh report. On December 10, 2014, Freeh wrote an Op/Ed piece for the Wall Street Journal, criticizing the torture report on CIA interrogations released by the Senate Intelligence Committee. In his critique, Freeh pointed out that key players like the President, Vice

President, and their advisors were not interviewed by the report's authors. Freeh then wrote:

Facts matter, including the fact that the Senate committee's Democratic majority failed to interview the three CIA directors and three deputy directors, or any other CIA employee for that matter, who had briefed them about the program and carried it out.

Such a glaring investigative lapse cannot be fairly explained by the Democratic majority's defense that it could make such crucial findings based solely on the 'paper record,' without interviewing the critical players. Nor does the committee's other explanation for avoiding interviews make sense: The Democratic senators say they didn't want to interfere with the Justice Department's criminal inquiry into the RDI program...

224. Accordingly, Freeh himself recognizes and decries the recklessness of a professional investigator who reaches sweeping conclusions where the investigation does not have access to critical live testimony.

225. The irony, of course, is that Freeh's Penn State Report suffered from the identical "investigative lapse," it made similarly "crucial findings based solely on [a] paper record," and it gave the same excuse for the failure to interview key players as the torture report Freeh criticized.

**Freeh Acted With Actual Malice And With Reckless Disregard
For The Truth When He Refused to Correct His Report's
Defamatory Statements In The Errata Sheet**

226. On July 23, 2012, less than two weeks after Freeh issued his report, Dr. Spanier sent a letter to the Board of Trustees and to Penn State's General

Counsel, identifying many of the false statements in the Report that are the subject of this Complaint, and explaining why the statements were false. On information and belief, the information in Dr. Spanier's document, entitled "Summary of Errors and Omissions in the Freeh Report Identified by Graham Spanier," was also shared with Freeh and FSS.

227. Dr. Spanier's letter and accompanying document specifically noted that:

- The Freeh Report never acknowledges that there is no evidence or information that contradicts Dr. Spanier's position that he was never told of any sexual activities involving a child and Sandusky.
- The Report deliberately omits any mention of the federal security clearance investigation performed concurrently with Freeh's investigation, which included evidence from key individuals Freeh did not interview and reached a totally different conclusion than the Freeh Report, and determined that Dr. Spanier's security clearances should remain active.
- The Freeh Report does not mention that — despite Freeh's claim that investigators reviewed voluminous electronic records — most University administration emails prior to 2004 were wiped out in a computer system changeover and thus were not available for review by Freeh and his Firm. Thus, it is not possible for Freeh to examine any relevant context

surrounding the 2001 email referred to in Freeh's Report.

- Freeh notes that former Penn State outside counsel Wendell Courtney declined to be interviewed for the Report, but deliberately did not include information provided by Dr. Spanier during his interview. Dr. Spanier informed Freeh on July 6, 2012 that he had recently spoken with Courtney about Courtney's discussions with Schultz in 2001, and that Courtney affirmed that the McQueary/Sandusky incident, as described to him by Schultz, was not reportable. Courtney also confirmed that he had no discussions with Dr. Spanier regarding the incident at the time.
- The Freeh Report neglects to identify Dr. Jonathan Dranov by name, fails to mention that Dranov testified at Sandusky's criminal trial, and fails to mention that, according to Dranov, McQueary claimed to have observed no sexual conduct on a minor by Sandusky. Freeh also fails to mention that Dranov is a mandatory reporter under Pennsylvania law, and that he determined that the incident as described by McQueary was not a reportable incident.
- The Freeh Report repeatedly conflates the actions and knowledge of Dr. Spanier, Schultz, Curley, and Paterno as if they are all of one mind, obscuring the fact that there is no evidence that Dr. Spanier was ever told more about the incident than Curley's report of "horseplay" in the showers.

- The Freeh Report accuses Dr. Spanier of failing to protect a against a child predator, even though Dr. Spanier *did not know* that Sandusky was a child predator.
- The Freeh Report accuses Dr. Spanier of concealing Sandusky’s child abuse, even though Dr. Spanier *did not know* of any child abuse by Sandusky.
- The Freeh Report accuses Dr. Spanier of failing to alert the Board of child abuse allegations in 1998 and 2001. However, in 1998 abuse was never alleged, and several investigations cleared Sandusky of any wrongdoing. Dr. Spanier was never told of any allegation of abuse in 2001 either.
- The Freeh Report falsely claims that Dr. Spanier concealed facts about Sandusky’s child abuse to avoid bad publicity. Dr. Spanier was never aware of any child abuse allegations, and therefore never could have concealed such allegations. He had no incentive to protect a child predator. Moreover, Freeh knew that Dr. Spanier never shied away from bad publicity, a near-daily fact of life for a university president.
- The Freeh Report’s claim that Dr. Spanier showed a striking lack of empathy for abuse victims completely ignores Dr. Spanier’s years of efforts and service on behalf of child and family welfare organizations.
- The Freeh Report claims that Dr. Spanier allowed Sandusky to retire in 1999 as a former football coach rather than as a “suspected child predator.” This

is a false claim because Dr. Spanier had no reason to consider Sandusky a suspected child predator in 1999. Sandusky was cleared of any wrongdoing after an investigation involving multiple Commonwealth and County agencies.

- The Freeh Report claims that Dr. Spanier denied that Schultz was present for a February 25, 2001 meeting between Curley and Dr. Spanier. In fact Dr. Spanier did not deny that Schultz was present. He simply told Freeh's investigators he did not remember the meeting at all, recounting what the calendar showed.

228. On July 24, 2012, Freeh issued a document entitled "Errata Sheet," purporting to correct various errors in the Freeh Report. This document was released quietly and with none of the fanfare that accompanied the release of the Report.

229. Although the Errata Sheet identified numerous typos and other errors in the Report, including mixing up of dates and misidentification of the authors of emails, it ignored all of the factual inaccuracies and false accusations identified and itemized for Freeh by Dr. Spanier.

230. Freeh's refusals to correct, retract, or even acknowledge the challenges to the defamatory statements in his Report at the time he issued his Errata Sheet constitute a willful failure to correct false statements despite

knowledge of actual falsity. By refusing to correct or retract the defamatory statements in his Report at the time he issued the Errata Sheet, Freeh chose to double down on the defamatory statements in the Report despite actual knowledge of their falsity or, at a minimum, he acted with a reckless disregard for the truth.

Freeh’s Defamatory Statements Are Repeated And Republished In Other Media Outlets, Compounding The Harm To Dr. Spanier

231. Freeh’s defamation of Dr. Spanier set off a media firestorm.

232. National and local media outlets across the country have republished Freeh’s false and defamatory statements. Just a few of the examples include:

- “Penn State leaders including the late football coach Joe Paterno covered up Jerry Sandusky’s abuse of children for years, showing a callous disregard for the victims to protect a multimillion-dollar football program, former FBI director Louis Freeh said on Thursday. Laying out the conclusions of his eight-month probe into the Sandusky scandal, Freeh singled out former university President Graham Spanier for criticism.... ‘Our most saddening and sober finding is the total disregard for the safety and welfare of Sandusky’s child victims by the most senior leaders at Penn State,’ Freeh said. ‘The most powerful men at Penn State failed to take any steps for 14 years to protect the children who Sandusky victimized.’” -- Dave Warner & Mark Shade, “Scathing report faults Penn State leaders in child sex case,”

CHICAGO TRIBUNE, July 12, 2012, *available at*
http://articles.chicagotribune.com/2012-07-12/sports/sns-rt-us-usa-crime-sanduskybre86b05d-20120711_1_jerry-sandusky-president-graham-spanier-sandusky-scandal

- “The most powerful leaders at Penn State University showed ‘total and consistent disregard’ for child sex abuse victims while covering up the attacks of a longtime sexual predator, according to an internal review into how the school handled a scandal involving its former assistant football coach.... In a scandal that has shaken Pennsylvania residents and gripped the nation, leading to Paterno’s dismissal and the ouster of longtime president Graham Spanier, Louis Freeh, the former FBI director who led the review, said top university officials forged an agreement to conceal Sandusky’s sexual attacks more than a decade ago.” -- Susan Candiotti, *et al.*, “Penn State leaders disregarded victims, ‘empowered’ Sandusky, review finds,” CNN, July 12, 2012, *available at*
<http://www.cnn.com/2012/07/12/us/pennsylvania-penn-state-investigation/>
- “A scathing report that excoriated top Pennsylvania State University officials, including legendary football coach Joe Paterno, for failing to protect boys from a sexual predator sent a warning to other universities about the need to fully disclose suspected crimes on campus.... The 267-

page report, commissioned by university trustees after allegations surfaced about abuse by former assistant football coach Jerry Sandusky, said top Penn State officials, including former President Graham Spanier and the late Mr. Paterno, ‘failed to protect against a child sexual predator harming children for over a decade.’” -- Kris Maher & John W. Miller, “Penn State Concealed Sex Abuse, Report Says,” THE WALL STREET JOURNAL, July 13, 2012, *available at* <http://online.wsj.com/news/articles/SB10001424052702303740704577522603440183734>

Dr. Spanier Has Suffered Significant Reputational, Emotional, And Economic Harm As A Result Of Freeh’s Statements

233. Freeh’s false and defamatory statements regarding Dr. Spanier have caused him severe damage.

234. Dr. Spanier has suffered severe reputational harm as a result of Freeh’s false and defamatory statements. Freeh’s false, malicious and defamatory statements regarding Spanier impugn his well-earned reputation as an educator, university administrator, civic leader, advocate for child and family welfare, and national security expert — and they undermine public confidence in his competence, ethics, and abilities in these areas. Dr. Spanier has spent a lifetime

building his reputation, and Freeh's statements falsely and wrongfully tarnish his strong reputation in these and other areas.

235. Dr. Spanier's reputational harm is presumed because Freeh's statements about him are defamatory *per se* in that those statements — accusing Dr. Spanier of actively and knowingly facilitating the sexual abuse of children by Sandusky — directly connote the commission of a crime. Freeh's statements about Dr. Spanier are also defamatory *per se* because they are directed at Dr. Spanier's fitness for his profession.

236. Freeh's false, malicious, and defamatory statements regarding Dr. Spanier have caused him to endure humiliation and verbal and written personal attacks.

237. Freeh's Report caused the NCAA and Big Ten Conference, organizations Dr. Spanier formerly led, to condemn and censure him.

238. Using the Freeh Report as justification, the University has taken a broad range of punitive actions against Dr. Spanier.

239. Freeh's Report caused Penn State, with the acquiescence of the Board of Trustees, to initiate proceedings to revoke Dr. Spanier's tenure.

240. Freeh's Report caused Penn State to prohibit Dr. Spanier from representing the University in any capacity.

241. Freeh's Report caused Penn State to cancel a course he was scheduled to teach.

242. Freeh's Report caused Penn State to revoke Dr. Spanier's assignment of an office at the University.

243. Freeh's Report caused Penn State to revoke any and all of Dr. Spanier's access to the University and its systems, including cutting him off from the University network and email.

244. Freeh's Report caused Penn State to confiscate Dr. Spanier's computer, laptop, iPad and printer.

245. On July 13, 2012 — the day after the Freeh Report was released — an individual at Penn State arranged to have a "request no contact" code placed on Dr. Spanier's file in the Penn State Alumni Association database, barring Dr. Spanier from receiving communications and mailings from the Alumni Association.

246. Because of the narrative spoken and written by Freeh, Dr. Spanier has been the subject of excoriation by reporters, activists, columnists, editorial writers, and bloggers.

247. Freeh's false, malicious, and defamatory statements regarding Dr. Spanier have caused him economic harm. Because of the narrative spoken and written by Freeh, Dr. Spanier has lost a number of rewarding employment

opportunities, including being forced to resign from a position on the board of directors of a corporation that paid Dr. Spanier handsomely.

248. Freeh's false, malicious, and defamatory statements have caused Dr. Spanier to suffer emotionally and physically.

249. As a direct and proximate result of Freeh's false, malicious and defamatory statements, Dr. Spanier and has been forced to defend himself from criminal charges, brought by prosecutors who worked closely with Freeh.

250. Freeh's infliction of this damage on Dr. Spanier was intentional and outrageous.

Freeh and FGIS Intentionally And Tortiously Interfere With Dr. Spanier's National Security Employment Opportunities

251. Following Dr. Spanier's resignation from the Presidency of Penn State, he was in frequent contact with former colleagues from the FBI, CIA, and other agencies, as well as others in the national security community with whom he had worked throughout his years in that field.

252. A group of national security executives with whom Dr. Spanier had previously worked informed Dr. Spanier that, to thank him for his years of service to the country, they planned to host an event in his honor in Washington, D.C. Dr. Spanier agreed to attend. At the event in Washington, D.C. on May 15, 2012, Dr. Spanier was presented with an honorary "special agent" memento, engraved with

the words: “Your vision, thought leadership, collaboration and accomplishments inspired the U.S. Intelligence and Higher Education communities and fortified our National Security. With great respect and warm gratitude from your colleagues and friends of the NCIS, FBI, and CIA.”

253. Dr. Spanier attended the February 2012 meeting of the National Security Higher Education Advisory Board, which he had a large role in planning with the Department of Homeland Security and the FBI. While in attendance at the meeting, Dr. Spanier was approached about taking on a national security assignment that would span his first post-presidential year. Arrangements were made for the opportunity for Dr. Spanier to serve in contractual capacity on significant projects that the U.S. government felt he was uniquely qualified to undertake. Over the course of the following weeks, Dr. Spanier traveled regularly to Washington and other locations for planning, discussions, and briefings.

254. Beginning in March 2012, Dr. Spanier began to work on two classified projects for the U.S. intelligence community.

255. In late April 2012, however, Dr. Spanier’s national security work opportunities were suddenly withdrawn. At the time, Dr. Spanier did not know why the arrangements he had previously made for such work were terminated.

256. Dr. Spanier would learn in October, 2013, more about the circumstances surrounding the termination of his national security work.

257. In late August 2013, Ryan Bagwell, a Penn State alumnus and founder of the Penn State Sunshine Fund — a grassroots effort aimed at improving transparency of Penn State Board of Trustee actions — obtained, through an inquiry made under Pennsylvania’s Right To Know Law, a copy of an email chain between and among Freeh, FGIS employee Omar McNeil, and Penn State Board of Trustees and Special Investigations Task Force members Kenneth Frazier and Ronald Tomalis. Ryan Bagwell made the April 12, 2012 email chain between Freeh, McNeil, Frazier, and Tomalis public for the first time on October 7, 2013, when he posted an article about the email chain on his personal website.

258. In that email chain, dated April 12, 2012, Freeh, Frazier, and Tomalis discussed Dr. Spanier’s national security employment opportunity. The chain began when Tomalis forwarded Freeh an article from *The Patriot News* reporting that Dr. Spanier would be “working on a special project for the U.S. government relating to national security.” In his email forwarding the article, Tomalis commented: “Seems someone might not have done their homework.”

259. Freeh responded to Tomalis’s email from his FGIS email account, stating: “Very interesting--we have done our job notifying the Federal prosecutors regarding the latest information.” Frazier replied, commenting: “Oh brother...”

260. Upon information and belief, Freeh’s statement responding to Tomalis’s email reflects action taken by Freeh stating, to federal officials, that Dr.

Spanier was not fit for the national security work that he was being employed to undertake.

261. Upon information and belief, Freeh's actions caused a government agency to terminate Dr. Spanier's then-current and prospective business relationship.

262. Prior to Mr. Bagwell's Right To Know Law inquiry, Freeh and Penn State refused to release any emails relating to Freeh's "investigation," including the April 12, 2012 email chain. As such, Dr. Spanier had not seen or been aware of the April 12, 2012 email chain prior to October 7, 2013, nor could Dr. Spanier have seen or been aware of the email chain through the exercise of reasonable diligence.

263. Because Dr. Spanier was not aware of that email chain, he was not aware of Freeh's communications with federal officials about him, and could not have been aware of those communications through the exercise of reasonable diligence.

264. Because Dr. Spanier could not have been aware of the email chain before October 7, 2013, he could not have known before that date that Freeh and FGIS's tortious acts injured him and caused him to lose out on existing and prospective business opportunities.

Penn State Brazenly And Repeatedly Breaches The Separation Agreement

265. In connection with the Freeh engagement and its aftermath, Penn State has willfully and repeatedly breached the Separation Agreement and caused further harm and damage to Dr. Spanier.

266. Although the Separation Agreement expressly prohibits Penn State and its Board of Trustees from making “any negative comments about Dr. Spanier” to the media or any other members of the public, Penn State and certain members of the Board of Trustees have repeatedly done so in breach of the Separation Agreement.

267. As explained herein, Penn State, the Board of Trustees, and the Board’s Special Investigations Task Force hired Freeh and FSS specifically because Freeh was considered the candidate that would make shaping the media narrative “his #1 priority.” Several members of the Board of Trustees were aware, months before the Freeh Report was released, that Freeh intended to defame Dr. Spanier in the report and to publicly issue a report making extraordinarily negative, damaging, and false statements about Dr. Spanier.

268. Penn State not only acquiesced in Freeh’s disparagement of Dr. Spanier, but in fact hired him to do so, and provided material support, encouragement, and facilitation of Freeh’s defamation of Dr. Spanier. The Board’s

Retention Agreement with Freeh in fact contemplates that Freeh would publicly issue a report accusing certain Penn State personnel of failing to report allegations of child sexual abuse, and members of the Board of Trustees knew months before the release of the Freeh Report that Freeh was targeting Dr. Spanier. Penn State knew it should not hire an agent to do that which the University and trustees were contractually forbidden to do, and that such statements by an agent hired by Penn State would breach the Separation Agreement.

269. For example, Penn State Board of Trustees member Keith Masser stated in a June 2012 interview with the Associated Press that Dr. Spanier was “involved in a cover-up” of Sandusky’s criminal activities.

270. Penn State also breached the Separation Agreement in connection with the Freeh engagement by itself publicly releasing the Freeh Report online to a worldwide audience. Following Freeh’s press conference on July 12, 2012, Penn State published the Freeh Report, a copy of Freeh’s prepared remarks, and a video of Freeh’s press conference on the website <http://progress.psu.edu/the-freeh-report>. Notwithstanding the Board’s own failure to assess the credibility of the Freeh Report critically, this remarkably flawed document together with these other materials are still available on Penn State’s website to this day.

271. In connection with the Freeh engagement and the release of the Freeh Report, members of the Penn State administration and the Board of Trustees have

repeatedly and willfully made disparaging comments about Dr. Spanier in breach of the Separation Agreement.

272. In a July 12, 2012 press release concerning the Freeh Report, Penn State stated: “Today’s comprehensive report is sad and sobering in that it concludes that at the moment of truth, people in positions of authority and responsibility did not put the welfare of children first.” The press release also states “Judge Freeh’s report concludes that certain people at the University who were in a position to protect children or confront the predator failed to do so. There can be no ambiguity about that.” Penn State publicly disseminated this press release, thereby effectively accepting its fallacious conclusions on its website at <http://progress.psu.edu/resource-library/story/penn-state-issues-statement-on-freeh-report>.

273. Also on July 12, 2012 Board of Trustees members Kenneth Frazier and Karen Peetz held a press conference along with Penn State President Rodney Erickson in conjunction with the release of the Freeh Report. During that press conference, Penn State permitted Frazier and Peetz to make numerous negative statements about Dr. Spanier, including:

- “Judge Freeh’s Report is both sad and sobering.... Our administrative leadership also failed. Judge Freeh’s Report concludes that at the moment of truth, people who are in a position to protect children, and to confront a

predator – including people at the highest levels of responsibility in the University – specifically, Graham Spanier, Joe Paterno, Tim Curley, and Gary Schultz, did not put the welfare of children first.” (Kenneth Frazier)

- In response to a question about whether the Board felt misled by Dr. Spanier: “I would say that we feel concerned and misled in the entire situation. Though we’re taking responsibility... And so each of the individuals I would say have let us down significantly.” (Peetz)
- In response to questioning about what Frazier wishes he had asked Spanier: “I can’t answer that question because I don’t think it was a question of asking the wrong questions. I think it was a reticence about sharing the information. It’s not a question of, if we’d asked a magic question, these folks would have said, ‘Ok, we’re not going to conceal what’s going on, now that you asked it that way we’ll answer it a different way.’” (Frazier)
- In response to questioning about why the Board didn’t rally behind attempts to get more information from Dr. Spanier: “I’ll make the point again for everybody to understand. In retrospect, we wish that we had pressed upon someone that we had complete trust in. The questions were asked, the answers were given, they were not complete, thorough, open answers. We could have asked more questions but again I want to say its not simply a question of us finding a magic formulation of the question. We asked

enough questions that if someone wanted to share what was going on they could have shared what was going on. Am I clear?" (Frazier)

- In response to a question about whether the Board had too much trust in Spanier: "There is a distinction between board oversight and management. The president of the school has an obligation to make sure that the school is run in an appropriate way and before this issue arose I think Graham Spanier was one of the most respected college presidents in the United States. I would say that we were delighted as a Board to have Graham Spanier as our president. We trusted him based on all external appearances, we believed what we were being told was accurate. In retrospect, we were not told what was being accurate [sic]." (Frazier)

274. Frazier and Peetz held another press conference on the following day, July 13, 2012, again to discuss the release of the Freeh Report. At that press conference, Frazier said of Dr. Spanier: "I think the Report shows that there was a breakdown or gap in terms of some of our oversight as a Board. I think it also says that some people, in a particular instance, because they wanted to avoid bad publicity, might have concealed the criminal acts of Jerry Sandusky."

275. Penn State has also breached the Separation Agreement by failing to allow Dr. Spanier to teach any courses and by failing to provide administrative

support commensurate with that received by other tenured faculty members and former presidents.

276. In preparation for the 2012 fall semester posting of spring semester courses, Dr. Spanier developed a new course. In May 2012 he identified an office location and prepared the paperwork necessary to hire a secretary. President Erickson and Acting Provost Pangborn did not respond to Dr. Spanier's emails about these matters and did not assign Dr. Spanier an office location or allow him to hire a secretary. When the spring course list was posted, Dr. Spanier's name was not on it. On November 2, 2012, Provost Pangborn sent Dr. Spanier a letter notifying Dr. Spanier that he was being placed on an indefinite suspension from any and all teaching duties.

277. On November 14, 2012, Penn State sent individuals to Dr. Spanier's home to confiscate and remove his desktop computer, laptop, iPad, and all associated electronics and means of accessing the Penn State network. IT support personnel were directed to have no contact with Dr. Spanier.

278. Despite the fact that the Separation Agreement expressly requires that Dr. Spanier be provided with the same administrative support as other faculty members, as well as an office on campus and a staff assistant, Penn State has breached the Separation Agreement by knowingly and intentionally failing to so provide.

279. Penn State has also breached the Separation Agreement by failing to pay for selected expenses Dr. Spanier incurred in connection with the Freeh Report, the Grand Jury presentment, and his prosecution based on the false claims in the Freeh Report.

280. Specifically, Dr. Spanier's legal team had to engage a firm to attempt to address the unfathomable reputational harm caused by Freeh's defamatory statements and Penn State's disparaging statements. Penn State has refused to reimburse Dr. Spanier for a substantial portion of this expense.

281. In connection with the Freeh engagement, Dr. Spanier also had to file a lawsuit, suggested by Penn State's legal counsel in the matter, in an attempt to gain access to his own emails, which Penn State provided to Freeh but refused to provide to Dr. Spanier. Penn State and Freeh denied and refused Dr. Spanier's request that he be provided such access in order to aid the Freeh probe and to prepare for Dr. Spanier's own interview with Freeh. Penn State refused to reimburse Dr. Spanier for any of the legal bills associated with this suit.

COUNT I:
DEFAMATION FOR STATEMENTS IN FREEH REPORT
(Against Freeh and FSS)

282. Plaintiff incorporates by reference paragraphs 1 through 281 of this Complaint as if fully set forth herein.

283. Freeh and FSS made false and defamatory statements of fact in the Freeh Report when they stated:

- Dr. Spanier exhibited “total and consistent disregard ... for the safety and welfare of Sandusky’s child victims.”
- Dr. Spanier “failed to protect against a child sexual predator harming children for over a decade.”
- Dr. Spanier “concealed Sandusky’s activities from the Board of Trustees, the University community and authorities.”
- Dr. Spanier “exhibited a striking lack of empathy for Sandusky’s victims by failing to inquire as to their safety and well-being, especially by not attempting to determine the identity of the child who Sandusky assaulted in the Lasch Building in 2001.”
- Dr. Spanier “empowered Sandusky to attract potential victims to the campus and football events by allowing him to have continued, unrestricted and unsupervised access to the University’s facilities and affiliation with the University’s prominent football program.”
- “[I]n order to avoid the consequences of bad publicity, the most powerful leaders at the University — Spanier, Schultz, Paterno, and Curley — repeatedly concealed critical facts relating to Sandusky’s child abuse from the authorities, the University’s Board of Trustees, the Penn State

community, and the public at large. The avoidance of the consequences of bad publicity is the most significant, but not the only, cause for this failure to protect child victims and report to authorities.”

- Dr. Spanier “fail[ed] ... to adequately report and respond to the actions of a serial sexual predator.”
- “The investigation also revealed: [] A striking lack of empathy for child abuse victims by the most senior leaders at the University.”
- Dr. Spanier made “[a] decision ... to allow Sandusky to retire in 1999, not as a suspected child predator, but as a valued member of the Penn State football legacy ... essentially granting him license to bring boys to campus facilities for ‘grooming’ as targets for his assaults.”
- “Despite their knowledge of the criminal investigation of Sandusky [in 1998], Spanier, Schultz, Paterno and Curley took no action to limit Sandusky’s access to Penn State facilities or took any measures to protect children on their campuses.”
- “The investigation also revealed: ... [a] president who discouraged discussion and dissent.”
- “After the February 2001 incident, Sandusky engaged in improper conduct with at least two children in the Lasch Building. Those assaults may well have been prevented if Spanier, Schultz, Paterno and Curley had taken

additional actions to safeguard children on University facilities.”

284. A copy of the Freeh Report is attached to this Complaint as Exhibit A.

285. These defamatory falsehoods were of and concerning Dr. Spanier.

286. These defamatory falsehoods impeach the integrity, virtue, and reputation of Dr. Spanier, exposing him to public hatred, contempt, and ridicule.

287. Freeh and FSS made these defamatory falsehoods with knowledge of their falsity or, at a minimum, with reckless disregard for the truth or falsity of the statements.

288. Freeh and FSS made these defamatory statements intentionally, willfully, maliciously, and in conscious disregard of Dr. Spanier’s rights and reputation, and also of the truth.

289. Freeh and FSS published these defamatory falsehoods in the Freeh Report, which was published to a worldwide internet audience at www.TheFreehReportonPSU.com.

290. These defamatory statements have been repeated and republished in other media outlets, which was reasonably foreseeable to Freeh and FSS, particularly because they employed a public relations firm to ensure the Freeh Report achieved maximum distribution and publicity.

291. These defamatory statements were reasonably understood by those who read them to be statements of fact, of and concerning Dr. Spanier.

292. These defamatory statements are false.

293. These statements are defamatory *per se* because they accuse Dr. Spanier of unlawful conduct.

294. These statements are defamatory *per se* because they impugn Dr. Spanier's fitness for his profession.

295. Freeh's statements were made within the course and scope of his employment by FSS.

296. Freeh and FSS had no privilege to publish the false and defamatory statements, or if they did, Freeh and FSS abused that privilege.

297. In addition to injuries presumed by law, these defamatory falsehoods have injured — and will continue to injure — Dr. Spanier in at least the following ways:

- (a) By impugning Dr. Spanier's professional and personal reputations;
- (b) By ascribing to Dr. Spanier conduct that would adversely affect his fitness for proper conduct as a University administrator;
- (c) By causing Dr. Spanier to be criminally charged for crimes he did not commit;
- (d) By causing Dr. Spanier to lose employment opportunities;
- (e) By subjecting Dr. Spanier to unwanted attention, harassment, and persecution; and

- (f) By causing Dr. Spanier damages in other ways yet to be determined.

298. Freeh and FSS are liable to Plaintiff for compensatory damages arising out of their defamation of the Plaintiff.

299. Freeh and FSS are also liable to Plaintiff for punitive damages because of the wanton and outrageous nature of the defamation.

COUNT II:
DEFAMATION FOR SPOKEN STATEMENTS
DURING THE JULY 12, 2012 PRESS CONFERENCE
(Against Freeh and FSS)

300. Plaintiff incorporates by reference paragraphs 1 through 299 of this Complaint as if fully set forth herein.

301. Freeh and FSS made false and defamatory statements of fact at the July 12, 2012 press conference Freeh stated:

- “Our most saddening and sobering finding is the total disregard for the safety and welfare of Sandusky’s child victims by the most senior leaders at Penn State.”
- “The most powerful men at Penn State failed to take any steps for 14 years to protect the children who Sandusky victimized.”
- “Messrs. Spanier, Schultz, Paterno, and Curley never demonstrated, through actions or words, any concern for the safety and well-being of Sandusky’s victims until after Sandusky’s arrest.”

- “[I]n order to avoid the consequences of bad publicity, the most powerful leaders at Penn State University — Messrs. Spanier, Schultz, Paterno and Curley — repeatedly concealed critical facts relating to Sandusky’s child abuse from the authorities, the University’s Board of Trustees, the Penn State community, and the public at large.”

302. These defamatory falsehoods were of and concerning Dr. Spanier.

303. These defamatory falsehoods impeach the integrity, virtue, and reputation of Dr. Spanier, exposing him to public hatred contempt, and ridicule.

304. Freeh made these defamatory falsehoods with actual knowledge of their falsity or, at a minimum, with reckless disregard for the truth or falsity of the statements.

305. Freeh made these defamatory statements intentionally, willfully, maliciously, and in conscious disregard of Dr. Spanier’s rights and reputation, and also of the truth.

306. Freeh published these defamatory falsehoods during a nationally televised press conference — and to a worldwide internet audience in the form of a video of the press conference.

307. These defamatory statements have been repeated and republished in other media outlets, which was reasonably foreseeable to Freeh and FSS,

particularly because they employed a public relations firm to ensure the press conference achieved maximum distribution and publicity.

308. These defamatory statements were reasonably understood by those who read them to be statements of fact, of and concerning Dr. Spanier.

309. These defamatory statements are false.

310. These statements are defamatory *per se* because they accuse Dr. Spanier of unlawful conduct.

311. These statements are defamatory *per se* because they impugn Dr. Spanier's fitness for his profession.

312. Freeh's statements were made within the course and scope of his employment by the FSS.

313. Freeh had no privilege to publish the false and defamatory statements, or if he did, Freeh abused that privilege.

314. In addition to injuries presumed by law, these defamatory falsehoods have injured — and will continue to injure — Dr. Spanier in at least the following ways:

- (a) By impugning Dr. Spanier's professional and personal reputations;
- (b) By ascribing to Dr. Spanier conduct that would adversely affect his fitness for proper conduct as a University administrator;

- (c) By causing Dr. Spanier to be criminally charged for crimes he did not commit;
- (d) By causing Dr. Spanier to lose employment opportunities;
- (e) By subjecting Dr. Spanier to unwanted attention, harassment, and persecution; and
- (f) By causing Dr. Spanier damages in other ways yet to be determined.

315. Freeh and FSS are liable to Plaintiff for compensatory damages arising out of their defamation of the Plaintiff.

316. Freeh and FSS are also liable to Plaintiff for punitive damages because of the wanton and outrageous nature of the defamation.

COUNT III:
DEFAMATION FOR WRITTEN PREPARED REMARKS
DISTRIBUTED FROM JULY 12, 2012 PRESS CONFERENCE
(Against Freeh and FSS)

317. Plaintiff incorporates by reference paragraphs 1 through 316 of this Complaint as if fully set forth herein.

318. Freeh and FSS made false and defamatory statements of fact in written prepared remarks distributed in connection with the July 12, 2012 press conference when they stated:

- “Our most saddening and sobering finding is the total disregard for the safety and welfare of Sandusky’s child victims by the most senior leaders at Penn State”

- “The most powerful men at Penn State failed to take any steps for 14 years to protect the children who Sandusky victimized.”
- “Messrs. Spanier, Schultz, Paterno, and Curley never demonstrated, through actions or words, any concern for the safety and well-being of Sandusky’s victims until after Sandusky’s arrest.”
- “[I]n order to avoid the consequences of bad publicity, the most powerful leaders at Penn State University — Messrs. Spanier, Schultz, Paterno and Curley — repeatedly concealed critical facts relating to Sandusky’s child abuse from the authorities, the University’s Board of Trustees, the Penn State community, and the public at large.”

319. A copy of the July 12, 2012 written prepared remarks are attached to this Complaint as Exhibit B.

320. These defamatory falsehoods were of and concerning Dr. Spanier.

321. These defamatory falsehoods impeach the integrity, virtue, and reputation of Dr. Spanier, exposing him to public hatred contempt, and ridicule.

322. Freeh and FSS made these defamatory falsehoods with actual knowledge of their falsity or, at a minimum, with reckless disregard for the truth or falsity of the statements.

323. Freeh and FSS made these defamatory statements intentionally, willfully, maliciously, and in conscious disregard of Dr. Spanier's rights and reputation, and also of the truth.

324. Freeh and FSS published these defamatory falsehoods to a worldwide audience by distributing the written remarks in the form of a press release and making the prepared remarks available for download on the internet.

325. These defamatory statements have been repeated and republished in other media outlets, which was reasonably foreseeable to Freeh and FSS, particularly because they employed a public relations firm to ensure the press conference achieved maximum distribution and publicity.

326. These defamatory statements were reasonably understood by those who read them to be statements of fact, of and concerning Dr. Spanier.

327. These defamatory statements are false.

328. These statements are defamatory *per se* because they accuse Dr. Spanier of unlawful conduct.

329. These statements are defamatory *per se* because they impugn Dr. Spanier's fitness for his profession.

330. These statements were made within the course and scope of Freeh's employment by FSS.

331. Freeh and FSS had no privilege to publish the false and defamatory statements, or if they did, Defendants abused that privilege.

332. In addition to injuries presumed by law, these defamatory falsehoods have injured — and will continue to injure — Dr. Spanier in at least the following ways:

- (a) By impugning Dr. Spanier's professional and personal reputations;
- (b) By ascribing to Dr. Spanier conduct that would adversely affect his fitness for proper conduct as a University administrator;
- (c) By causing Dr. Spanier to be criminally charged for crimes he did not commit;
- (d) By causing Dr. Spanier to lose employment opportunities;
- (e) By subjecting Dr. Spanier to unwanted attention, harassment, and persecution; and
- (f) By causing Dr. Spanier damages in other ways yet to be determined.

333. Freeh and FSS are liable to Plaintiff for compensatory damages arising out of their defamation of the plaintiff.

334. Freeh and FSS are also liable to Plaintiff for punitive damages because of the wanton and outrageous nature of the defamation.

**COUNT IV: DEFAMATION FOR STATEMENTS MADE BY
FREEH IN THE FEBRUARY 10, 2013 PRESS RELEASE
(Against Freeh and FSS)**

335. Plaintiff incorporates by reference paragraphs 1 through 334 of this Complaint as if fully set forth herein.

336. Freeh made false and defamatory statements of fact in Freeh's February 10, 2013 Press Release when he stated:

- "As detailed in my report... four of the most powerful officials at Penn State agreed not to report Sandusky's activity to public officials."
- "I stand by our conclusion that four of the most powerful people at Penn State failed to protect against a child sexual predator harming children for over a decade."
- "These men exhibited a striking lack of empathy for Sandusky's victims by failing to inquire as to their safety and well-being, especially by not even attempting to determine the identity of the child who Sandusky assaulted in the Lasch Building in 2001."

337. A copy of the February 10, 2013 press release is attached to this Complaint as Exhibit C.

338. These defamatory falsehoods were of and concerning Dr. Spanier.

339. These defamatory falsehoods impeach the integrity, virtue, and reputation of Dr. Spanier, exposing him to public hatred, contempt, and ridicule.

340. Freeh made these defamatory falsehoods with actual knowledge of their falsity or, at a minimum, with reckless disregard for the truth or falsity of the statements.

341. Freeh made these defamatory statements intentionally, willfully, maliciously, and in conscious disregard of Dr. Spanier's right and reputation, and also of the truth.

342. Freeh published these statements to a worldwide audience by posting them on the internet, and by disseminating them to media outlets such as ESPN.

343. These defamatory statements have been repeated and republished in other media outlets, which was reasonably foreseeable to Freeh, and in fact was his intent.

344. These defamatory statements were reasonably understood by those who read them to be statements of fact, of and concerning Dr. Spanier.

345. These defamatory statements are false.

346. These statements are defamatory *per se* because they accuse Dr. Spanier of unlawful conduct.

347. These statements are defamatory *per se* because they impugn Dr. Spanier's fitness for his profession.

348. Freeh's statements were made within the course and scope of his employment by FSS.

349. Freeh had no privilege to publish the false and defamatory statements, or if he did, Freeh abused that privilege.

350. In addition to injuries presumed by law, these defamatory falsehoods have injured — and will continue to injure — Dr. Spanier in at least the following ways:

- (a) By impugning Dr. Spanier's professional and personal reputations;
- (b) By ascribing to Dr. Spanier conduct that would adversely affect his fitness for proper conduct as a University administrator;
- (c) By causing Dr. Spanier to be criminally charged for crimes he did not commit;
- (d) By causing Dr. Spanier to lose employment opportunities;
- (e) By subjecting Dr. Spanier to unwanted attention, harassment, and persecution; and
- (f) By causing Dr. Spanier damages in other ways yet to be determined.

351. Freeh and FSS are liable to Plaintiff for compensatory damages arising out of their defamation of Plaintiff.

352. Freeh and FSS are also liable to Plaintiff for punitive damages because of the wanton and outrageous nature of the defamation.

**COUNT V: TORTIOUS INTERFERENCE WITH PROSPECTIVE
CONTRACTUAL/BUSINESS RELATIONS**
(Against Freeh and FGIS)

353. Plaintiff incorporates by reference paragraphs 1 through 352 of the Complaint as if fully set forth herein.

354. By contacting federal officials and impugning Dr. Spanier's fitness for federal employment, Freeh tortiously interfered with Dr. Spanier's contractual and prospective business relations with a U.S. government agency.

355. Freeh's statements were made within the course and scope of his employment by FGIS. Freeh acknowledged his interference on an email sent from his FGIS account, and in conference with FGIS investigator Omar McNeil, along with trustees Frazier and Tomalis.

356. Freeh had no privilege to communicate with federal officials regarding Dr. Spanier's employment or, if he did, he abused that privilege.

357. As a result of Freeh's actions, a government agency withdrew Dr. Spanier's contracts, Dr. Spanier was removed from the board of directors of a corporation, and Dr. Spanier additionally lost out on prospective relations that were reasonably certain to occur but for Freeh's tortious act.

358. Freeh and FGIS are liable to Dr. Spanier for compensatory damages arising out of their tortious interference with Dr. Spanier's contractual and prospective business relations.

**COUNT VI: BREACH OF CONTRACT FOR NEGATIVE
COMMENTS IN FREEH REPORT AND FREEH PRESS
CONFERENCE
(Against Penn State)**

359. Plaintiff incorporates by reference paragraphs 1 through 358 of this Complaint as if fully set forth herein.

360. The Separation Agreement between Dr. Spanier and Penn State is a valid and enforceable contract.

361. A copy of the Separation Agreement is attached to this Complaint as Exhibit D.

362. The Separation Agreement prohibits Penn State from making any negative comments about Dr. Spanier to the media, to his professional colleagues, or to any other members of the public.

363. The Separation Agreement requires Penn State to use reasonable efforts to cause the members of the Board of Trustees not to make any negative comments about Dr. Spanier to the media, to his professional colleagues, or to any other members of the public.

364. Penn State has materially breached the Separation Agreement.

365. Penn State breached the Separation Agreement by hiring Freeh and directing Freeh and FSS to publicly accuse Penn State administrators of concealing Sandusky's criminal activities, by encouraging and facilitating Freeh and FSS's

making of the many numerous negative statements about Dr. Spanier set forth in Counts I-III, and by knowingly employing an agent, FSS, to make negative comments about Dr. Spanier despite the Separation Agreement's prohibition on making such statements.

366. Dr. Spanier has performed all of his obligations under the Separation Agreement.

367. Dr. Spanier has been damaged by Penn State's contractual breach by, among other things, having his reputation tarnished, by having negative statements about him widely published and disseminated, by loss of employment opportunities, by having to hire a professional firm to attempt to repair the damage to his reputation, and by having to incur the substantial burden and expense of bringing and pursuing this action in order to enforce his rights under the Separation Agreement.

**COUNT VII: BREACH OF CONTRACT FOR PUBLISHING
FREEH REPORT, THE FREEH PRESS CONFERENCE, AND
FREEH'S JULY 12, 2012 MEDIA STATEMENT
(Against Penn State)**

368. Plaintiff incorporates by reference paragraphs 1 through 367 of this Complaint as if fully set forth herein.

369. The Separation Agreement between Dr. Spanier and Penn State is a valid and enforceable contract.

370. A copy of the Separation Agreement is attached to this Complaint as Exhibit D.

371. The Separation Agreement prohibits Penn State from making any negative comments about Dr. Spanier to the media, to his professional colleagues, or to any other members of the public.

372. The Separation Agreement requires Penn State to use reasonable efforts to cause the members of the Board of Trustees not to make any negative comments about Dr. Spanier to the media, to his professional colleagues, or to any other members of the public.

373. Penn State has materially breached the Separation Agreement.

374. Penn State breached the Separation Agreement by publishing the Freeh Report, a video of the Freeh Press Conference, and the written prepared remarks of Freeh distributed on July 12, 2012 on its website. In doing so Penn State knowingly published the statements about Dr. Spanier identified in Counts I-III.

375. Penn State published these materials to the media and general public with the knowledge that they contain numerous negative comments about Dr. Spanier, despite the Separation Agreement's prohibition on making such statements.

376. Dr. Spanier has performed all of his obligations under the Separation Agreement.

377. Dr. Spanier has been damaged by Penn State's contractual breach by, among other things, having his reputation tarnished, by having negative statements about him widely published and disseminated, by loss of employment opportunities, by having to hire a professional media relations firm to attempt to repair the damage to his reputation, and by having to incur the substantial burden and expense of bringing and pursuing this action in order to enforce his rights under the Separation Agreement.

**COUNT VIII: BREACH OF CONTRACT FOR NEGATIVE
COMMENTS BY KENNETH FRAZIER AND KAREN PEETZ
(Against Penn State)**

378. Plaintiff incorporates by reference paragraphs 1 through 377 of this Complaint as if fully set forth herein.

379. The Separation Agreement between Dr. Spanier and Penn State is a valid and enforceable contract.

380. A copy of the Separation Agreement is attached to this Complaint as Exhibit D.

381. The Separation Agreement prohibits Penn State from making any negative comments about Dr. Spanier to the media, to his professional colleagues, or to any other members of the public.

382. The Separation Agreement requires Penn State to use reasonable efforts to cause the members of the Board of Trustees not to make any negative comments about Dr. Spanier to the media, to his professional colleagues, or to any other members of the public.

383. Penn State has materially breached the Separation Agreement.

384. Penn State breached the Separation Agreement by holding Penn State-organized and sponsored press conferences on July 12, 2012 and July 13, 2012 in which President Erickson, Trustee Kenneth Frazier, and Trustee Karen Peetz made numerous negative comments about Dr. Spanier, including:

- “Judge Freeh’s Report is both sad and sobering.... Our administrative leadership also failed. Judge Freeh’s Report concludes that that the moment of truth, people who are in a position to protect children, and to confront a predator – including people at the highest levels of responsibility in the University – specifically, Graham Spanier, Joe Paterno, Tim Curley, and Gary Schultz, did not put the welfare of children first.” (Kenneth Frazier)
- In response to a question about whether the Board felt misled by Dr. Spanier: “I would say that we feel concerned and misled in the entire situation. Though we’re taking responsibility... And so each of the individuals I would say have let us down significantly.” (Peetz)
- In response to questioning about what Frazier wishes he had asked Spanier:

“I can’t answer that question because I don’t think it was a question of asking the wrong questions. I think it was a reticence about sharing the information. It’s not a question of, if we’d asked a magic question, these folks would have said, ‘Ok, we’re not going to conceal what’s going on, now that you asked it that way we’ll answer it a different way.’” (Frazier)

- In response to questioning about why the Board didn’t rally behind attempts to get more information from Dr. Spanier: “I’ll make the point again for everybody to understand. In retrospect, we wish that we had pressed upon someone that we had complete trust in. The questions were asked, the answers were given, they were not complete, thorough, open answers. We could have asked more questions but again I want to say its not simply a question of us finding a magic formulation of the question. We asked enough questions that if someone wanted to share what was going on they could have shared what was going on. Am I clear?” (Frazier)
- In response to a question about whether the Board had too much trust in Spanier, Frazier said: “There is a distinction between board oversight and management. The president of the school has an obligation to make sure that the school is run in an appropriate way and before this issue arose I think Graham Spanier was one of the most respected college presidents in the United States. I would say that we were delighted as a Board to have

Graham Spanier as our president. We trusted him based on all external appearances, we believed what we were being told was accurate. In retrospect, we were not told what was being accurate [sic].”

- Frazier further said that, “I think the Report shows that there was a breakdown or gap in terms of some of our oversight as a Board. I think it also says that some people, in a particular instance, because they wanted to avoid bad publicity, might have concealed the criminal acts of Jerry Sandusky.”

385. Penn State breached the Separation Agreement by publishing a July 12, 2012 press release on its website in which Penn State stated “Today’s comprehensive report is sad and sobering in that it concludes that at the moment of truth, people in positions of authority and responsibility did not put the welfare of children first,” and that “Judge Freeh’s report concludes that certain people at the University who were in a position to protect children or confront the predator failed to do so. There can be no ambiguity about that.” A copy of this press release is attached to this Complaint as Exhibit E.

386. Penn State knowingly published these negative statements to the media and general public, despite the Separation Agreement’s prohibition on making such statements.

387. Penn State failed to use reasonable efforts to cause Frazier and Peetz not to make negative comments about Dr. Spanier to the media, his professional colleagues, and the public. Penn State in fact organized the press conference and published it on its website, and Penn State President Erickson appeared at and participated in the press conference with Frazier and Peetz.

388. Dr. Spanier has performed all of his obligations under the Separation Agreement.

389. Dr. Spanier has been damaged by Penn State's contractual breach by, among other things, having his reputation tarnished, by having negative statements about him widely published and disseminated, by loss of employment opportunities, by having to hire a professional media relations firm to attempt to repair the damage to his reputation, and by having to incur the substantial burden and expense of bringing and pursuing this action in order to enforce his rights under the Separation Agreement.

**COUNT IX: BREACH OF CONTRACT FOR NEGATIVE
COMMENTS OF TRUSTEE KEITH MASSER**

390. Plaintiff incorporates by reference paragraphs 1 through 389 of this Complaint as if fully set forth herein.

391. The Separation Agreement between Dr. Spanier and Penn State is a valid and enforceable contract.

392. A copy of the Separation Agreement is attached to this Complaint as Exhibit D.

393. The Separation Agreement prohibits Penn State from making any negative comments about Dr. Spanier to the media, to his professional colleagues, or to any other members of the public.

394. The Separation Agreement requires Penn State to use reasonable efforts to cause the members of the Board of Trustees not to make any negative comments about Dr. Spanier to the media, to his professional colleagues, or to any other members of the public.

395. Penn State has materially breached the Separation Agreement.

396. Penn State breached the Separation Agreement by failing to use reasonable efforts to cause Trustees Keith Masser not to make negative comments about Dr. Spanier to the media.

397. Trustee Masser stated in a June 2012 interview with the Associated Press that Dr. Spanier was “involved in a cover-up” of Sandusky’s criminal activities. A copy of this interview is attached to this Complaint as Exhibit F.

398. Penn State undertook no efforts to cause Trustee Masser not to make this negative comment about Dr. Spanier to the media, despite the Separation Agreement’s prohibition on making such statements.

399. Dr. Spanier has performed all of his obligations under the Separation Agreement.

400. Dr. Spanier has been damaged by Penn State's contractual breach by, among other things, having his reputation tarnished, by having Trustee Masser's statement widely published and disseminated in the media, by loss of employment opportunities, by having to hire a professional media relations firm to attempt to repair the damage to his reputation, and by having to incur the substantial burden and expense of bringing and pursuing this action in order to enforce his rights under the Separation Agreement.

**COUNT X: BREACH OF CONTRACT FOR NEGATIVE
COMMENTS OF TRUSTEES TO THE NEW YORK TIMES
(Against Penn State)**

401. Plaintiff incorporates by reference paragraphs 1 through 400 of this Complaint as if fully set forth herein.

402. The Separation Agreement between Dr. Spanier and Penn State is a valid and enforceable contract.

403. A copy of the Separation Agreement is attached to this Complaint as Exhibit D.

404. The Separation Agreement prohibits Penn State from making any negative comments about Dr. Spanier to the media, to his professional colleagues, or to any other members of the public.

405. The Separation Agreement requires Penn State to use reasonable efforts to cause the members of the Board of Trustees not to make any negative comments about Dr. Spanier to the media, to his professional colleagues, or to any other members of the public.

406. Penn State has materially breached the Separation Agreement.

407. Penn State breached the Separation Agreement by failing to use reasonable efforts to cause thirteen members of the Board of Trustees not to meet with the New York Times in January 2012 and make numerous negative comments about Dr. Spanier. A copy of the January 2012 New York Times story is attached as Exhibit G.

408. During a pre-planned, in-person, group interview with a New York Times reporter in New Jersey on January 18, 2012, the Trustees made the following statements about Dr. Spanier, all of which breach the Separation Agreement:

- “The trustees, over three hours, described how they had felt blindsided by Spanier’s failure to keep them informed of the nature and scope of the Pennsylvania attorney general’s investigation of Sandusky, along with the

investigation of university officials.”

- “The trustees on [a Saturday, November 5, 2011 conference call] who had read the details of the charges against Sandusky and the two senior university officials felt a distinct lack of urgency by the university. Many were irked that Spanier had released a statement in full support of Curley and Schultz, who were indicted for perjury. The trustees were floored, they said, that Spanier did not seem to recognize the severity of the situation.”
- “The trustees quickly realized that Spanier had chosen not to keep them informed.”
- “The trustees said this week that they were disappointed that Spanier, who was legally allowed to speak about his grand jury testimony, did not brief the board on the nature of the questions by the grand jury about the 2002 episode. ‘He should have told us a lot more,’ [Trustee] Lubert said. ‘He should have let us know much more of the background. He was able to legally share his testimony and I think that he had an obligation to do that with the board so we could get more engaged with the problem.’”
- “Part of being a leader at this level is to be a risk manager and to think through what might happen,’ the trustee Karen B. Peetz, an executive with Bank of New York Mellon, said of Spanier.”
- “The Sunday meeting ended with the trustees eager to issue a news release,

expressing a commitment to a full internal investigation and sympathy for any victims. In the interviews this week, they accused Spanier of having altered the release.”

409. Penn State undertook no efforts to cause the trustees not to make these negative comments about Dr. Spanier to the media, despite the Separation Agreement’s prohibition on making such statements.

410. Dr. Spanier has performed all of his obligations under the Separation Agreement.

411. Dr. Spanier has been damaged by Penn State’s contractual breach by, among other things, having his reputation tarnished, by having the trustee’s statements widely published and disseminated in the media, by loss of employment opportunities, by having to hire a professional media relations firm to attempt to repair the damage to his reputation, and by having to incur the substantial burden and expense of bringing and pursuing this action in order to enforce his rights under the Separation Agreement.

**COUNT XI: BREACH OF CONTRACT FOR FAILURE TO
PROVIDE ADMINISTRATIVE SUPPORT**

412. Plaintiff incorporates by reference paragraphs 1 through 411 of this Complaint as if fully set forth herein.

413. The Separation Agreement between Dr. Spanier and Penn State is a valid and enforceable contract.

414. A copy of the Separation Agreement is attached to this Complaint as Exhibit D.

415. The Separation Agreement requires Penn State to provide Dr. Spanier computer access, IT support, administrative support commensurate with that provided to other tenured faculty members and University Professors, an office, and a staff assistant.

416. Penn State has materially breached the Separation Agreement.

417. Penn State has not provided Dr. Spanier with computer access or IT support. Penn State in fact confiscated from Dr. Spanier his University-issued desktop computer, laptop computer, and iPad, and cut off his ability to access the Penn State network.

418. Penn State has not provided Dr. Spanier with administrative support commensurate with that provided to other faculty members and former presidents. Penn State in fact has not provided Dr. Spanier with any administrative support.

419. Penn State has not provided Dr. Spanier with an office or a staff assistant. Penn State has knowingly and intentionally ignored Dr. Spanier's requests for an assigned office space and a staff assistant.

420. Dr. Spanier has performed all of his obligations under the Separation Agreement.

421. Dr. Spanier has been damaged by Penn State's contractual breach by, among other things, having no access to the University network, by having no ability to teach courses or otherwise work as a tenured University Professor as required by the Separation Agreement, and by having to incur the substantial burden and expense of bringing and pursuing this action in order to enforce his rights under the Separation Agreement.

**COUNT XII: BREACH OF CONTRACT FOR FAILURE TO PAY
LEGAL FEES AND EXPENSES**

422. Plaintiff incorporates by reference paragraphs 1 through 421 of this Complaint as if fully set forth herein.

423. The Separation Agreement between Dr. Spanier and Penn State is a valid and enforceable contract.

424. A copy of the Separation Agreement is attached to this Complaint as Exhibit D.

425. The Separation Agreement requires Penn State to reimburse Dr. Spanier for attorneys fees and expenses incurred in connection with matters relating to the grand jury presentment and his termination from the position of President of the University, and to indemnify Dr. Spanier for all legal fees and expenses with respect to acts or omissions occurring while he was serving as President of Penn State.

426. Penn State has materially breached the Separation Agreement.

427. Penn State breached the Separation Agreement by failing to reimburse Dr. Spanier for his law firm's expenses for consultant services to defend Dr. Spanier's reputation and address the damage caused by Penn State, Freeh, and FSS, and the cost of having to initiate a federal lawsuit to gain access to his email in order to properly defend himself against the damaging statements made by Penn State, Freeh, and FSS.

428. Dr. Spanier has performed all of his obligations under the Separation Agreement.

429. Dr. Spanier has been damaged by Penn State's contractual breach by, among other things, having to expend funds to defend himself from the very false and damaging statement sanctioned and published by Penn State in the Freeh Report, having to expend funds to initiate and prosecute the lawsuit to obtain his own emails that Penn State provided to Freeh, and by having to incur the substantial burden and expense of bringing and pursuing this action in order to enforce his rights under the Separation Agreement.

PUNITIVE DAMAGES

430. The actions or omissions of Freeh and FSS set forth in this Complaint demonstrate malice, egregious defamation, and insult. Such actions or omissions by Freeh and FSS were undertaken with either: (1) maliciousness, spite, ill will, vengeance, or deliberate intent to harm Dr. Spanier; or (2) reckless disregard of the

falsity of the speech and its effects on Dr. Spanier. Accordingly, Plaintiff requests an award of punitive damages and attorneys' fees beyond and in excess of those damages necessary to compensate Plaintiff for injuries resulting from Freeh and FSS's conduct.

PRAYER FOR RELIEF

431. Plaintiff prays that this Court provide the following relief:

- (a) Compensatory and consequential damages for detraction from good name and reputation and for injuries to Dr. Spanier's professional standing;
- (b) Punitive damages to punish Freeh and FSS's reprehensible conduct and to deter its future occurrence;
- (c) Compensatory damages for Freeh and FGIS's tortious interference;
- (d) Damages for Penn State's breach of contract;
- (e) Costs and fees incurred in the prosecution of this action;
and
- (f) Further relief as this Court shall deem just and proper.

JURY TRIAL DEMAND

432. Plaintiff demands a trial by jury on all issues so triable.

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Attorneys for Plaintiff Graham B. Spanier

Dated: March ____, 2015

VERIFICATION

I verify that the statements made in the foregoing Complaint are true and correct to the best of my knowledge, information, and belief. I understand that any false statements herein are made subject to the penalties of 18 Pa. C.S. § 4904, relating to unsworn falsification to authorities.

Date: _____

Dr. Graham B. Spanier