

**Timothy K. Lewis
Schnader Harrison Segal & Lewis
Press Conference Remarks on Behalf of
Dr. Graham B. Spanier
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Since last November, shortly before he voluntarily resigned as President of Penn State University, it has been my honor to represent Dr. Graham B. Spanier, a nationally and internationally acclaimed leader in higher education.

Dr. Spanier has enjoyed a well-earned reputation for integrity and innovation – an unimpeachable reputation. This, along with his unparalleled commitment to the great University he led for 16 years, its students, its faculty, its Trustees, and its alumni, has brought him recognition from his peers as among the truly outstanding University presidents of his era.

The privilege of representing Dr. Spanier is shared by me; my colleague here at Schnader Harrison Segal and Lewis, Liz Ainslie; and Pete Vaira and Jack Riley of the firm Vaira and Riley.

We have come to know this man quite well. He is a talented individual and an exceptional human being who, in the wake of one of the most horrible scandals to saddle any institution, has suffered greatly, and undeservedly.

My name is Tim Lewis. Like Judge Freeh, I am a former United States District Court Judge. In fact, he and I were appointed to the federal bench in the same year, 1991. I am also a former Judge on the United States Court of Appeals for the Third Circuit.

Also like Judge Freeh, I am a former federal prosecutor. So is each of my colleagues. Pete Vaira is a 15 year veteran of the United States Department of Justice, having served 10 years in the Organized Crime Section and 5 years as the United States Attorney for the Eastern District of Pennsylvania. Jack Riley and Liz Ainslie worked as Assistant U.S. Attorneys during Pete's tenure. Each of us has received some special recognition for our work as prosecutors.

I give you this background so you may be assured we are quite familiar with the difference between an “independent, full and complete investigation,” which the University commissioned Judge Freeh to perform, and the blundering and indefensible indictment he and his staff produced.

I give you my background so you may be assured that I know the difference between a balanced, fair and judicious assessment of evidence, on the one hand, and a flat-out distortion of facts so infused with bias and innuendo that it is, quite simply, unworthy of the confidence that has been placed in it, let alone the reported \$6.5 million the University paid for it. And Judge Freeh should have known that difference, too.

It pains me to say this. Former federal judges are usually a reserved and supportive fraternity. There are so few of us, and we share a unique bond in having been privileged to serve. And I have respected Judge Freeh. I have admired his distinguished service to our nation. My colleagues and I have been in the same trenches he has. Like us, he has devoted a significant part of his career to helping ensure that justice will prevail after a full and complete and honest review of available evidence.

But he has failed here. There is nothing “full or complete” about the Freeh Report. Nor am I aware of any court in the land that would accept such unsupported and outrageous conclusions as “independent,” or any judge who would put his or her name behind them. It is now apparent that Judge Freeh was not an “independent investigator,” but a self-anointed accuser who, in his zeal to protect victims of wrongdoing from a monster, recklessly and without justification created victims of his own.

Among these are a dead man who he knew could not respond; two individuals under indictment who he also knew could not at this point respond; and a former University president who is not only going to respond but who, today, welcomes the opportunity to do so.

The Freeh Report, as it pertains to Dr. Spanier, is a myth. And that myth, along with the free pass its author has enjoyed thus far, ends today.

We now know what a terrible, sick, depraved monster Jerry Sandusky has been for decades. The sheer weight of the damage he inflicted upon countless victims is unfathomable, and unforgiveable. We pray for those victims, and for their recovery. And Dr. Spanier, himself a victim of child abuse, would

have been the first to have acted had he known in 1998 or in 2001, or at any other time, that a predator of this ilk lurked on or anywhere near the Penn State campus.

The Freeh Report, with no evidence to support its conclusion, says he did know. The truth makes clear that he did not. Sadly, much of the truth was either deliberately omitted from the Report or manipulated into a shrill distortion. And the irony is that while this Report attempts to portray Dr. Spanier as having engaged in a conspiracy to conceal information, a closer inspection confirms that if anyone is guilty of concealment it isn't Dr. Spanier; it is Judge Freeh.

There are many instances of this but I am going to specifically focus on two main events cited in the Report: an incident in 2001, and another in 1998.

A centerpiece of Judge Freeh's investigation was the claim that Mike McQueary told Penn State officials that he had observed Sandusky sexually abusing a minor in a shower in the Lasch building February, 2001. He concludes that to avoid bad publicity, Dr. Spanier along with Curley, Schultz and Paterno, "repeatedly concealed critical facts relating to Sandusky's abuse," thereby exhibiting "[a] striking lack of empathy for child abuse victims."

But let's take a closer look at the audacious leaps, with no supporting evidence, that Judge Freeh's Report takes to reach that scathing conclusion:

- 1. It assumes that McQueary explicitly reported a sexual act to Coach Paterno;**
- 2. It then assumes that either Paterno or McQueary reported a sexual act to either Curley, Schultz or both;**
- 3. It next assumes that either Curley or Schultz reported a sexual assault to Dr. Spanier.**

Curley and Schultz have denied that they ever told Dr. Spanier anything of the sort.

In his five hour interview by Judge Freeh, Dr. Spanier unequivocally denied that he had ever heard a report about a sexual act involving a child. He said

exactly what Coach Paterno reported, and repeated even after he was fired by the Board: all that McQueary told him was that there was some sort of “horseplay” going on. “Horseplay” was referred to over and over again, but never with any sexual connotation or suggestion of abuse.

But the Judge paid no attention to that or to the fact that an extensive national security clearance review was conducted in 2012 as a result of the Commonwealth’s investigation, and Dr. Spanier’s security clearance was confirmed. The investigation concluded he was telling the truth. Apparently, none of this was good enough for the independent investigator, either, who instead credited McQueary’s preliminary hearing testimony as a basis for rejecting this exculpatory evidence.

Yet Judge Freeh never made any independent assessment of McQueary’s testimony or of anything else he said, and we know McQueary said different things on different occasions. Judge Freeh didn’t even interview McQueary. Nor did he cite his trial testimony in his Report. Why? Perhaps because he knew that if he had done all of that, it would have been next to impossible to sustain the conclusions he was already intent on reaching.

Even less excusable but more revealing is this: Judge Freeh knew that an honest resolution of what happened in that shower, and thus what could have been told by McQueary to Coach Paterno, and then by Paterno to Curley and Schultz, and then, perhaps, by them to Dr. Spanier, rested upon corroborating evidence. That corroborating evidence was readily available, and Judge Freeh knew where to find it.

Dr. Jonathan Dranov, a close friend to the McQueary family who heard McQueary’s first-hand account of what happened just hours after the incident occurred, and who testified at Sandusky’s trial, has consistently stated that he asked McQueary if he had witnessed any sexual contact or abuse. McQueary replied, unequivocally, “no.” Moreover, the law requires any Doctor who receives information about the sexual abuse of a child to report it immediately. Nothing McQueary told Dr. Dranov suggested to the Doctor a need to do so.

Judge Freeh does not mention this in his Report. Nor does he mention that the jury acquitted Sandusky of this count. Most important, he doesn’t mention or explain why he never even bothered to interview Dr. Dranov, even

though he knew what he would have said. Yet he has the audacity to accuse Dr. Spanier of concealing important information.

Nonetheless, and despite the fact that there is no evidence that contradicts Dr. Spanier's consistent and repeated statements – to the grand jury, to the Attorney General, to Judge Freeh, to the Board of Trustees, and to any and everyone else who would listen – that he was never told of any sexual acts involving Sandusky and a child, Judge Freeh repeatedly, and with no basis whatsoever, charges Dr. Spanier with knowledge of and participation in a sinister cover-up of the sexual abuse of children.

This can only be seen as a cynical attempt by a biased investigator to pile speculation on top of innuendo in order to support his version of the truth. It is sad. But there is more.

In a tortured effort to accuse Dr. Spanier of failing to respond to a 1998 incident involving Sandusky, Judge Freeh first acknowledges that the matter was investigated by police and child protective agencies; that no charges were filed; and that the investigation determined that no sexual assault had occurred. But then, disregarding all of that, he does an about-face and accuses Dr. Spanier of:

- 1. Failing to take action to limit Sandusky's access to facilities;**
- 2. Failing to take measures to protect children on the campus;**
- 3. Trying to avoid bad publicity by repeatedly concealing facts regarding Sandusky's child abuse from authorities, the Board of Trustees, the Penn State community, and the public at large; and,**
- 4. Disregarding the safety and welfare of Sandusky's victims.**

Now, I suppose in 2012 it is not too difficult to look back 14 years and, knowing what we now know about Sandusky, want for the President of the University to have taken some action. But let's take a look at all that was known at that time:

- 1. Sandusky was a revered coach and upstanding member of the community, with no history of suspicious behavior;**

- 2. A claim – a claim that could be made against anyone – was made.**
- 3. That claim was investigated by child abuse experts, the police and the District Attorney;**
- 4. The authorities responsible for investigating these matters – particularly the police and the DA – determined that nothing happened that warranted any action.**

In light of all of that, for an investigator to find a grand conspiracy to actively conceal child abuse or to allow a predator to roam free is nothing short of absurd. Such sophistry could only be produced by the mind of a results-oriented investigator operating through the misleading prism of hindsight, and influenced by a grand jury presentment with significant problems of its own.

The authorities investigated the 1998 incident and dismissed it as not constituting a crime. Yet Judge Freeh suggests a failure to report criminal behavior or to take steps to protect against it. What was there to conceal, by Dr. Spanier or anyone else, and from whom?

Judge Freeh goes so far as to criticize Dr. Spanier for “[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 . . .”

It is difficult to comprehend how someone who once served as a judge and is now acting as an allegedly independent, presumably unbiased, investigator can conclude that a person who has been fully cleared – by every level of authority there is – nonetheless remains a “suspect.”

Judge Freeh also concluded, without citation to any evidence, that “Spanier, Schultz, Paterno and Curley were kept informed of the investigation.” He singles out Dr. Spanier for failing to limit Sandusky’s access and not declaring him a “persona non grata” based upon the 1998 incident.

I’ve already explained why this is a preposterous and irresponsible conclusion. It bears mentioning, however, that Dr. Spanier was copied on only two emails related to this matter which simply stated that the investigation had concluded there was no criminal behavior and the matter was closed. There is no evidence that Dr. Spanier ever replied to these emails,

participated in any meetings about them, or was in any other way “kept informed” of the 1998 investigation.

There are many more examples of glaring oversights, indefensible exclusions of exculpatory evidence, leaping to conclusions with no basis except the biased opinion of the author, credibility determinations in the face of countervailing evidence, all of which render this Report precisely what I said it was as it relates to Dr. Spanier: a myth. Many of these are documented in more detail in the report we are providing you today, which is a summary of our investigation of the investigation. We hope you will give as much voice to what we have uncovered as you gave to Judge Freeh’s erroneous conclusions.

The truth is that Dr. Spanier, consistent with his nature, his ethics and his concern for his University, has tried to cooperate; was anxious to talk to Judge Freeh; voluntarily appeared before the grand jury; and has not ever – not once – wavered from what the facts make clear: he was never told that there was anything of a sexual nature involving Jerry Sandusky and a minor. Had he known, he would have taken immediate action. And there was never any effort or conspiracy to conceal anything from anyone.

This matter involves a serial predator; a monster; a master manipulator who fooled everyone, including the police and the District Attorney. That is how these types of criminals are able to go undetected for so long. And it appears this man was able to fool his Head Coach, his players, officials at the University, possibly even his wife. But there is no evidence to suggest Dr. Spanier knew or should have known what the Freeh Report claims today. It is easy to make irresponsible accusations now that we know everything about Sandusky. But as I said and as we will continue to make clear, there is no evidence to support them. And in, fact the evidence establishes otherwise.

A truly independent, unbiased investigation would have come to that conclusion. Unfortunately and quite obviously, that is not what occurred here.

We hope you will continue to examine carefully and critically the manner in which this investigation was conducted, the conclusions it reached with respect to Dr. Spanier, and the fall-out it has engendered. Penn State University deserved better. The Commonwealth of Pennsylvania deserved better. The victims of Jerry Sandusky’s heinous crimes deserved far better.

And Graham Spanier deserved better. Each deserved an unbiased search for the truth, and not this unfortunate rush to judgment.