



REPORT TO THE ATTORNEY GENERAL  
ON THE INVESTIGATION OF GERALD A. SANDUSKY

May 30, 2014<sup>\*</sup>

H. Geoffrey Moulton, Jr.  
Special Deputy Attorney General

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<sup>\*</sup> As amended, June 23, 2014.

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## RESPONSES

Jonelle Eshbach

Governor Thomas Corbett

William H. Ryan, Jr., Richard A. Sheetz, Jr., Randy P. Feathers, Frank G. Fina, Joseph E. McGettigan

Colonel Frank Noonan

Glenn A. Parno

A.F., A.F.’s Mother, A.F.’s Psychologist

Michael Angelelli

Dr. John R. Raykovitz and Katherine Genovese

## **INTRODUCTION**

On June 22, 2012, Gerald A. Sandusky was convicted of sexually abusing 10 pre-teen and teenaged boys. The Centre County jury, having heard the compelling testimony of eight courageous victims, as well as important evidence concerning two other victims, found Sandusky guilty of 45 of the 48 counts it had been asked to consider. On October 9, 2012, the trial court imposed an aggregate sentence of 30 to 60 years' imprisonment. Sandusky's conviction and sentence have been affirmed on appeal. Despite that unquestionably successful final result – Sandusky is likely to spend the rest of his life in prison – members of the public, along with legislators, commentators, and others, raised concerns about the investigation that led to Sandusky's arrest and conviction. Most of those concerns centered on the length of the investigation, which began in November 2008, was transferred to the Office of Attorney General ("OAG") in March 2009, and did not result in charges until November 2011. That passage of time led to concern and speculation, publicly voiced almost immediately after charges were filed.<sup>1</sup> Why did the investigation take as long as it did? Was the time consumed necessary to put together a viable case, or were there other explanations? Other aspects of the investigation raised questions as well, including whether school district officials properly handled the initial

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<sup>1</sup> See, e.g., Sara Ganim, *Patriot-News Special Report: Inside the Jerry Sandusky Investigation – Why Did It Take So Long?*, PENNLIVE, Nov. 13, 2011, [http://www.pennlive.com/midstate/index.ssf/2011/11/special\\_report\\_why\\_the\\_jerry\\_s.html](http://www.pennlive.com/midstate/index.ssf/2011/11/special_report_why_the_jerry_s.html); Will Bunch, *Did Corbett React too Slowly?*, PHILLY.COM, Nov. 15, 2011, [http://articles.philly.com/2011-11-15/news/30401771\\_1\\_probe-jerry-sandusky-penn-state-football-assistant](http://articles.philly.com/2011-11-15/news/30401771_1_probe-jerry-sandusky-penn-state-football-assistant); Dennis Owens, *Corbett Again Defends Length of Sandusky Investigation*, ABC27 WHTM, Nov. 21, 2011, <http://www.abc27.com/story/16094517/corbett-again-defends-length-of-sandusky-investigation>; Robert Swift, *House Caucuses Spar Over Sandusky Case*, THETIMES-TRIBUNE.COM, Oct. 9, 2012, <http://thetimes-tribune.com/news/house-caucuses-spar-over-sandusky-case-1.1385184>; Charles Thompson, *Pennsylvania House Democrat Leaders Advance Attack On Corbett's Probe of Sandusky*, PENNLIVE, Oct. 17, 2012, [http://www.pennlive.com/midstate/index.ssf/2012/10/post\\_451.html](http://www.pennlive.com/midstate/index.ssf/2012/10/post_451.html).

complaint in 2008,<sup>2</sup> and whether investigators' actions were consistent with best practices in the investigation of child abuse cases.

While some might question the need for an examination of an investigation with such a successful outcome, effective organizations have long understood the importance of reviewing, understanding, and evaluating past performance as a means to improving future performance.<sup>3</sup> Moreover, public institutions, including prosecutors' offices, are accountable to the public.<sup>4</sup> If substantial numbers of people question the efficacy or motives of the Office of Attorney General, then the rule of law is undermined.<sup>5</sup> I hope that this report, by describing the course of the Sandusky investigation as fully and accurately as possible and addressing legitimate public

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<sup>2</sup> See, e.g., Jim Runkle, *Scandal May Include Keystone Central*, SUNGAZETTE.COM, Nov. 12, 2011, <http://www.sungazette.com/page/content.detail/id/570961/Scandal-may-include-Keystone-Central.html?nav=5011>. But cf. *No Cover-Up By School Officials, Sources Say*, THE EXPRESS, Nov. 15, 2011, <http://www.lockhaven.com/page/content.detail/id/535243/No-cover-up-by-school-officials--sources-say.html?nav=5180>. See also Jim Runkle, *Victim's Mother: I Have Proof School Delayed Reporting Sandusky Abuse*, SUNGAZETTE.COM, Nov. 2, 2012, <http://sungazette.com/page/content.detail/id/585275/Victim-s-mother--I-have-proof-school-delayed-reporting-Sandusky-abuse.html>; Sara Ganim, *'They Didn't Believe Me': Jerry Sandusky Victim's Allegations Ignored In Hometown Of Lock Haven*, PENNLIVE, Nov. 3, 2012, [http://www.pennlive.com/midstate/index.ssf/2012/11/jerry\\_sandusky\\_victims\\_allegat.html](http://www.pennlive.com/midstate/index.ssf/2012/11/jerry_sandusky_victims_allegat.html); Kevin Johnson, *Pa. Reviewing Original Sandusky Allegation: "Victim 1" and Mother Say High School Did Not Handle The Report Of Sexual Abuse Properly*, USA TODAY, Oct. 8, 2013, <http://www.usatoday.com/story/news/nation/2013/10/07/pa-reviewing-original-sandusky-allegation-/2940009/>; SILENT NO MORE: VICTIM 1'S FIGHT FOR JUSTICE AGAINST JERRY SANDUSKY (2012).

<sup>3</sup> See, e.g., David A. Garvin, *Building a Learning Organization*, HARVARD BUSINESS REVIEW, July-August 1993; Neal J. Roesse & Kathleen D. Vohs, *Hindsight Bias*, 7 PERSPECTIVES ON PSYCHOLOGICAL SCIENCE 411, 412 (2012) ("Individuals and organizations innovate, thrive, and prosper when they analyze mistakes and adjust their strategies accordingly.").

<sup>4</sup> See, e.g., Daniel C. Richman, *Old Chief v. United States: Stipulating Away Prosecutorial Accountability?*, 83 VA. L. REV. 939, 963 (1997) ("Accountability may be important for all public servants in a democracy, but it is of particular significance for an official charged with selecting targets for 'community condemnation.'"); NATIONAL PROSECUTION STANDARDS §§ 2-6 cmt. at 25, 2-14 cmt. at 41 (Nat'l Dist. Attorneys Ass'n, 3d ed. updated 2009), available at <http://www.ndaa.org/pdf/NDAA%20NPS%203rd%20Ed.%20w%20Revised%20Commentary.pdf>; Ronald F. Wright & Marc L. Miller, *The Worldwide Accountability Deficit for Prosecutors*, 67 WASH. & LEE L. REV. 1587 (2010).

<sup>5</sup> Public accountability does not mean that prosecutorial decisions should be driven by public sentiment. See, e.g., William J. Stuntz, *The Pathological Politics of Criminal Law*, 100 MICH. L. REV. 505, 509 (2001) (observing that political pressure may lead prosecutors to favor voter preferences rather than justice); Anthony C. Thompson, *It Takes A Community to Prosecute*, 77 NOTRE DAME L. REV. 321, 348-49 (2002) ("Some might contend that placing too much emphasis on community sentiment could undermine the detachment the prosecutor needs in order to exercise discretion and fulfill the role of minister of justice. . . . Enhanced proximity to and collaboration with the community, if not handled in the right way, could result in prosecutors becoming too accountable or too susceptible to influence.").

concerns, will serve both to enhance public trust in the Office of Attorney General and the rule of law and to help improve, where necessary, the law-enforcement and protective-services response to allegations of child sexual abuse. One undoubted silver lining of the Sandusky case is that it dramatically raised public awareness of child sexual abuse<sup>6</sup> and prompted important changes in both law and practice, particularly in Pennsylvania.<sup>7</sup> This report, in addition to describing the course of the Sandusky investigation, makes specific recommendations designed to build on the significant changes that have already taken place.

### **SCOPE**

When compared to the vast range of issues raised by Sandusky's crimes, the scope of this report is narrow. It covers the time period from the initial complaint by a 15-year-old high school student (Victim 1 in the Sandusky presentment) in November 2008 through the filing of charges in November 2011. Within that three-year time period, it focuses on the actions of law enforcement, and to a lesser extent on the actions of child protective services and school officials.<sup>8</sup> The report does not address the wide range of issues, many of them vitally important, that fall outside of that scope. The largest set of Sandusky-related questions not addressed here

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<sup>6</sup> See, e.g., Kate Giammarise, *Reporting Level Of Suspected Child Abuse In Pennsylvania At Highest: State Officials Say Better Awareness*, PITTSBURGH POST-GAZETTE, June 1, 2013, <http://www.post-gazette.com/news/state/2013/06/01/Reporting-level-of-suspected-child-abuse-in-Pennsylvania-at-highest.print>; Jennifer Carboni, *Reports of Child Abuse On The Rise*, DAILY LOCAL NEWS, Mar. 1, 2012, <http://www.dailylocal.com/article/DL/20111204/NEWS/312049961>; DPW: *ChildLine Calls Hit Record High*, Capitol Watch for Children: An Update On State and Federal Policies Affecting Pennsylvania's Children (Pennsylvania Partners for Children, Harrisburg, Pa.), June 2013, at 7-8.

<sup>7</sup> See, e.g., JOINT STATE GOVERNMENT COMMISSION – GENERAL ASSEMBLY OF THE COMMONWEALTH OF PENNSYLVANIA, *CHILD PROTECTION IN PENNSYLVANIA: PROPOSED RECOMMENDATIONS*, REPORT OF THE TASK FORCE ON CHILD PROTECTION, at 8-11 (2012), available at <http://jsg.legis.state.pa.us/resources/documents/ftp/publications/2012-285-Child%20Protection%20Report%20FINAL%20PDF%2011.27.12.pdf>; Myles Snyder, *Corbett Signs Bills to Update Pa. Child Abuse Laws*, ABC27 WHTM, Dec. 18, 2013, <http://www.abc27.com/story/24251579/corbett-signs-bills-to-update-pa-child-abuse-laws>; The Associated Press, *Tom Corbett Signs Child-Abuse Laws Inspired by Jerry Sandusky, Priest Cases*, PENNLIVE, Dec. 18, 2013, [http://www.pennlive.com/midstate/index.ssf/2013/12/tom\\_corbett\\_jerry\\_sandusky.html](http://www.pennlive.com/midstate/index.ssf/2013/12/tom_corbett_jerry_sandusky.html).

<sup>8</sup> The report does not address Sandusky's trial, other than to note the final outcome and refer to testimony relevant to the conduct of the investigation.

are those concerned with the conduct of Pennsylvania State University (“Penn State” or “PSU”) and its officials, including issues that bear directly on the pending charges against former administrators Graham Spanier, Gary Schultz, and Timothy Curley. While the report does briefly discuss, where relevant, Penn State’s response to law enforcement inquiries from November 2008 through November 2011, it does not address other issues, such as Penn State’s handling of earlier allegations against Sandusky, Penn State’s response to the filing of charges,<sup>9</sup> or Penn State’s handling of sexual assault allegations more generally.<sup>10</sup> Nor does it address an extensive array of other matters, such as the decision by the Centre County District Attorney in 1998 not to file charges against Sandusky, or the general efficacy or propriety of the operations of The Second Mile.

### **METHODOLOGY**

A comprehensive inquiry into the investigation of Sandusky required both a review of all relevant and available documents and interviews of those persons who could help explain what happened over the course of the investigation. David Peifer, OAG Special Agent in Charge, Bureau of Special Investigations,<sup>11</sup> and I reviewed tens of thousands of pages of documents,

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<sup>9</sup> Many of these issues have been the subject of extended analysis elsewhere. See, e.g., FREEH SPORKIN & SULLIVAN, LLP, REPORT OF THE SPECIAL INVESTIGATIVE COUNSEL REGARDING THE ACTIONS OF THE PENNSYLVANIA STATE UNIVERSITY RELATED TO THE CHILD SEXUAL ABUSE COMMITTED BY GERALD A. SANDUSKY (2012), available at [http://progress.psu.edu/assets/content/REPORT\\_FINAL\\_071212.pdf](http://progress.psu.edu/assets/content/REPORT_FINAL_071212.pdf); KING & SPALDING ET AL., CRITIQUE OF THE FREEH REPORT: THE RUSH TO INJUSTICE REGARDING JOE PATERNO (2013), available at [http://www.paterno.com/Resources/Docs/SOLLERS\\_FINAL\\_REPORT\\_2-9-2013.pdf](http://www.paterno.com/Resources/Docs/SOLLERS_FINAL_REPORT_2-9-2013.pdf). See also Penn Staters for Responsible Stewardship, <http://ps4rs.org/>; Sandusky Reports, <http://sanduskyreports.com/> (Ray Blehar’s Reports); Penn State: Seeking the Truth, <http://emf.intherough.net/pennstate.htm> (Eileen Morgan’s Reports & Articles). This report takes no position with respect to the opinions expressed by the sources cited above.

<sup>10</sup> See, e.g., Lexi Belculfine, *Inquiry to Examine Penn State’s Handling of Sex Assaults*, PITTSBURGH POST-GAZETTE, Jan. 26, 2014, <http://www.post-gazette.com/news/education/2014/01/26/Inquiry-to-examine-Penn-State-s-handling-of-sex-assaults/stories/201401260160>.

<sup>11</sup> Special Agent in Charge Peifer’s responsibilities include supervising OAG’s Child Predator Unit. Before coming to OAG in early 2013, Peifer had served 34 years as a criminal investigator in Delaware County. For his last 14 years in Delaware County, Peifer headed the Pennsylvania Internet Crimes Against Children Task Force (“ICAC”) and supervised Delaware County’s Child Abuse Unit.



including: Pennsylvania State Police (“PSP”) and OAG reports and memoranda; the OAG case file; child-protective-services reports; and grand jury transcripts, subpoenas, and documents supplied in response to subpoenas. In addition, with the help of Braden Cook,<sup>12</sup> we searched millions of pages of electronic material for relevant information. Agent Peifer and I conducted more than 50 interviews of people both inside and outside law enforcement who had a connection to the investigation. Some of the interviews lasted more than a full day. Senior Deputy Attorney General Laura Ditka, who participated in many of the interviews and contributed significantly to this report, provided invaluable expertise based on her vast experience investigating and prosecuting child-sexual-abuse cases in Pennsylvania for over 20 years.

Both the document review and the witness interviews presented noteworthy challenges. While most of the relevant documents were readily available at OAG, one notable exception involved OAG email. In 2011, OAG adopted an email retention policy that provided that all emails more than six months old would be deleted unless specifically retained by a recipient or sender, changing the previous policy, which had been to retain all email for five years.<sup>13</sup> As a result, by the time the current administration took office in January 2013, almost all of the OAG emails sent and received during the course of the Sandusky investigation had been deleted. Moreover, because of the way emails are stored at OAG (on a series of servers rather than on individual desktop computers), and because of the way those servers are used (for daily and

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<sup>12</sup> OAG Senior Supervisory Special Agent, Bureau of Special Investigations.

<sup>13</sup> According to William H. Ryan, Jr., who was the Acting Attorney General at the time, the change in the email retention policy was prompted by concerns expressed by OAG information technology (“IT”) staff about the cost of retaining such a high volume of email. Ryan further explained that individuals within the office remained free to retain particular emails for as long as they liked, and that the six-month period was based on a recommendation from IT staff and a survey of the practices of other government institutions. Following the November 6, 2012, election, at the request of the Attorney General-elect, OAG “held” all emails pending a review of the email retention policy. In July 2013, under the current administration, the policy for retention of emails on the backup servers was changed from six months to two years.

weekly backups of both emails and other documents, as well as storage of new emails and documents), the space on which the deleted emails resided was quickly overwritten with new material, making the deleted emails unrecoverable even using computer forensic techniques.<sup>14</sup>

This apparent inability to retrieve and review the contemporaneous email record at OAG presented a serious obstacle to a comprehensive review of the investigation. While many aspects of a criminal investigation are carefully documented in formal reports, memoranda, transcripts, and recordings, other aspects are not. Emails often provide an invaluable supplement to those formal documents and witness interviews when piecing together past events.<sup>15</sup> Fortunately, and somewhat fortuitously, led by Agent Cook with the help of the OAG information technology (“IT”) staff, we finally were able to locate, recover, and search OAG email from the relevant time period.

Initially, given the retention policy and server set up described above, we were told that no emails from the period of November 2008 through November 2011 were recoverable, unless they had been saved by individual, current OAG employees. In the summer of 2013, however, IT staff identified an older email-retention server currently maintained solely to preserve email for the Tobacco Enforcement Unit in connection with ongoing litigation. Significantly, the server had once been used to back up email system-wide. All content other than the Tobacco Unit emails had been deleted, however, and the company responsible for creating the email-

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<sup>14</sup> Electronic documents, including emails, are often recoverable by computer forensic experts even after they have been “deleted,” because the “deletion” merely removes a link to the stored data rather than removing the data itself. See, e.g., WARREN G. KRUSE II & JAY G. HEISER, *COMPUTER FORENSICS: INCIDENT RESPONSE ESSENTIALS* 17 (2002). The data typically continues to reside on the storage device until that space is “overwritten,” meaning that it is used to store other data. Once that occurs, the original data is typically unrecoverable.

<sup>15</sup> See, e.g., Gail M. Cookson & Carole Longendyke, *Data Forensics*, 39 MD. B.J. 66, 66 (January/February 2006); Daniel J. Fetterman, *Strategies for Dealing with the Surge in Financial Fraud Investigations*, in *WHITE COLLAR FRAUD INVESTIGATIONS: LEADING LAWYERS ON ANALYZING RECENT TRENDS, BUILDING A DEFENSE STRATEGY, AND DEVELOPING COMPLIANCE PROGRAMS (INSIDE THE MINDS)* (2009), available at 2009 WL 4025328 (ASPATORE), 5.

backup system insisted that email deleted by their program pursuant to OAG's document retention policy was not retrievable in any form by any technique, even though it may not have been overwritten with new data. Further inquiry in September and early October 2013 yielded the same answer that had been given earlier: no deleted email was recoverable for the time period in question.<sup>16</sup> Finally, in mid-October 2013, Agent Cook, after further discussions with the company and with OAG IT staff, devised a complex, multi-step process for finding and restoring the deleted emails. As a result, we were able to recover the emails from the relevant time period for review in their original form. That process began in November 2013 and was completed on March 22, 2014.<sup>17</sup> The recovered emails have been extremely helpful in understanding the course of the Sandusky investigation, both in their own right and in refreshing the recollection of witnesses.

Witness interviews, like the review of relevant documents, were essential to a comprehensive examination of the Sandusky investigation. Many of the witnesses were involved in the grand jury component of that investigation, and their interviews, therefore, were likely to involve discussion of "matters occurring before the grand jury."<sup>18</sup> In order to assure everyone involved in such interviews, including potential interviewees and their counsel, that the interviews would not run afoul of grand-jury-secrecy rules, on June 25, 2013, OAG filed a "Motion Concerning Disclosure of Matters Occurring before the Grand Jury." On June 27, 2013, Supervising Grand Jury Judge Norman A. Krumenacker III granted the motion, clearing the way for witness interviews.

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<sup>16</sup> The only suggestion offered was that OAG contact a vendor specializing in computer disaster recovery.

<sup>17</sup> The recovery process, which resulted in the restoration of approximately 20.5 million emails, was painstakingly slow. Fortunately, the process required far more computer time than human time.

<sup>18</sup> 42 PA. CONS. STAT. § 4549(b).

For the most part, witnesses both inside and outside law enforcement agreed to be interviewed, even though they were not, and could not be, compelled to do so.<sup>19</sup> Prosecutors and agents, other law enforcement officials, child-protective-service workers, school district officials, and many others gave freely of their time and made invaluable contributions to this review.

A few individuals declined to be interviewed. More significant than those isolated cases, however, was the decision of the Pennsylvania State Police not to make its members available for interview. PSP Chief Counsel Scott Ford and I exchanged several letters in an effort to address concerns raised by PSP and to work out the details of the requested interviews.<sup>20</sup> In the end, Chief Counsel Ford informed me that PSP, with two exceptions,<sup>21</sup> would “not make its members available [for interview] until the completion of all investigations and prosecutions involving Mr. Sandusky,” including the pending prosecution against Curley, Schultz, and Spanier.<sup>22</sup>

According to Chief Counsel Ford’s letter, the decision was based on “the concerns of our members” and “the potential impact of your interviews on the on-going prosecutions.”<sup>23</sup> The letter further explained that while the “PSP wants to support your review out of a respect to the

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<sup>19</sup> Given the administrative nature of this project, we did not have the power to compel either interviews or the production of documents.

<sup>20</sup> The five letters we exchanged on the topic of witness interviews are attached to this report in Appendix A.

<sup>21</sup> See *infra* note 23.

<sup>22</sup> Letter from Scott R. Ford, Chief Counsel, Pa. State Police, to H. Geoffrey Moulton, Jr., Special Deputy Attorney Gen., Pa. Office of Attorney Gen. (Aug. 27, 2013) (contained in Appendix A); Letter from H. Geoffrey Moulton, Jr., Special Deputy Attorney Gen., Pa. Office of Attorney Gen., to Scott R. Ford, Chief Counsel, Pa. State Police (Aug. 28, 2013) (contained in Appendix A).

<sup>23</sup> Letter from Scott R. Ford, Chief Counsel, Pa. State Police, to H. Geoffrey Moulton, Jr., Special Deputy Attorney Gen., Pa. Office of Attorney Gen. (Aug. 27, 2013) (contained in Appendix A). The PSP offered two exceptions to this decision, stating that “you may interview both Colonel [Francis] Noonan and [attorney William] Conley regarding their involvement in the investigation during the time they were employed by the OAG.” *Id.* Chief Counsel Ford’s letter explained that “[b]oth have expressed a willingness to participate in your review and given their former positions at the OAG and the timeframes in which they were employed, they are confident their participation will not impact the current prosecutions.” *Id.* Both Col. Noonan and Mr. Conley were interviewed.

OAG and the long history of coordination between the two agencies . . . , it will not do so at risk of jeopardizing on-going prosecutions.”<sup>24</sup> I responded to the “jeopardizing” point as follows:

As you and I have discussed, OAG – the institution directly responsible for those ongoing prosecutions – disagrees with PSP’s assessment that interviews of PSP members would “jeopardize” those prosecutions. The issues that I have been tasked to address, and the questions I would like to ask PSP members, are quite distinct from the guilt or innocence of Messrs. Curley, Schultz, and Spanier.<sup>25</sup>

Unfortunately, PSP did not change its position,<sup>26</sup> despite several requests for reconsideration, making it difficult to answer questions related to the Sandusky investigation not fully addressed in the documentary record or by other witnesses.

### **HINDSIGHT BIAS AND LEARNING FROM EXPERIENCE**

In conducting this review, we were mindful of the adage that “hindsight is always 20-20.” That familiar aphorism cautions everyone involved in after-the-fact assessments, whether of single events or of large, complex projects, that outcomes often seem more obvious in hindsight than they did as the events or projects were unfolding.<sup>27</sup> Put another way, connecting the dots is far easier once you’ve already seen the entire picture.<sup>28</sup> Psychologists describe this phenomenon as “hindsight bias,” and warn that it creates the risk that decision-makers may be unfairly criticized for not knowing what became obvious only later.<sup>29</sup> Of course, the risk of hindsight

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<sup>24</sup> *Id.*

<sup>25</sup> Letter from H. Geoffrey Moulton, Jr., Special Deputy Attorney Gen., Pa. Office of Attorney Gen., to Scott R. Ford, Chief Counsel, Pa. State Police (Aug. 28, 2013) (contained in Appendix A).

<sup>26</sup> See Letter from Lt. Col. George L. Bivens, Deputy Commissioner of Operations, Pa. State Police, to H. Geoffrey Moulton, Jr., Special Deputy Attorney Gen., Pa. Office of Attorney Gen. (May 20, 2014) (contained in Appendix A).

<sup>27</sup> See, e.g., Therese A. Louie, Mahesh N. Rajan & Robert E. Sibley, *Tackling the Monday-Morning Quarterback: Applications of Hindsight Bias in Decision-Making Settings*, 25 SOCIAL COGNITION 32 (2007).

<sup>28</sup> See, e.g., Bruce Schneier, *Why FBI and CIA Didn’t Connect the Dots*, CNN OPINION, May 2, 2013, <http://www.cnn.com/2013/05/02/opinion/schneier-boston-bombing/>.

<sup>29</sup> See, e.g., Roese & Vohs, *supra* note 3. See also EXECUTIVE SUMMARY, NATIONAL COMMISSION ON TERRORIST ATTACKS UPON THE UNITED STATES, THE 9/11 COMMISSION REPORT: FINAL REPORT OF THE NATIONAL COMMISSION ON TERRORIST ATTACKS UPON THE UNITED STATES 8, *available at*

bias does not mean that after-the-fact appraisals should not be undertaken or cannot be valuable. Indeed, learning from experience is one of the best ways for “[i]ndividuals and organizations [to] innovate, thrive, and prosper.”<sup>30</sup> This report attempts to take advantage of hindsight’s benefits while recognizing its potential pitfalls.

### **THE USE OF NAMES**

With limited exceptions, this report refers to the major participants in the Sandusky investigation by name. Sandusky’s victims, consistent with statutory and case law, are referred to by initials rather than by name,<sup>31</sup> even when their names have been made public elsewhere.<sup>32</sup> Other minors, who may or may not have been victims, are also not named and are sometimes referred to by initials. On occasion, persons associated with victims are referred to but not named in order to protect the identity of the victims. Finally, the report also does not name several participants whose roles were relatively small and whose identities have not previously been widely disseminated.

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[http://govinfo.library.unt.edu/911/report/911Report\\_Exec.pdf](http://govinfo.library.unt.edu/911/report/911Report_Exec.pdf) (“We write with the benefit and handicap of hindsight. We are mindful of the danger of being unjust to men and women who made choices in conditions of uncertainty and in circumstances over which they often had little control.”).

<sup>30</sup> Roese & Vohs, *supra* note 3, at 412; *see also* Garvin, *supra* note 3, at 7-8; Frank R. Gulliver, *Post-Project Appraisals Pay*, HARVARD BUSINESS REVIEW, March-April 1987. In the words of the Danish philosopher Søren Kierkegaard, who captured the duality of hindsight long before the term “hindsight bias” was coined: “Life can only be understood backwards; but it must be lived forwards.” *Søren Kierkegaard—Quotes: Life*, ENCYCLOPÆDIA BRITANNICA, <http://www.britannica.com/topic/317503/supplemental-information> (last visited Jan. 7, 2014).

<sup>31</sup> *See* 42 PA. CONS. STAT. § 5988 (prohibiting officers of the court from revealing the name of a minor victim of sexual or physical abuse). *Cf.* *Commonwealth v. Chambers*, 602 Pa. 224, 231 n.1, 980 A.2d 35, 39 n.1 (2009); *T.A. v. Allen*, 868 A.2d 594, 595 n.1 (Pa. Super. 2005).

<sup>32</sup> Where appropriate for the sake of clarity, victims are also referred to by the “victim number” used in the two grand jury presentments recommending charges against Sandusky.

### **RELEASING THE REPORT TO THE PUBLIC**

Of necessity, this report discusses “matters occurring before the grand jury.”<sup>33</sup> While many of those matters have already been made public in connection with Sandusky’s trial, not all of them have. As a result, before the report may be released to the public, it must be submitted to Supervising Grand Jury Judge Krumenacker, who will determine whether its public release is appropriate in light of the interests protected by grand jury secrecy. Judge Krumenacker is aware of the nature of the report and is prepared to rule promptly once it is submitted to him. Per your request, I am submitting a copy of the report to Judge Krumenacker at the same time that I am providing this copy to you.

In addition, after the report has been submitted to Judge Krumenacker but before it is made public, certain persons will be provided an opportunity to review those portions of the report that pertain to them and to respond prior to publication. In the leading case of *Simon v. Commonwealth*,<sup>34</sup> the Pennsylvania Crime Commission had published a report (about organized crime in the “bingo industry”) that had a potential negative effect on the plaintiff’s reputation. In *Simon*, the Commonwealth Court recognized a state constitutional right to reputation<sup>35</sup> and held that the Commission’s failure to provide plaintiff with advance notice of its criticisms and an opportunity to respond before publication violated plaintiff’s state due process rights. The *Simon* case, while not elaborating on precisely what process is required, appears to mandate that persons referenced in a government report be provided: (1) those aspects of the report that might reasonably be understood to adversely affect their reputation, and (2) an opportunity to respond prior to publication. In connection with our submission of the report to Judge Krumenacker, we

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<sup>33</sup> 42 PA. CONS. STAT. § 4549(b).

<sup>34</sup> *Simon v. Commonwealth*, 659 A.2d 631 (Pa. Cmwlth. Ct. 1995).

<sup>35</sup> PA. CONST. art. I, § 1.

are seeking his authorization to provide notice and an opportunity to respond to persons who fall under the *Simon* decision.<sup>36 \*</sup>

## **OVERVIEW**

Part One of this report is a narrative account of what occurred, and what did not occur, during the course of the Sandusky investigation, beginning with the initial report by A.F. to school officials in November 2008 and ending with the filing of formal charges against Sandusky in November and December 2011. Part One is divided into five sections, each covering a distinct phase of the investigation. The narrative is based on a review of documents and interviews of witnesses. Inevitably, different witnesses have different recollections of certain events, and some aspects of the investigation are not covered in the documentary record. Where neither the documents nor witnesses resolve a disputed matter, this report sets forth the competing positions for the reader to consider. Part Two is an analysis of critical aspects of the events described in Part One. Part Three makes recommendations. Part Four is a timeline of investigative steps and other significant events in the Sandusky investigation. A summary of the report structure and content follows.

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<sup>36</sup> As noted above, Judge Krumenacker has authority over the disclosure of matters occurring before the Grand Jury.

\* Addendum: Attached to this report as “Responses” are the written responses submitted by certain individuals who were provided either the entire report or the sections of the report in which they are mentioned and who elected to respond, in accordance with their rights under the decision in *Simon v. Commonwealth*, 659 A.2d 631 (Pa. Cmwlth. Ct. 1995). While we have provided these individuals with the opportunity to respond and have attached their responses to this report when requested, the viewpoints expressed in each response are those of the author of that response and are not endorsed by me or by the Office of Attorney General. All changes to the body of the report resulting from the responses are noted by asterisk footnote.



## **Part One: The Sandusky Investigation**

### **A. Phase One: A.F. Complaint (November 2008) through Referral to OAG (March 2009)**

Part One, Section A summarizes the investigation of Sandusky from the initial report by A.F. in November 2008 to the referral of the case to OAG by the Centre County District Attorney in March 2009. The investigation began when A.F. reported, first to the principal and a guidance counselor at his high school and then to Clinton County Children and Youth Services (“CYS”), that he had been the victim of inappropriate conduct by Sandusky. Those allegations led to a CYS investigation that found A.F. credible and his report to be “indicated” within the meaning of Pennsylvania’s Child Protective Services Law (“CPSL”).<sup>37</sup> CYS promptly notified the Pennsylvania Department of Public Welfare and referred the matter to the Pennsylvania State Police for criminal investigation. In the meantime, school officials summoned Sandusky to the school and told him he would no longer be permitted on school grounds. They also identified two current and two former students with whom Sandusky had had extensive contact, and then contacted the former students and the parents of the current students to warn them not to have further contact with Sandusky.

Section A also describes the early stages of the criminal investigation, conducted by PSP, as well as the referral of the matter first to the Clinton County District Attorney in January 2009, then to the Centre County District Attorney in early February 2009, and finally to OAG in March 2009. The lead PSP investigator prepared a report of his initial investigation and, in late January or early February 2009, delivered it to the Clinton County District Attorney, who, based on his understanding that most of the alleged conduct took place in Centre County rather than Clinton County, referred the matter to the Centre County District Attorney. The Centre County District

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<sup>37</sup> See *infra* note 43.

Attorney, in turn, concluded that he had a potential conflict of interest (his wife is the sister of one of Sandusky's adopted children); and so on March 3, 2009, he sent a letter to OAG asking that it assume responsibility for the case.

*B. Phase Two: Receipt of Case by OAG (March 2009) through Draft Presentment (March 2010)*

Part One, Section B summarizes the second phase of the Sandusky investigation, which ran from March 2009, when OAG accepted the case from the Centre County District Attorney, through March 2010, when the assigned prosecutor submitted to her supervisors a draft presentment against Sandusky, with A.F. as the sole victim. Section B describes the decision to submit the matter to a statewide investigating grand jury, A.F.'s testimony before the Grand Jury (on two occasions), efforts to corroborate A.F. and to find other victims, investigative steps considered but not taken, and work on a draft presentment.

OAG submitted the Sandusky investigation to the Thirtieth Statewide Investigating Grand Jury on May 1, 2009. According to the Notice of Submission, and to those involved in the decision, the reasons for doing so included the power to compel testimony under oath, the ability to subpoena documents that might otherwise be unobtainable, and the ability to keep a sensitive investigation secret. A.F. testified before the Grand Jury in June. Consistent with his most recent interviews with PSP, he acknowledged that Sandusky had performed oral sex on him and that on at least one occasion he had performed oral sex on Sandusky. He had great difficulty testifying, however, and his testimony about the oral sex was in the form of mostly one-word answers to leading questions.

Following A.F.'s grand jury testimony, the investigation sought both to find evidence that would corroborate A.F.'s allegations and to identify additional Sandusky victims, which

investigators believed existed. The search for other victims focused on using A.F. and officials at A.F.'s school to identify other boys who had spent significant time with Sandusky in the recent past. While this effort did not identify additional victims, it did yield testimony of what investigators believed was "grooming" behavior by Sandusky.<sup>38</sup> In terms of attempting to corroborate A.F., investigators had A.F. place a recorded call to Sandusky, subpoenaed telephone records that showed an unusually high volume of calls from Sandusky to phones used by A.F., and secured the testimony of a volunteer wrestling coach who confirmed A.F.'s description of an odd incident involving Sandusky and A.F. in a school weight room.

In September 2009, the OAG agent assigned to the case suggested several investigative steps, two of which – serving a grand jury subpoena on the Centre County Office of Children and Youth Services ("Centre County CYS") for similar complaints about Sandusky and getting a search warrant for Sandusky's home computer – were not accomplished until January and June 2011, respectively. According to prosecutors, these steps were not undertaken in 2009 because the prosecutors believed that they were unlikely to be productive and would have risked publicly revealing the existence of the investigation.

By the end of 2009, investigators had only one victim, A.F., available to testify, and few, if any, leads on potential additional victims. As a result, the assigned prosecutor began work on a draft presentment that would summarize the evidence gathered to date and recommend charges against Sandusky with A.F. as the sole victim. She completed the draft and delivered it to her supervisor in early March 2010.

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<sup>38</sup> For a definition of "grooming" behavior by child molesters, *see infra* note 79.

*C. Phase Three: Draft Presentment (March 2010) through McQueary Tip (November 2010)*

Part One, Section C describes the third phase of the investigation, which covered the time from submission of the draft presentment in March 2010 until the receipt of a tip in November 2010 about Penn State assistant football coach Michael McQueary having witnessed something relevant to the investigation. The focus of the assigned prosecutor during most of this phase was on getting a final answer to the question whether the draft presentment, with A.F. as the only victim, would be approved by those above her in the chain of command. She sought this answer in a series of emails running from April until mid-August, at which time she was told that the case would not go forward as it then stood, and that everything possible should be done to find additional victims. In the interim, no witnesses were interviewed, no witnesses testified in the Grand Jury, and no grand jury subpoenas were issued. The central basis for the decision, as expressed at the time, was the belief that A.F.'s testimony would be insufficient to convict a community icon like Sandusky, and that a Sandusky acquittal would make filing charges later, based on later-discovered victims, difficult if not impossible.

Between August and the beginning of November, investigators did not succeed in identifying any new victims. In late October, however, they did develop leads based on internet postings relating to Sandusky's announced retirement from The Second Mile. Some of those postings, chiefly on websites hosting discussions about Penn State football, suggested that Sandusky was a child molester. Later in 2010 and into early 2011, investigators tracked down and interviewed several individuals who had posted such comments. In the end, none of the posters identified had any first-hand knowledge of criminal conduct by Sandusky. By the beginning of November 2010, with the exception of the internet postings, the investigation was

at a standstill with respect to finding additional victims. That changed with an email tip about McQueary.

*D. Phase Four: McQueary Tip (November 2010) through the Filing of Charges (November 2011)*

Part One, Section D summarizes the course of the investigation from the McQueary tip, received by investigators on November 4, 2010, through the filing of formal charges on November 4, 2011. Finding McQueary was tremendously important, not only because uninvolved third-party witnesses to child sexual abuse are relatively rare, but also because McQueary confirmed the belief of investigators and prosecutors that Sandusky had victimized others. Together with the discovery, in late 2010 or early 2011, of the fact that Sandusky had been investigated for similar conduct in 1998, McQueary changed the trajectory of the investigation. From January 2011 through the filing of charges in November, the investigation proceeded rapidly and aggressively. Investigators and prosecutors conducted hundreds of interviews, issued over one hundred subpoenas, identified more Sandusky victims, and investigated the conduct of Penn State administrators. Section D summarizes the investigation's most important activities by month, with a particular focus on those efforts that led to the identification of additional victims.

In November and December 2010, the investigation focused both on the information provided by McQueary and on the internet postings suggesting that Sandusky's retirement from The Second Mile was linked to child sexual abuse. After McQueary testified in the Grand Jury on December 14, the decision was made to subpoena Penn State head football coach Joseph V. Paterno, Penn State Athletic Director Timothy Curley, and Senior Vice President Gary Schultz to

testify in January. In addition, on December 29, the Grand Jury issued a records subpoena to Penn State for records relating to Sandusky and inappropriate conduct with underage males.

In January 2011, PSP investigators went to the Penn State and State College police departments and asked for copies of all criminal reports relating to Sandusky. They received, among other things, a report of a 1998 investigation of an allegation that Sandusky had engaged in inappropriate conduct with an 11-year-old boy in a shower on the Penn State campus. This report led investigators to the boy in question, Z.K. (Victim 6 in the Sandusky presentment), as well as to additional victims identified by Z.K. and his mother. Also in January, Paterno, Curley, and Schultz all testified in the Grand Jury, and grand jury subpoenas were issued to, among others, The Second Mile and Centre County CYS for records related to Sandusky.

In February 2011, investigators continued their efforts to find additional victims and to corroborate the victims they had already identified. Most significantly, PSP investigators interviewed D.S., who had been identified by Z.K. and his mother as a possible victim and who was later described as Victim 7 in the Sandusky presentment. D.S. pointed investigators toward two additional possible victims, B.S.H. (later described as Victim 4) and M.K. (later described as Victim 5), based on photographs in Sandusky's autobiography. Also in February, investigators continued to pursue existing leads, interviewing Penn State coaches and athletic department personnel and additional individuals who had posted comments about Sandusky on the internet. In addition, the Grand Jury issued several subpoenas for documents, chiefly to Commonwealth and county agencies for information about allegations against Sandusky and for records related to Sandusky adoptions and foster children.

In March 2011, the search for additional victims and added corroboration continued, with more subpoenas for records, more interviews, and more grand jury testimony. March also included an interview of Penn State President Graham Spanier, as part of further investigation into how Penn State administrators handled the information provided by McQueary. On March 31, 2011, *The Patriot-News* and the *Centre Daily Times* each published a story written by Sara Ganim about the grand jury investigation of Sandusky. The story, in addition to raising the prospect of a leak of grand jury information, quickly generated two significant leads on additional criminal conduct by Sandusky. The first of those leads came the very same day, when a Penn State employee who had seen the story called PSP to describe an incident involving Sandusky and a young boy in a shower that a fellow employee had seen (“the janitor incident”).

In April 2011, the investigation continued to gain momentum, with the assignment of two additional agents from OAG, the identification and confirmation of additional victims, three days of testimony before the Grand Jury, and the gathering of further information about the 1998 incident. On April 1, an attorney called OAG to say that he represented an adult male who had been sexually assaulted by Sandusky when he was a juvenile. That male turned out to be B.S.H. (Victim 4 in the Sandusky presentment), whom investigators interviewed later in the month. Also in April, the Grand Jury heard testimony from 12 witnesses, including D.S., who became the second victim (A.F. being the first) to testify that he had been a victim of criminal conduct by Sandusky, and Penn State President Spanier, whose testimony formed part of the basis for charges filed against him in 2012.

As discussed in Section D, May 2011 was the most active month of the investigation to date. Two new troopers had been added to the investigative team, which was now described informally as a task force and which now had dedicated space in which members could meet and

work in close proximity. In May alone, the team conducted over 60 interviews, focusing on finding additional victims and learning more about the victims and incidents that had already been uncovered. The interviews included possible witnesses to the janitor incident, former Second Mile participants, current and former employees of Centre County CYC, persons with knowledge of the 1998 investigation, persons with knowledge of Penn State police reporting procedures, persons with knowledge of the configuration of and access to Penn State football-related facilities, and witnesses who might be able to corroborate already-identified victims. On May 19, nine witnesses testified before the Grand Jury, including B.S.H. (Victim 4), witnesses with information about the janitor incident, and witnesses with information about the 1998 incident and the investigation thereof.

In June 2011, the investigation continued at a brisk pace, with investigators continuing to interview former Second Mile participants, current and former Centre County CYC employees, and other witnesses who might have had information about already-identified victims and incidents. In early June, investigators interviewed both Z.K. (Victim 6), who had recently returned from out of state, and M.K. (Victim 5), who had been mentioned by Z.K.'s mother as a possible victim and identified by D.S. from a photograph in Sandusky's autobiography. Z.K. and M.K. were two of seven live witnesses to testify before the Grand Jury in June. On June 21, investigators executed a search warrant at Sandusky's residence. The search uncovered, among other things, many photographs of already-identified Sandusky victims as well as photographs of another boy, who was not identified as a victim until after the initial charges were filed against



Sandusky in November 2011.<sup>39</sup> Searchers also found several typed lists of Second Mile participants, with the names of some participants highlighted with hand-written asterisks.

In July 2011, investigators continued the search for more victims and worked toward completing the corroboration of identified victims through additional grand jury subpoenas, more interviews, and the review of items supplied in response to earlier subpoenas and items found in the search of Sandusky's residence. The most time-consuming activity in July was a concerted, systematic effort to identify Sandusky victims by interviewing selected Second Mile participants. Investigators conducted more than 100 such interviews in July, and attempted many others. One of the former Second Mile participants interviewed in July was J.S., who was later described as Victim 3 in the Sandusky presentment.

In August 2011, the interviews of former Second Mile participants continued, as did efforts to corroborate already-identified victims and the review of records seized during the search of Sandusky's residence. The Grand Jury heard testimony from two witnesses in August: J.S., who described sexually explicit conduct by Sandusky, and Z.K.'s sister, who described a conversation she had had with M.K. that corroborated what M.K. had told investigators about Sandusky. Also in August, OAG officials met with A.F., his mother, and his psychologist to discuss A.F.'s frustration that charges had not yet been brought.

In September and October 2011, the effort to find additional victims and corroborate existing victims continued, with more interviews, additional subpoenas, and further review of evidence obtained pursuant to earlier subpoenas and the June search. In October, five witnesses testified before the Grand Jury (the September session had been cancelled due to flooding),

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<sup>39</sup> None of these photographs were sexual in nature.

addressing both the 1998 investigation and the Clinton County CYC response to A.F.'s allegations. In addition, the mothers of M.K. and J.S. each testified about her son's involvement in The Second Mile and relationship with Sandusky. Meanwhile, prosecutors also focused on those things they believed necessary to prepare the case to be charged, including drafting a presentment that addressed the conduct uncovered during the course of the investigation. By the end of October, most important decisions about victims, defendants, and charges had been made. By the start of November, the presentment was largely ready to be submitted to the Grand Jury and plans were being made for Sandusky's arrest.

Section D concludes with a brief description of the relevant events in the first five days of November 2011. On November 3, after hearing brief testimony on the previous two days, the Grand Jury voted to approve the presentment and recommend charges against Sandusky related to six identified victims – A.F., J.S., B.S.H., M.K., Z.K., and D.S. – and two unidentified victims, as well as charges against Curley and Schultz for perjury and for failing to report or refer a case of suspected child abuse. On Friday, November 4, the supervising grand jury judge accepted the presentment and placed it under seal. The same day, investigators filed criminal complaints and secured arrest warrants for Sandusky, Curley, and Schultz. Despite the sealing order, the charges against Sandusky were posted on a court website on Friday afternoon, apparently by mistake, and then promptly reported by the press. As a result, Sandusky learned of the charges before he could be arrested. Through his attorney, he turned himself in the next day.

#### *E. Selected Post-Charging Events*

Section E concludes Part One with a brief account of selected post-charging events, including the filing of additional charges against Sandusky on December 7, 2011, based on the testimony of two victims who came forward after the initial charges had been filed.

## **Part Two: Analysis**

### **A. The Initial Report by Keystone Central School District**

Part Two, Section A discusses the initial report by Keystone Central School District to Clinton County CYS, focusing on whether the District complied with its reporting obligations under Pennsylvania's CPSL. In particular, Section A addresses several objections that have been raised concerning the District's conduct: first, that the report to CYS was not made until the day after the meeting with A.F. and, therefore, was not made "immediately" within the meaning of the CPSL; second, that district officials tried to discourage A.F. and his mother from making a report to the appropriate authorities themselves; and third, that a district official suggested to CYS that A.F.'s account should be viewed skeptically.

After discussing the relevant provisions of the CPSL, and a highly contested factual record, Section A concludes that district officials substantially complied with their obligations under the CPSL. While ideally those officials would have made their report to CYS the same day they met with A.F., their delay of one day appears to have had no material impact on the safety of the child or on the subsequent investigation by CYS and law enforcement. As to the alleged effort to discourage A.F. and his mother from making a report, Section A concludes that despite seemingly irreconcilable accounts about the meeting in question, and what was likely a deeply unfortunate misunderstanding, the bottom line is that all parties promptly reported to Clinton County CYS. Finally, the claim that a school official suggested to CYS that A.F.'s allegations should be viewed skeptically is similarly based on a highly contested claim about the relevant facts. Here the positions of the alleged participants in the exchange are irreconcilable, and neither the school district nor CYS apparently possesses records that would resolve the matter. In any event, no one at CYS or in law enforcement who participated in the investigation

of A.F.'s report was told about the alleged statement at the time, so there is little chance that it had any impact on the investigation.

*B. The Actions of Clinton County Children and Youth Services and Law Enforcement before the Matter was Sent to the Office of Attorney General*

Section B examines the actions of Clinton County CYS and law enforcement between the time of A.F.'s initial complaint in November 2008 and the transfer of the case to OAG in March 2009. In several respects, Clinton County CYS responded to A.F.'s allegations in textbook fashion, including handling A.F. with skill and compassion, promptly reporting to ChildLine and law enforcement, conducting an appropriate investigation, and concluding that A.F.'s report was "indicated." CYS also provided additional support services to A.F. that he greatly valued.

Nevertheless, Section B concludes that the level of coordination between Clinton County CYS and its law enforcement partners was less than ideal. The then District Attorney of Clinton County does not recall being notified of the investigation until late January 2009, at which point he concluded that it should be handled by the Centre County District Attorney, who in turn referred the matter to OAG. Neither District Attorney convened an "investigative team" as contemplated by the CPSL. Nor did anyone in law enforcement participate in the interview by CYS of Sandusky on January 15, 2009. This was a significant missed opportunity, particularly since at no point later in the investigation did law enforcement manage to interview Sandusky. Another missed opportunity was the failure of CYS and law enforcement to learn about the 1998 allegations at this juncture. While Pennsylvania law required expungement of any reference to the 1998 investigation in the statewide central registry, the institutional knowledge of that investigation residing in the Centre County District Attorney's Office was not passed on to investigators or prosecutors pursuing A.F.'s allegations. In addition, had a broad-based

investigative or multidisciplinary team been convened in either Clinton or Centre County, someone on that team might well have had knowledge of the earlier allegations. It is reasonable to believe that had investigators known at the outset about prior victims and their connection to The Second Mile, they would have begun an intensive search for additional victims and evidence of the sort that occurred in 2011 after they learned about the 1998 allegations.

### C. The Use of the Grand Jury

Section C addresses the use of a grand jury to investigate Sandusky, chiefly at the macro level – the decision to conduct a grand jury investigation rather than rely only on ordinary police work – but also at the micro level – certain choices made about how to use the powers of the Grand Jury in the investigation. Was the decision to use a grand jury to investigate Sandusky well founded? Both the assigned prosecutor and her supervisor believed that the advantages of the grand jury – the power to compel testimony under oath, the ability to subpoena documents that might not otherwise be obtainable, and the ability to keep a sensitive investigation secret – all counseled in favor of its use to investigate Sandusky. The need for secrecy was particularly acute, they believed, because of Sandusky’s status in the community. In hindsight, the powers of the Grand Jury certainly proved valuable, most notably in compelling the testimony of certain witnesses and the production of documents. Of course, had the plan been to charge Sandusky swiftly, based on A.F.’s allegations, there would have been little need for a grand jury. But that was not the plan. Section C concludes that given the felt need to corroborate A.F. and to search for additional victims before charging, the decision to use a grand jury to investigate appears to have been a reasonable exercise of prosecutorial discretion, albeit one that not all prosecutors necessarily would have made.

Similarly, Section C concludes that given the decision not to charge right away, the use of a grand jury did not itself appear to slow the investigation. Prosecutors were able to schedule time for witnesses without significant difficulty, and the deferral of significant investigative steps until relatively late in the investigation was not the product of the decision to use a grand jury. Indeed, for long stretches of time before the investigation was ramped up in 2011, the resources of the Grand Jury were barely used at all. Finally, Section C addresses the choice made by prosecutors to have all of Sandusky's victims testify in the Grand Jury, rather than presenting their statements through the testimony of others.

#### *D. The Role of Electoral Politics*

Section D addresses the question whether electoral politics played a role in the length of the Sandusky investigation. Beginning when Sandusky was charged in November 2011, people have asked whether Governor Corbett, while Attorney General, intentionally slowed the pace of the investigation so that it would not adversely affect his gubernatorial campaign. Section D examines three specific issues related to the potential impact of electoral politics: the delay in making a final decision concerning the draft presentment in 2010, the relationship between the Bonusgate and Sandusky investigations, and the campaign contributions of Second Mile board members. (The specific issue of allocation of resources is addressed in Section E.) Section D explains that an extensive review of the available documentary record, including contemporaneous OAG emails, together with interviews of OAG personnel involved in the investigation while Corbett was Attorney General, has revealed no direct evidence that electoral politics influenced any important decision made in the Sandusky investigation.

While the delay in 2010 led some people involved in the investigation to speculate that politics had intruded into the decision-making process, Section D explains that this review

uncovered no evidence to support that speculation, other than the fact of extended delay in reaching a decision. With respect to the relationship between the Sandusky and Bonusgate-related investigations, Section D explains that while it is difficult to determine how the course of the Sandusky investigation would have been different had it, in its early stages, received the same intense focus as Bonusgate, the facts suggest that the early pace of the Sandusky investigation was less affected by a lack of Bonusgate-like resources than by the failure to take investigative steps that did not necessarily require additional resources. Finally, Section D concludes that while the failure of investigators to contact The Second Mile until 2011 is indeed puzzling, there is nothing in the available documentary record or witness interviews to suggest that then-Attorney General Corbett or anyone else in his OAG executive office at the time gave any instructions about how to conduct the investigation of Sandusky, including what witnesses to interview or entities to contact or investigate.

#### *E. Resources*

Section E discusses whether the assignment of additional investigative resources earlier in the investigation would have resulted in the earlier identification of additional victims and, therefore, the earlier filing of charges. While it is true that 2011 witnessed an increase in both investigative resources and the pace and scope of the investigation, the discovery of most victims and incidents identified in 2011 cannot easily be linked to the infusion of additional resources. Indeed, the best leads in late 2010 and early 2011, which led to the identification of four victims and two incidents without identified victims, were entirely unrelated to new investigative resources. Section E also explains that this review uncovered no evidence that any important investigative step was contemplated in 2009 or 2010 and then not taken for lack of resources. Nor, as far as the review determined, was anyone at OAG denied a request for additional

resources to work on the Sandusky investigation. Section E concludes that whether the assignment of additional resources earlier in the Sandusky investigation would have resulted in the earlier discovery of additional victims, and therefore the earlier filing of charges, is impossible to know even in hindsight.

*F. Should Sandusky Have Been Charged Earlier, Either Based on a Single Victim in 2009 or 2010, or Based on a Growing Number of Victims in 2011?*

Section F examines the question whether Sandusky should have been charged earlier, either based on the testimony of a single victim in 2009 or 2010, or based on the growing number of identified victims in 2011. Addressing this question of timing is important, notwithstanding the fact that Sandusky was ultimately tried, convicted, and sentenced to prison for what is likely to be the rest of his life. Timeliness is significant in all criminal investigations, particularly when the target of the investigation has the opportunity to continue to commit crimes while the investigation is proceeding. Timeliness is particularly important in child-sexual-abuse investigations, because research suggests that child molesters are more likely than other offenders to continue their behavior despite obstacles such as the existence of an ongoing investigation.

Before the Sandusky investigation came to OAG in March 2009, no prosecutorial authority had given serious consideration to filing charges, in part because neither the Clinton County District Attorney nor the Centre County District Attorney considered the case on the merits before sending it on to its next stop. Section F focuses on the one point in the investigation when prosecutors did seriously consider, but ultimately decided against, bringing charges: March to August 2010, when the assigned prosecutor submitted and her supervisors considered a draft presentment with A.F. as the sole victim. In addition, Section F briefly



addresses two other potential decision points: March 2009, when the case first came to OAG; and June 2011, by which time the investigation had secured the testimony of three additional victims. Section F concludes that at all three points the decision not to bring charges appears to have fit within acceptable bounds of prosecutorial discretion, though other prosecutors might reasonably have decided differently.

#### *G. Why Did the Sandusky Investigation Take as Long as it Did?*

Section G concludes Part Two by examining the overarching and complex question of why the Sandusky investigation took as long as it did. Sandusky was charged on November 4, 2011, more than 35 months after Clinton County CYC referred the matter to the Pennsylvania State Police, and 32 months after the investigation arrived at OAG. Given the decision not to charge Sandusky based on A.F. as the sole victim, questions about the investigation's length reduce largely to why it took as long as it did to find additional victims or to take certain investigative steps that later proved valuable. As Section G notes, this report's review of the course of the investigation reveals several significant factors that contributed to the failure to find victims earlier, including miscommunication at the outset, the CPSL's requirement that child abuse allegations deemed unfounded be expunged, and the failure to take certain steps earlier in the investigation that proved fruitful later. In addition, while in 2011 the investigation covered a tremendous amount of ground that significantly strengthened the case against Sandusky, there were significant stretches of time during which little if any investigative activity took place. Section G discusses the productive investigative steps taken in 2011 – asking Penn State and State College police about earlier investigations involving Sandusky, subpoenaing The Second Mile and Centre County CYC, and searching Sandusky's residence – and addresses the reasons why those steps were not taken earlier in the investigation.

### **Part Three: Recommendations**

Part Three makes recommendations in five areas: the conduct of multi-victim, child-sexual-abuse investigations by both child protective services and law enforcement; the handling of high-priority cases within OAG; transition planning at OAG; education and outreach by OAG; and consideration of further legislative change.

### **Part Four: Timeline**

Part Four consists of a timeline of investigative steps and other significant events in the Sandusky investigation, beginning with the initial report by Victim 1 to officials at his high school and ending with the filing of charges against Sandusky in November and December 2011.

## **PART ONE: THE SANDUSKY INVESTIGATION**

The investigation that led to the charging of Sandusky in November 2011 may usefully be divided into four phases.<sup>40</sup> The first phase ran from the report by A.F. to school officials in November 2008 to the referral of the case to OAG by the Centre County District Attorney in March 2009. While the first phase pre-dated the involvement of OAG, it both set the stage for the investigative work that followed and revealed areas for improvement in the coordination of child-welfare and law-enforcement efforts. The second phase ran from March 2009, when OAG accepted the case from Centre County, through March 2010, when a draft presentment against Sandusky, with A.F. as the sole victim, was submitted by the assigned prosecutor to her supervisors in the office. The third phase covered the time from the submission of the draft presentment in March 2010 until November 2010, when the Centre County District Attorney received an unsigned email identifying Michael McQueary as a possible source of information about criminal conduct by Sandusky. The fourth and final phase covered by this report began with the McQueary tip and ran through the filing of formal charges in November 2011.<sup>41</sup>

What follows is a description of what occurred (and what did not occur) during each of those four phases of the investigation. While the narrative attempts to include the most important actions taken and decisions made during the investigation, it is necessarily a summary and does not (and could not) cover every detail of the investigation. In any investigation, much occurs that is not reflected in the documentary record and that witnesses may not recall in detail

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<sup>40</sup> These phases are used for purposes of organizing this report and are not meant to suggest that the people involved in the investigation of Sandusky necessarily thought of their work in terms of phases.

<sup>41</sup> The Sandusky investigation continued unabated after the first charges were filed, through the filing of additional charges against Sandusky in December 2011, the trial in June 2012, and beyond. This report covers in detail only the time period through the filing of the initial charges, *see* Part One, Sections A through D, though it does briefly address subsequent investigative activity, *see* Part One, Section E.

years later, such as meetings, strategy sessions, and impromptu discussions among investigators and attorneys. Moreover, a substantial portion of the investigation of Sandusky was conducted by the Pennsylvania State Police (“PSP”). Because PSP declined to make its employees available for interview,<sup>42</sup> the descriptions of PSP’s actions are, of necessity, based upon PSP reports and other documents, and interviews of others.

**A. Phase One: A.F. Complaint (November 2008) through Referral to OAG (March 2009)**

In the fall of 2008, A.F. was a ninth-grade student at Central Mountain High School (“CMHS”) in the Keystone Central School District (“District”) in Clinton County, Pennsylvania. In November of that year, he reported, first to school officials and then to Clinton County Children and Youth Services (“CYS”), that he had been the victim of inappropriate conduct by Gerald Sandusky. Those reports led to a CYS investigation that found A.F. credible and his report to be “indicated.”<sup>43</sup> CYS promptly notified both ChildLine (the statewide child abuse hotline administered by the Department of Public Welfare (“DPW”))<sup>44</sup> and the Pennsylvania State Police about the allegations.

A.F.’s allegations about Sandusky’s conduct were reported to Clinton County CYS by

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<sup>42</sup> See discussion *supra* Introduction.

<sup>43</sup> Under Pennsylvania’s Child Protective Services Law, a county agency receiving a report of child abuse is charged with conducting an investigation to determine if the report is “founded,” “indicated,” or “unfounded.” See 23 PA. CONS. STAT. § 6368 (2008), *amended by* Act of Dec. 18, 2013, P.L. 1170, No. 108 (effective Dec. 31, 2014), and Act of Dec. 18, 2013, P.L. 1235, No. 123. As the law existed at the time, a report was “indicated” if the agency “determines that substantial evidence of the alleged abuse exists.” 23 PA. CONS. STAT. § 6303(a) (2008), *amended by* Act of Dec. 18, 2013, P.L. 1170, No. 108 (effective Dec. 31, 2014) (the 2013 amendment made no material change to the quoted language). A report was “founded” “if there has been any judicial adjudication based on a finding that a child who is a subject of the report has been abused.” 23 PA. CONS. STAT. § 6303(a) (2008), *amended by* Act of Dec. 18, 2013, P.L. 1170, No. 108 (effective Dec. 31, 2014), and Act of May 14, 2014, P.L. 645, No. 44 (effective Dec. 31, 2014) (the 2013 and 2014 amendments made no material change to the quoted language). An “unfounded” report is any report that is neither founded nor indicated. 23 PA. CONS. STAT. § 6303(a).

<sup>44</sup> ChildLine is “[a]n organizational unit of [DPW] which operates a Statewide toll-free system for receiving reports of suspected child abuse established under section 6332 of the CPSL (relating to establishment of Statewide toll-free telephone number), refers the reports for investigation and maintains the reports in the appropriate file.” 55 PA. CODE § 3490.4.

two different sources. One was CMHS principal Karen Probst. Probst, along with a school guidance counselor, met with A.F. and then A.F. and his mother, on November 19.<sup>45</sup> The meeting had been sparked by a phone call to the school by A.F.'s mother the day before, during which she expressed concern about both Sandusky's conduct and recent changes in A.F.'s behavior. At the November 19 meeting, A.F. described conduct by Sandusky that was patently inappropriate and that school officials ultimately decided warranted a report to the authorities under Pennsylvania's Child Protective Services Law ("CPSL"). In particular, A.F. described repeated incidents of Sandusky getting into bed with him and rolling A.F. on top of him, so that the two of them were lying face to face. These incidents occurred either in Sandusky's home or in hotel rooms when the two traveled together. Occasionally, Sandusky would "crack" A.F.'s back, pulling A.F. in even closer. A.F. did not describe overtly sexual conduct by Sandusky, and said he did not know whether Sandusky was sexually aroused. A.F. did say, however, that during these incidents he would "freeze," not knowing how to respond, and that he was worried that "things would escalate."<sup>46\*</sup> According to Probst, she called A.F.'s home that evening to check on A.F.'s well-being but did not receive an answer. The following day, November 20, after discussions with Acting School District Superintendent John DiNunzio and a local solicitor,<sup>47</sup> as well as further contact with A.F. and his mother, Probst, in the presence of her

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<sup>45</sup> While one participant in the meeting stated that it occurred on November 20, a review of relevant records confirms that it took place on November 19.

<sup>46</sup> Following the meeting, Probst and the guidance counselor each made and kept notes describing what had occurred. \* In responding to this report, Probst pointed out that her notes and the notes of the guidance counselor were "substantially consistent with one another."

<sup>47</sup> Because Superintendent DiNunzio was unable to reach the District's regular solicitor, he called the solicitor for a nearby district where DiNunzio had worked previously. According to a confirming email from the solicitor to DiNunzio sent that day, district officials told the solicitor that they found A.F. and his story to be credible and the solicitor affirmed to the officials that they had an obligation to report.

superintendent, \* called Clinton County CYS to report A.F.'s allegations.<sup>48</sup>

After making the report to CYS, Probst and the superintendent summoned Sandusky to the school and told him that he would no longer be permitted on school grounds. In addition, Probst and an assistant principal identified two current and two former CMHS students, beyond A.F., with whom Sandusky seemed to have had extensive contact. They called the former students, and the parents of the current students, to warn them not to have further contact with Sandusky.

The other report to CYS was made by Erin Rutt, a CYS employee who was the CYS coordinator for both the Big Brother Big Sister program and The Second Mile, the charity for at-risk youth founded by Sandusky. Rutt knew A.F. and his mother from their family's participation in both programs. On November 19 or 20, either the day of or the day after A.F. and his mother met with CMHS officials about Sandusky's conduct, A.F.'s mother disclosed the same information to Rutt. On November 20, Rutt reported the information to CYS Director Gerald Rosamilia. According to Rosamilia, CYS received the reports from Rutt and Probst at about the same time, though he may have spoken to Rutt before he learned of Probst's call. On the afternoon of November 20, Rutt picked up A.F. and his mother in a CYS van and drove them to CYS to be interviewed.

During A.F.'s November 20 interview, conducted by CYS case worker Jessica Dershem, along with a second case worker, A.F. again disclosed inappropriate, but not explicitly sexual,

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\* In responding to this report, Superintendent DiNunzio stated: "I made the initial phone call to inform CYS of the problem, and then I turned the phone over to Mrs. Probst who then spoke to CYS."

<sup>48</sup> According to CYS records, Probst called and made her report at 12:35 p.m. on November 20. According to a CYS employee, Probst also had called earlier in the day. During that earlier call, according to the CYS employee, Probst stated that A.F. and his mother were coming to CYS and that CYS, in assessing their allegations, should "consider the source." Probst denies making such a call or suggesting to CYS that A.F. or his mother should not be believed.

behavior by Sandusky. In particular, A.F. described Sandusky getting into bed with A.F. when A.F. spent the night at Sandusky's house, pulling A.F. on top of him and holding him there for as long as 10 to 15 minutes at a time. During these sessions, which A.F. said occurred often, Sandusky would "crack" A.F.'s back, pulling him in even closer to Sandusky. A.F. also described overnight stays with Sandusky in hotel rooms where he and Sandusky sometimes shared a bed, and where similar behavior occurred.

Under the CPSL, if the statewide central register contains information of a prior report of abuse committed by the current alleged perpetrator, DPW "shall immediately notify the appropriate county agency of this fact."<sup>49</sup> Although Sandusky had been investigated for suspected child abuse in 1998,<sup>50</sup> no record of that investigation appears to have existed in the statewide central register in 2008. By operation of the CPSL, all reports that are deemed "unfounded," meaning that they were neither "indicated" nor "founded," must be expunged no later than one year and 120 days after the filing of the report.<sup>51</sup> As a result, in 2008, Clinton County CYs workers and Pennsylvania State Police investigators did not learn through ChildLine of the earlier investigation of Sandusky. Nor did they or OAG learn of that earlier investigation through other means until more than two years later. There is no indication in the records, or through interviews, that before late 2010 anyone involved in the criminal investigation of A.F.'s allegations contacted Centre County CYs, DPW, Penn State, or the State

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<sup>49</sup> 23 PA. CONS. STAT. § 6334(a) (2008), *amended by* Act of Apr. 7, 2014, P.L. 388, No. 29 (effective Dec. 31, 2014).

<sup>50</sup> The 1998 investigation was conducted by Penn State police, with the assistance of the State College police, in conjunction with both DPW and the Centre County District Attorney's Office. The District Attorney at the time, Ray Gricar, ultimately declined prosecution.

<sup>51</sup> 23 PA. CONS. STAT. § 6337(a) (2008), *amended by* Act of Apr. 7, 2014, P.L. 388, No. 29 (effective Dec. 31, 2014).

College police to ask about other allegations against Sandusky.<sup>52</sup> Law enforcement officials from PSP and OAG did not learn of the 1998 incident until late 2010 or early 2011.<sup>53</sup>

On November 20, 2008, CYS Director Rosamilia, upon learning of the allegations against Sandusky made by a youth from The Second Mile, decided to suspend his office's relationship with that organization. He so informed Erin Rutt, CYS's Second Mile coordinator, and Katherine Genovese, executive vice president of The Second Mile.<sup>54</sup> According to Rosamilia, during his phone call with Genovese, he explained that he was suspending his office's relationship with The Second Mile because an allegation of sexual abuse had been made against someone from The Second Mile. When Genovese pressed him for the identity of the alleged perpetrator, Rosamilia says that he declined, citing confidentiality provisions of the CPSL, but that he did tell her that it was not one of her primary staff engaged in day-to-day contact with children. At some point during the conversation, according to Rosamilia, Genovese surmised that it was Sandusky.\* Rosamilia apparently did not describe his conversation with Genovese to anyone in law enforcement until August 2011, which he says was the first time he was interviewed in connection with the Sandusky investigation.

PSP, having received the referral from CYS on or about November 21, 2008, assigned Tpr. Joseph M. Cavanaugh of the Lamar Barracks to the investigation. On December 12, 2008, Cavanaugh, along with a trooper from the Montoursville Barracks and CYS case worker Jessica

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<sup>52</sup> The lead PSP investigator at the time, Tpr. Joseph Cavanaugh, may have been aware, based on his discussions with Clinton County CYS caseworker Dershem, that no record of other allegations against Sandusky existed in the ChildLine database.

<sup>53</sup> See discussion *infra* Part One, Section D.

<sup>54</sup> Genovese, through counsel, declined to be interviewed for this report.

\* In their response to this report, Genovese and Dr. John R. Raykovitz, former Second Mile President and CEO, disagree with Rosamilia's description of this call. See Responses, Dr. John R. Raykovitz and Katherine Genovese, at 1.



Dershem, interviewed A.F. A.F. described Sandusky's conduct in more detail than he had earlier, adding that Sandusky repeatedly kissed him on the cheek and lips, blew on his stomach, and rubbed his back and bare bottom.<sup>55</sup> Between that interview and late January 2009, Tpr. Cavanaugh conducted the following eight additional interviews: (1) A.F.'s mother; (2) Steven Turchetta, CMHS Assistant Principal and Head Football Coach; (3) – (6) four CMHS students (two current and two former) identified by Turchetta as "selected" by Sandusky to "mentor";<sup>56</sup> (7) Clinton County CYS case worker Jessica Dershem; and (8) Joseph Fred Miller, Jr., a volunteer wrestling coach who corroborated A.F.'s description of an unusual incident between A.F. and Sandusky.<sup>57</sup>

Meanwhile, on January 2, 2009, pursuant to the CPSL and related regulations,<sup>58</sup> Clinton County CYS notified Sandusky that he was the subject of a report of suspected child abuse. As a result of that notification, on January 15, 2009, Dershem, along with CYS solicitor Michael Angelelli, interviewed Sandusky at CYS offices.<sup>59</sup> Despite earlier discussions between Dershem and Tpr. Cavanaugh about a possible Sandusky interview, neither Tpr. Cavanaugh nor any other

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<sup>55</sup> After the initial CYS interview on November 20, CYS provided A.F. the services of its contract psychologist, which both A.F. and the psychologist say contributed to A.F.'s willingness to reveal more information to the authorities than he had earlier.

<sup>56</sup> According to Cavanaugh's report, all four denied sexual contact with Sandusky. The two current students told Cavanaugh that nothing inappropriate or odd had occurred during the time they spent with Sandusky. One former student, while denying that anything odd or inappropriate had occurred, described Sandusky as "suffocating." The other former student described Sandusky as "very needy" and stated that Sandusky would put his hand on the student's knee while Sandusky was driving, behavior that Sandusky eventually stopped.

<sup>57</sup> Miller told Cavanaugh that he had come across A.F. and Sandusky one evening in a school weight room "rolling around" on a mat. Miller testified about the incident in more detail both in the Grand Jury and at trial. See Transcript of Proceedings (Jury Trial—Day 2) at 300-21, *Commonwealth v. Sandusky*, Nos. CP-14-CR-2421-2011 & CP-14-CR-2422-2011 (Ct. Com. Pl. Centre County, June 12, 2012) (trial testimony).

<sup>58</sup> See 23 PA. CONS. STAT. § 6368(a) (2008), *amended by* Act of Dec. 18, 2013, P.L. 1235, No. 123; 55 PA. CODE § 3490.58.

<sup>59</sup> Sandusky was accompanied by counsel.

law enforcement official participated in this interview.<sup>60\*</sup> During the interview, Sandusky did not admit to engaging in criminal conduct, but he did make damaging admissions that played an important role at his later trial.<sup>61</sup> In particular, according to Dershem's notes of the interview, Sandusky admitted to pulling A.F. on top of him and cracking his back and to rubbing A.F.'s back underneath his shirt. When asked about whether the back rubs extended to A.F.'s buttocks, Sandusky said "I can't honestly answer if my hands were below his pants."

On January 16, 2009, the day after the Sandusky interview, CYS personnel – Rosamilia, Dershem, and Angelelli – discussed the matter and concluded that there was sufficient information to "indicate" the case.<sup>62</sup> As a result, Dershem prepared and sent the appropriate form to ChildLine.

Tpr. Cavanaugh, after completing the interviews noted above (the last of which occurred on January 21, 2009), prepared a report that described the allegations and interviews. In late January or early February 2009, Tpr. Cavanaugh took his report and met with Clinton County District Attorney Michael Salisbury to discuss further investigation and possible prosecution. Salisbury, upon learning that most of the conduct alleged by A.F. had occurred in Centre County rather than Clinton County, decided to send the case to Centre County District Attorney Michael

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<sup>60</sup> Given PSP's decision not to make its employees available for interview, I was unable to determine whether this was a conscious decision or the product of miscommunication. \* In his response to this report, Col. Frank Noonan, Commissioner of the Pennsylvania State Police, states: "PSP was not aware of, nor were investigators invited to participate in, the 2009 Children and Youth Services (CYS) interview of Mr. Sandusky," and that "a review of the CYS report and the PSP Incident Report, two documents to which Mr. Moulton cited numerous times, clearly demonstrates that PSP had no knowledge of that interview." See Responses, Colonel Frank Noonan, at 1, 2.

<sup>61</sup> See Transcript of Proceedings (Jury Trial—Day 2) at 133-44, *Commonwealth v. Sandusky*, Nos. CP-14-CR-2421-2011 & CP-14-CR-2422-2011 (Ct. Com. Pl. Centre County, June 12, 2012) (testimony of Jessica Dershem); Transcript of Proceedings (Jury Trial—Day 8) at 133-34, *Commonwealth v. Sandusky*, Nos. CP-14-CR-2421-2011 & CP-14-CR-2422-2011 (Ct. Com. Pl. Centre County, June 21, 2012) (Commonwealth's closing argument).

<sup>62</sup> See 23 PA. CONS. STAT. § 6303(a) (2008) (a report of abuse should be "indicated" if the agency "determines that substantial evidence of the alleged abuse exists."), *amended by* Act of Dec. 18, 2013, P.L. 1170, No. 108 (effective Dec. 31, 2014) (the 2013 amendment made no material change to the quoted language).

Madeira. According to Salisbury, he contacted Madeira the day of his meeting with Tpr. Cavanaugh and delivered Cavanaugh's report to Madeira in early February.

According to then-District Attorney Madeira, he immediately recognized that he had a potential conflict of interest in the case: Madeira's wife is the sister of one of Sandusky's adopted children. On March 3, 2009, Madeira sent a letter to OAG Executive Deputy Attorney General ("EDAG") Richard A. Sheetz, Jr., head of the Criminal Law Division, asking OAG to "assume responsibility for the prosecution of this case" because of the "apparent and actual conflict of interest [that] exists for me and my office."<sup>63</sup> This letter was received at OAG on March 4. On March 18, 2009, EDAG Sheetz wrote back to Madeira, stating that OAG "will assume jurisdiction of this case" and that the case had been assigned to Senior Deputy Attorney General ("SDAG") Jonelle H. Eshbach.<sup>64</sup>

The 1998 incident was investigated by the Penn State Police Department and referred to the Centre County District Attorney's Office. The District Attorney in 1998, Ray Gricar, declined to prosecute the case and no further investigation of Sandusky occurred at the time.<sup>65</sup> In early 2009, no one who had worked directly on the 1998 investigation remained in the Centre County District Attorney's Office. Gricar had disappeared in 2005, and the only assistant district attorney who had been involved in the matter in 1998 had left the office in early 2006. The District Attorney in 2009, Michael Madeira, had taken office in 2006. First Assistant Mark

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<sup>63</sup> Letter from Michael T. Madeira, District Attorney, Centre County District Attorney's Office, to Richard A. Sheetz, Jr., Executive Deputy Attorney Gen., Pa. Office of Attorney Gen. (Mar. 3, 2009) (attached as part of Appendix B). Madeira's referral was based on the Commonwealth Attorneys Act, which gives the Attorney General the power to prosecute a case "[u]pon the request of a district attorney . . . who represents that there is the potential for an actual or apparent conflict of interest on the part of the district attorney or his office." 71 PA. STAT. ANN. § 732-205(a)(3).

<sup>64</sup> Letter from Richard A. Sheetz, Jr., Executive Deputy Attorney Gen., Pa. Office of Attorney Gen., to Michael T. Madeira, District Attorney, Centre County District Attorney's Office (Mar. 18, 2009) (attached as part of Appendix B).

<sup>65</sup> The merits of that declination are beyond the scope of this report.

Smith, however, had been in the office in 1998 and was generally aware of the investigation. Smith remembers telling Madeira, at the time of the referral from District Attorney Salisbury, about the earlier investigation of Sandusky. Madeira states that he does not recall such a discussion. In any event, no one disputes that neither Madeira nor anyone else from the Centre County District Attorney's Office passed on information about the 1998 investigation to OAG when the case was transferred in March 2009.

**B. Phase Two: Receipt of Case by OAG (March 2009) through Draft Presentment (March 2010)**

The assignment of SDAG Eshbach to the Sandusky investigation on March 17, 2009, was made by then-Chief Deputy Attorney General ("CDAG") Frank Fina, who headed the Criminal Prosecutions Section within the Criminal Law Division at OAG. Fina reported to EDAG Sheetz, who ran the Criminal Law Division. Sheetz reported to First Deputy Attorney General William H. Ryan, Jr., who in turn reported to Attorney General Tom Corbett.<sup>66</sup> Both Ryan and Corbett recall learning about the matter very soon after it arrived at OAG. According to Corbett, he recognized right away the significance of the allegations.

Fina explained that he assigned that matter to Eshbach because of her skill as a lawyer and her considerable experience in handling child-sexual-abuse cases. In Pennsylvania, the vast majority of child-sexual-abuse cases are prosecuted by county district attorney's offices; OAG gains jurisdiction of such cases only when referred by a district attorney based on a conflict of interest (as in Sandusky) or inadequate resources.<sup>67</sup> Most of Eshbach's experience in this area had come during her time as an assistant district attorney in York County, although she did prosecute many of the child-sexual-abuse cases that came to OAG based on county-level

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<sup>66</sup> Corbett had been sworn in as Attorney General on January 18, 2005.

<sup>67</sup> See 71 PA. STAT. ANN. § 732-205(a)(3).

conflicts. On March 17, 2009, she received from Centre County District Attorney Madeira the eight-page PSP report that Madeira had received from District Attorney Salisbury in early February. As noted above, neither Madeira nor anyone from the Centre County District Attorney's Office told Eshbach or anyone at OAG about the 1998 allegations against Sandusky.

By the time the investigation was transferred to OAG, Tpr. Cavanaugh had been replaced by Tpr. Timothy Lear as the lead PSP investigator.<sup>68</sup> Tpr. Lear interviewed A.F. on March 12, 2009, and again on March 19, 2009. According to the report of the March 19 interview, at which A.F.'s psychologist was present, A.F. related, though reluctantly, that Sandusky had performed oral sex on A.F. several times and that Sandusky also had forced A.F. to perform oral sex on Sandusky. No prosecutor participated in either interview. On April 3, 2009, Eshbach met A.F. for the first time, at a meeting with Tpr. Lear, A.F.'s mother, and A.F.'s psychologist. At the meeting, Eshbach explained the expected course of the investigation going forward, including the likelihood of A.F. testifying in the Grand Jury. Eshbach did not ask A.F. any substantive questions regarding the abuse by Sandusky, relying instead on the information provided by investigators.

On May 1, 2009, OAG submitted the Sandusky investigation to the Thirtieth Statewide Investigating Grand Jury. Pursuant to the Investigating Grand Jury Act,<sup>69</sup> the Notice of Submission explained the nature of the investigation and why OAG believed the investigative resources of the Grand Jury were needed:<sup>70</sup>

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<sup>68</sup> Tpr. Cavanaugh was assigned to PSP's Lamar barracks, which covers Clinton County, where A.F. lived and went to school. Tpr. Lear was assigned to PSP's Rockview barracks, which covers Centre County, where Sandusky lived and committed most of the abuse described by A.F.

<sup>69</sup> See 42 PA. CONS. STAT. §§ 4541-4553.

<sup>70</sup> See 42 PA. CONS. STAT. § 4550.

The Pennsylvania State Police are pursuing an investigation based upon a founded Clinton County Children and Youth Services complaint alleging sexual assault by a Centre county adult male upon a juvenile male with whom he became acquainted through his sponsorship of a charity for disadvantaged youth. It is believed that other minor males have been similarly assaulted through this connection. The investigation concerns allegations of involuntary deviate sexual intercourse, indecent assault, and corruption of minors in Clinton and Centre counties. The powers of the grand jury are needed in order for the investigation of this matter to advance to a satisfactory conclusion. In particular, the power of the grand jury to compel the attendance of witnesses is needed. Witnesses with knowledge may be too embarrassed or intimidated to admit their knowledge of the violations because the actor is well-regarded and influential and is also known as the founder of a charity that raises funds for and serves disadvantaged children. Young men who are potentially involved are in fear of revealing what they know due to the suspect's power and influence.

The power of the grand jury to compel testimony under oath is needed. It is critical in a sexual assault case where no physical evidence exists to test the reliability of information provided by the witness and to obtain testimonial evidence which could be used at a criminal trial as substantive evidence if the witness testifies differently at trial. See *Commonwealth v. Lively*, 530 Pa. 464, 610 A.2d 7 (1992).

The power of the grand jury to subpoena documents is needed in order to obtain information that would not otherwise be available. Specifically, telephone records and business records may be needed to corroborate the testimony of the witnesses.<sup>71</sup>

According to Fina, the decision to use a grand jury<sup>72</sup> to investigate Sandusky was his, a decision with which both his supervisor, Sheetz, and the line prosecutor, Eshbach, agreed. According to then-Attorney General Corbett, he was informed of this decision and agreed with it. According to Fina, while many sexual-assault cases are not necessarily appropriate for referral to an investigating grand jury, this one was, particularly because of the perceived need to keep the investigation secret. In addition to the reasons set out in the Notice of Submission, Fina was concerned that without the protection of grand-jury-secrecy orders, the investigation would

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<sup>71</sup> NOTICE OF SUBMISSION OF INVESTIGATION NO. 29, ¶ 3 (attached as part of Appendix C).

<sup>72</sup> Consistent with OAG practice, the term "grand jury" in this report refers to grand juries generally. The term "Grand Jury" refers to a particular body, here the Grand Jury that was employed to investigate Sandusky. As discussed later in the report, the term of the Thirtieth Statewide Investigating Grand Jury expired while the Sandusky investigation was ongoing, and it was replaced by the Thirty-Third Statewide Investigating Grand Jury. See *infra* Part One, Section D. Where convenient, this report uses "Grand Jury" to refer to both bodies.

become public. And if the investigation became public, he feared that any other Sandusky victims, who apparently had not complained about Sandusky to date, would be more reluctant to come forward, particularly given Sandusky's prominence in the community.<sup>73</sup> According to Eshbach, she also believed that this investigation belonged in a grand jury, chiefly for the reasons included in the Notice of Submission. In addition, she noted that while at OAG she had successfully used a grand jury to investigate another multi-victim child-sexual-abuse case, against a police officer in Marysville, Pennsylvania.<sup>74</sup> On May 5, the supervising grand jury judge accepted the submission and the Sandusky investigation was designated "Notice No. 29" in the Thirtieth Statewide Investigating Grand Jury,<sup>75</sup> which met for one week each month in Harrisburg.

Later in May, Tpr. Scott Rossman replaced Tpr. Lear as the lead investigator for PSP. Also in May, OAG Agent Anthony Sassano was assigned to the case. According to Eshbach, she asked for the addition of an OAG agent to assist Tpr. Rossman. Fina and Randy Feathers, who was then an OAG Regional Director and Sassano's supervisor, each take credit for the selection of Sassano, offering similar reasons: Sassano's skill and experience as an investigator, including experience investigating sexual-assault cases during his 20 years of work for the City of Altoona Police Department, as well as the fact that Sassano worked in and was familiar with

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<sup>73</sup> Fina stated that he saw the investigation as presenting two possibilities: either A.F. was telling the truth, in which case Sandusky was not only a child molester but also likely a serial child molester who had left a string of victims, or A.F. was not telling the truth, in which case Sandusky was innocent. According to Fina, in either event secrecy was paramount.

<sup>74</sup> See *Attorney General Corbett & PA State Police Announces Arrest of Marysville Police Officer Charged with Sex Crimes Involving Numerous Teenage Girls*, PENNSYLVANIA OFFICE OF ATTORNEY GENERAL, Oct. 25, 2007, <http://www.attorneygeneral.gov/press.aspx?id=3042&LangType=1034>; The Associated Press, *Ex-Pa. Officer Guilty of Sex Crimes While On Duty*, USA TODAY, Oct. 26, 2008, [http://usatoday30.usatoday.com/news/nation/2008-10-26-pa-minors\\_N.htm](http://usatoday30.usatoday.com/news/nation/2008-10-26-pa-minors_N.htm); see also *Commonwealth v. Pavlovich*, No. 2145 MDA 2009 (Pa. Super Ct. Apr. 29, 2011) (affirming appeal from *Commonwealth v. Pavlovich*, No. CP-50-CR-0000042-2008) (Ct. Com. Pl. Perry County)).

<sup>75</sup> See *In Re: The Thirtieth Statewide Investigating Grand Jury, Notice No. 29, Order*, May 5, 2009 (attached as part of Appendix C).

State College, where Sandusky resided. According to Fina, Sassano, who was assigned to the Bureau of Narcotics Investigation and Drug Control at OAG, had as much relevant experience as any agent at OAG at the time. According to Agent Sassano, at this stage of the investigation Tpr. Rossman was the lead investigator; Agent Sassano was to assist Tpr. Rossman as needed.<sup>76</sup>

At the time the Sandusky investigation came to OAG, the office was heavily invested in a set of investigations and prosecutions involving the Pennsylvania Legislature that fell under the heading of “Bonusgate.” According to an OAG press release, the investigations began in 2007 “after a series of newspaper stories revealed that millions of dollars of taxpayer funded bonuses were paid to employees of the Pennsylvania Legislature,” and they “uncovered the illegal use of millions of dollars in taxpayers’ funds, resources and state employees for political campaign purposes.”<sup>77</sup> The work on Bonusgate was extremely labor intensive for both prosecutors and agents at OAG. Agent Sassano’s assignment to Sandusky occurred in conjunction with the

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<sup>76</sup> At the time, according to Sassano, that meant helping to coordinate matters in the Grand Jury and handling the planned telephone call from A.F. to Sandusky. See *infra* notes 81-82 and accompanying text.

<sup>77</sup> *Attorney General Corbett Announces Charges in Legislative Bonus Investigation – 12 Suspects Charged in 1st Phase of the Investigation*, THE ATTORNEY GENERAL’S PRESS OFFICE—PENNSYLVANIA OFFICE OF ATTORNEY GENERAL, July 10, 2008, <http://www.attorneygeneral.gov/press.aspx?id=3771>. In July 2008, in the first phase of the Bonusgate investigation, OAG brought charges against 12 then-current and former members of the House Democratic Caucus. *Id.* The charges focused on the directing of public employees to work on political campaigns while being paid by taxpayers, and the payment of state-funded bonuses for such work.

In November 2009, in the second phase of the investigation, OAG brought similar charges against 10 then-current and former members of the House Republican Caucus. See *Attorney General Corbett Announces Criminal Charges in Second Phase of Legislative Investigation; 10 Suspects Charged*, THE ATTORNEY GENERAL’S PRESS OFFICE—PENNSYLVANIA OFFICE OF ATTORNEY GENERAL, Nov. 12, 2009, <http://www.attorneygeneral.gov/press.aspx?id=4834>. The second phase of the investigation is also commonly referred to as “Computergate” because it involved the use of taxpayer funds to create computer programs that were designed to facilitate campaign and election activities. See *id.*; Angela Couloumbis, *6th ‘Computergate’ Defendant Expected to Plead Guilty*, PHILLY.COM, Sept. 19, 2011, [http://articles.philly.com/2011-09-19/news/30176126\\_1\\_guilty-plea-jury-selection-campaign-manager](http://articles.philly.com/2011-09-19/news/30176126_1_guilty-plea-jury-selection-campaign-manager). Finally, in December 2009, OAG brought charges against three other then-current and former members of the House Democratic Caucus, as part of the ongoing Bonusgate investigation based upon conduct similar to that which had been discovered in the first phase of the investigation. See *Attorney General Corbett Announces Additional Charges in Ongoing Public Corruption Investigation*, THE ATTORNEY GENERAL’S PRESS OFFICE—PENNSYLVANIA OFFICE OF ATTORNEY GENERAL, Dec. 15, 2009, <http://www.attorneygeneral.gov/press.aspx?id=4919>.

Ultimately, the investigation resulted in 22 individuals being convicted or pleading guilty. See Charles Thompson, *Tom Corbett and Bonusgate: Did Senate Republicans Get A Break?*, PENNLIVE, Feb. 27, 2013, [http://www.pennlive.com/midstate/index.ssf/2013/02/tom\\_corbett\\_and\\_bonusgate\\_did.html](http://www.pennlive.com/midstate/index.ssf/2013/02/tom_corbett_and_bonusgate_did.html).



reassignment of several other cases from OAG Bureau of Criminal Investigations (“BCI”) agents in Harrisburg who were working on Bonusgate to other OAG agents in various field offices.<sup>78</sup>

In June 2009, the grand jury investigation got underway. On June 16, Tpr. Rossman and A.F. both appeared before the Grand Jury. Tpr. Rossman testified about the investigation to date, described Sandusky’s efforts to “groom” and then sexually assault A.F.,<sup>79</sup> expressed the belief that Sandusky had victimized others, and explained the hope that use of the Grand Jury would help identify more victims. A.F. testified about his interactions with Sandusky. Consistent with his most recent interviews, including an interview by Tpr. Rossman on June 8, 2009, A.F. acknowledged that Sandusky had performed oral sex on him and that on at least one occasion he had performed oral sex on Sandusky. He did so with great difficulty, however, and was able to testify about the oral sex only with one-word answers in response to leading questions.<sup>80</sup>

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<sup>78</sup> Cf. Greg Bock, *Relief Follows Sandusky Verdict*, ALTOONAMIRROR.COM, June 24, 2012, <http://www.altoonamirror.com/page/content.detail/id/561937/Relief-follows-Sandusky-verdict.html?nav=756> (“During the Bonusgate investigation, we had a shortage of investigators in Harrisburg” (quoting former OAG Regional Director Randy Feathers)).

<sup>79</sup> The process of “grooming”

is defined as a variety of techniques used by a sex offender to access and control potential and actual child victims. This process takes access, time, and interpersonal skill. How much time depends on the needs of the child and skills of the adult. If done well the process not only gains the victim’s initial cooperation, but also decreases the likelihood of disclosure by the victim and increases the likelihood of ongoing, repeated access.

KENNETH V. LANNING, *CHILD MOLESTERS: A BEHAVIORAL ANALYSIS – FOR PROFESSIONALS INVESTIGATING THE SEXUAL EXPLOITATION OF CHILDREN* 27 (National Center for Missing & Exploited Children, 5th ed. 2010), available at [http://www.missingkids.com/en\\_US/publications/NC70.pdf](http://www.missingkids.com/en_US/publications/NC70.pdf). For a more detailed description of the “grooming” process, see *id.* at 26-28. See also CARLA VAN DAM, *THE SOCIALLY SKILLED CHILD MOLESTER: DIFFERENTIATING THE GUILTY FROM THE FALSELY ACCUSED* 7, 43-44 (Routledge 2013) (originally published by The Haworth Press, Inc. 2006).

<sup>80</sup> Adolescent boys often have great difficulty describing the details of the abuse they suffered. See LANNING, *supra* note 79, at 85 (“Many children, especially adolescent boys, vehemently deny their involvement with a pedophile.”); William Winslade et al., *Castrating Pedophiles Convicted of Sex Offenses Against Children: New Treatment or Old Punishment?*, 51 SMU L. REV. 349, 411 n.37 (1998) (observing “that shame may be a powerful factor in keeping boys from reporting sexual abuse, and that even when sexual abuse is uncovered, boys may be extremely reluctant to discuss the sexual abuse”).

Following A.F.'s initial grand jury testimony, the investigation sought both to secure evidence that would corroborate A.F.'s allegations and to identify additional Sandusky victims. In terms of the search for other victims, the focus at the time was on using A.F. and officials at CMHS to identify other boys who had spent significant time with Sandusky in the recent past. That effort resulted in the interview of F.P., a former CMHS student previously interviewed by Tpr. Cavanaugh, and F.A., who had spent time with both Sandusky and A.F. While each denied being a victim of sexual misconduct, both described what investigators believed was "grooming" behavior by Sandusky. F.P. told Agent Sassano on June 17, 2009, that he had met Sandusky through The Second Mile, that Sandusky had given him gifts and taken him to football games and golf outings, and that Sandusky occasionally had placed his hand on F.P.'s knee while they were driving in Sandusky's car. F.A., who also met Sandusky through The Second Mile, was interviewed by Tpr. Rossman on July 14, 2009, and testified in the Grand Jury on August 17, 2009. According to F.A.'s testimony, while riding in a car with Sandusky and A.F., he had witnessed Sandusky placing his hand on A.F.'s knee and reaching across the seat to tickle A.F. F.A. testified that Sandusky had engaged in the same knee-touching and tickling behavior with him, and that Sandusky's conduct had made him very uncomfortable.

The efforts at corroborating A.F.'s allegations, in addition to securing the testimony of F.A., included having A.F. place a consensual phone call to Sandusky,<sup>81</sup> interviewing two people affiliated with the Keystone Central School District who had had contact with both Sandusky and A.F., and subpoenaing telephone records. While A.F. eventually spoke to Sandusky in a recorded phone call, Sandusky did not admit to criminal conduct. Nevertheless, according to

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<sup>81</sup> Under Pennsylvania's Wiretapping and Electronic Surveillance Control Act, 18 PA. CONS. STAT. § 5701 *et seq.*, a law enforcement officer may intercept and record a conversation as part of a criminal investigation as long as one of the parties to the conversation has given prior consent and the officer has obtained approval from a qualified representative of the appropriate prosecutorial entity. *See id.* § 5704(2)(ii).

Eshbach, Sandusky's odd behavior on the call provided support for A.F.'s allegations.<sup>82</sup> The two witnesses associated with the District, Joseph Miller and Steven Turchetta, had been interviewed by Tpr. Cavanaugh in January; both testified in the Grand Jury on July 15, 2009.

Miller testified about the weight-room incident that A.F. had first described to CMHS officials the previous November. Miller confirmed walking into the weight room after school hours and finding A.F. and Sandusky lying face-to-face on mats. According to Miller, A.F. and Sandusky both appeared to be surprised, as was he, and Sandusky quickly volunteered that he and A.F. were "just working on wrestling moves." Miller told the Grand Jury that he had found the situation somewhat odd – Sandusky and A.F. were in a secluded room ill-equipped for wrestling while the larger wrestling room was available next door, and Sandusky was not a wrestling coach – but had thought little of it at the time because of Sandusky's stellar reputation in the community for helping children. Steven Turchetta testified that he was an assistant principal and head football coach at CMHS, that Sandusky was a volunteer assistant football coach at CMHS, and that Sandusky "mentored" children in the District, including A.F., who participated in programs run by The Second Mile. Turchetta confirmed A.F.'s account that it was not unusual for him, as assistant principal, to call A.F. and other students out of class or activity period at the end of the day to see Sandusky at Sandusky's request. Turchetta, who did not testify at trial, further told the Grand Jury that Sandusky was sometimes "controlling," "clingy," and "needy" in his relationships with The Second Mile students he mentored. He also discussed the other students with whom Sandusky had formed "mentoring" relationships while at

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<sup>82</sup> The phone call, which lasted for seven minutes and 35 seconds, consisted chiefly of A.F. asking Sandusky whether he had abused anyone else besides A.F., and of Sandusky telling A.F. that he (Sandusky) could not talk to him (A.F.). Sandusky repeatedly said he had to get off the phone, but then stayed on the line. Eventually, Sandusky told A.F. that he did not know what he was talking about and hung up.

CMHS, students he had identified for Tpr. Cavanaugh, and that Tpr. Cavanaugh had interviewed, back in January.

On July 27, 2009, the Grand Jury issued subpoenas to three telephone service providers for records of telephone calls placed to and from phones used by Sandusky, A.F., and A.F.'s mother. According to Agent Sassano's later grand jury testimony, the records showed, in a 19-month period, 61 phone calls from Sandusky's home phone to A.F.'s home phone; 57 calls from Sandusky's cell phone to A.F.'s home phone; four calls from A.F.'s home phone to Sandusky's cell phone; and one call from A.F.'s mother's cell phone to Sandusky's cell phone.

The investigation reached the end of 2009 with only one Sandusky victim, A.F., available to testify. Tpr. Rossman did succeed in identifying M.S., who later described himself as another Sandusky victim, in the fall of 2009. During an October 29, 2009, interview with Tpr. Rossman, however, M.S. flatly denied that Sandusky had ever touched him inappropriately.<sup>83</sup> Much later, during the Sandusky trial in June 2012, M.S. contacted OAG and stated that he had in fact been the victim of sexual abuse by Sandusky.<sup>84</sup>

As the criminal investigation proceeded through the first nine months of 2009, Sandusky pursued his right to challenge the Clinton County CYs determination, made in January, that A.F.'s allegations against Sandusky were "indicated."<sup>85</sup> Eventually, a hearing before a DPW

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<sup>83</sup> M.S. repeated this denial when testifying before the Grand Jury on April 11, 2011.

<sup>84</sup> Other investigative steps taken in 2009 included sending a subpoena for Sandusky's credit report and reviewing the results, and a review of income reports concerning Sandusky from the Pennsylvania Department of Labor and Industry.

<sup>85</sup> As the CPSL existed at the time, after a report of suspected child abuse was determined to be "indicated," the report was entered in the Statewide central register, the ChildLine registry, and was expunged from the pending complaint file. 23 PA. CONS. STAT. § 6338(a) (2008), *amended by* Act of Dec. 18, 2013, P.L. 1170, No. 108 (effective Dec. 31, 2014), Act of Apr. 7, 2014, P.L. 388, No. 29 (effective Dec. 31, 2014), and Act of May 14, 2014, P.L. \_\_\_, No. 45 (effective Dec. 31, 2014); 55 PA. CODE § 3490.35. At that time, the perpetrator, among others, had to be given notice of the determination of the report, including "an explanation of the implications of the determination." 23 PA. CONS. STAT. § 6338(a) (2008), *amended by* Act of Dec. 18, 2013, P.L. 1170, No. 108

hearing officer was scheduled for September 30, 2009. Had the hearing taken place, A.F. would likely have been called as a witness and been subject to cross-examination by Sandusky's lawyer. This prospect concerned Eshbach, who sought and secured an order from the supervising grand jury judge temporarily staying the DPW hearing.<sup>86</sup> That order became moot, however, when Sandusky withdrew his request for a hearing, apparently after his lawyer learned from Clinton County CYS that A.F. was alleging more than indecent assault.

On September 3, 2009, Agent Sassano sent an email to Eshbach and Tpr. Rossman suggesting that they consider four different investigative steps: (1) getting a search warrant for Sandusky's home computer; (2) pursuing a lead provided by A.F.'s mother that the Philadelphia Eagles had offered A.F. season tickets; (3) accessing Sandusky's employment records at Penn State; and (4) serving a grand jury subpoena on Centre County CYS for similar complaints about Sandusky.<sup>87</sup> Two of those suggestions – pursuing the season-tickets lead and subpoenaing Penn

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(effective Dec. 31, 2014), Act of Apr. 7, 2014, P.L. 388, No. 29 (effective Dec. 31, 2014), and Act of May 14, 2014, P.L. \_\_\_, No. 45 (effective Dec. 31, 2014); *see also* 55 PA. CODE § 3490.40(a). The notice also had to “inform the recipient of his right, within 45 days after being notified of the status of the report, to appeal an indicated report, and his right to a hearing if the request is denied.” 23 PA. CONS. STAT. § 6338(a) (2008), *amended by* Act of Dec. 18, 2013, P.L. 1170, No. 108 (effective Dec. 31, 2014), Act of Apr. 7, 2014, P.L. 388, No. 29 (effective Dec. 31, 2014), and Act of May 14, 2014, P.L. \_\_\_, No. 45 (effective Dec. 31, 2014).

A perpetrator of an indicated report then “may, within 45 days of being notified of the status of the report, request the secretary [of DPW] to amend or expunge an indicated report on the grounds that it is inaccurate or it is being maintained in a manner inconsistent with” the CPSL. 23 PA. CONS. STAT. § 6341(a)(2) (2008), *amended by* Act of Dec. 18, 2013, P.L. 1170, No. 108 (effective Dec. 31, 2014), and Act of May 14, 2014, P.L. \_\_\_, No. 45 (effective Dec. 31, 2014); *see also* 55 PA. CODE § 3490.105a(a). If a perpetrator filed such a request, the secretary of DPW had 30 days to decide “whether or not to grant the request.” 55 PA. CODE § 3490.105a(b); *see also* 23 PA. CONS. STAT. § 6341(c) (2008), *amended by* Act of Dec. 18, 2013, P.L. 1170, No. 108 (effective Dec. 31, 2014), and Act of May 14, 2014, P.L. \_\_\_, No. 45 (effective Dec. 31, 2014). If the secretary denied the request, the perpetrator had “45 days from the date of the letter giving notice of the decision to deny the request in which to request a hearing” “before the secretary or a designated agent of the secretary.” 23 PA. CONS. STAT. § 6341(c) (2008), *amended by* Act of Dec. 18, 2013, P.L. 1170, No. 108 (effective Dec. 31, 2014), and Act of May 14, 2014, P.L. \_\_\_, No. 45 (effective Dec. 31, 2014); *see also* 55 PA. CODE § 3490.106a. Such a hearing would be held before DPW's Bureau of Hearings and Appeals. 55 PA. CODE § 3490.106a(d).

<sup>86</sup> Had the hearing gone forward, Sandusky apparently would not have been obligated to testify in support of his position.

<sup>87</sup> Email from Anthony Sassano, Agent, Pa. Office of Attorney Gen., to Jonelle H. Eshbach, Senior Deputy Attorney Gen., Pa. Office of Attorney Gen., and cc Scott Rossman, Trooper, Pa. State Police (Sept. 03, 2009, 01:08 PM) (attached as Appendix D).

State for Sandusky's employment records – were acted on in late 2009 and early 2010. The other two – searching Sandusky's computer and seeking records of complaints from Centre County CYS – were not pursued until much later. The Grand Jury issued its first subpoena to Centre County CYS on January 28, 2011. Sandusky's home (including his computer) was not searched until June 21, 2011.

Both Eshbach and Fina were asked why these investigative steps suggested by Agent Sassano were not undertaken at the time. Eshbach explained that she expected if Centre County CYS had information about other allegations against Sandusky, investigators would already know about it, so issuing a subpoena would be of no value. As for the search warrant, Eshbach said that at the time she did not believe that a search of Sandusky's computer would bear fruit – Sandusky had been aware of the investigation since January and would have had the chance to destroy any incriminating evidence in the meantime, and in any event, she had been told that Sandusky was not a regular computer user. Fina, in addition to the explanations given by Eshbach, said that he believed they would have had difficulty establishing probable cause for a search at the time, and that he was also concerned that either action – searching Sandusky's home or sending a subpoena to Centre County CYS – would result in the investigation becoming public and thus make it more difficult to persuade additional victims to come forward.<sup>88</sup>

On November 16, 2009, A.F. testified before the Grand Jury for a second time. According to Eshbach, she wanted to determine whether A.F. would be able to describe Sandusky's conduct in his own words, rather than by responding to leading questions as he had in June. At the November 16 session, he was able to do so with respect to Sandusky performing

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<sup>88</sup> Ryan and Corbett both explained that they left matters of operational detail, such as what subpoenas to issue and when and where to search, to the professionals below them in the chain of command.

oral sex on him. While A.F. also eventually confirmed that he had performed oral sex on Sandusky, he did so only with a one-word answer to a leading question.

On December 16, 2009, at the fifth and final grand jury session of the year concerning Sandusky, Eshbach summarized the state of the investigation in an exchange with grand jurors:

MS. ESHBACH: As of now, we haven't found any other victims. We're still trying. I suspect, although I don't know for sure, that perhaps when this becomes public, we might have some other people turn up. That sometimes happens, but we have been trying pretty hard to find some other folks and so far have not. We are pursuing one other, just so you know.

A JUROR: When do you see this moving forward from out of here? I'm just curious.

MS. ESHBACH: As soon as I can write a presentment for you guys. They want – my bosses want us to pursue every angle. They have said, you know, go where the evidence leads. So depending upon whether anything comes out of, for example, looking at Penn State, we would look there before we actually gave you guys a presentment to consider; but I have to do that before you guys are done.

A JUROR: Have you pursued anybody from Penn State prior to when he was a coach up there?

MS. ESHBACH: Not yet. Not yet. It is kind of – we're going to ask, but we sort of suspect that we are going to get a door closed in our face, that there are no records or anything like that. That is what we bring people in here for.<sup>89</sup>

Eshbach asked Penn State for records the following month, issuing a subpoena on January 7, 2010, for Sandusky's employment and personnel records. In a memorandum to her superiors about the subpoena, Eshbach explained:

The reason for the issuance of the subpoena to Penn State is because we have some suspicion that the university may have become aware of Sandusky's inappropriate behavior towards the many young boys he was in contact with while he was employed at the university, through his creation and participation in the Second Mile Program. Sandusky was routinely surrounded by young men, although we have been unable to develop any victims other than the one minor victim who has testified before the Grand Jury. However, it is worthy of note that

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<sup>89</sup> Thirtieth Statewide Investigating Grand Jury, In re: Notice No. 29, Transcript of Proceedings, Witness: Anthony Sassano, Dec. 16, 2009, at 8-9.

Sandusky left Penn State as the defensive coordinator of the very successful, Division One-A Penn State Nittany Lion Football team at a relatively young age and rather abruptly. Although [it] is obvious that he was not going to be Joe Paterno's successor at any time in [the] near future at the time of his retirement, it was at the time odd that he retired so abruptly. We therefore are seeking any records which might indicate that his reason for leaving the university's employ was other than by his own choice. I recognize that it is possible that the records might be sanitized concerning this but believe after consulting with the investigators and many of you, that is a lead we must pursue.<sup>90</sup>

According to Agent Sassano's later report, the records supplied by Penn State in response to the subpoena contained no derogatory information about Sandusky.

Following the final grand jury session of 2009, Eshbach began to work on a draft presentment summarizing the evidence gathered to date and recommending charges against Sandusky with A.F. as the sole victim. She completed the draft and delivered it to her supervisor in early March 2010. At that time, Fina was in the middle of a lengthy Bonusgate trial against former Pennsylvania state representative Michael Veon and three others.<sup>91</sup> As a result of his responsibility for that case, Fina had decided in late 2009, in consultation with Sheetz, that CDAG Glenn Parno, chief deputy of the Environmental Crimes Section of the Criminal Law Division, would temporarily assume Fina's supervisory duties for cases and attorneys in the Criminal Prosecutions Section in Harrisburg. As a result, Eshbach gave her draft presentment to Parno rather than Fina.

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<sup>90</sup> Significant Event Memorandum from Jonelle H. Eshbach, Senior Deputy Attorney Gen., Pa. Office of Attorney Gen., through Glenn A. Parno, Chief Deputy Attorney Gen., Pa. Office of Attorney Gen., to Richard A. Sheetz, Jr., Executive Deputy Attorney Gen., Pa. Office of Attorney Gen. (Jan. 11. 2010) (attached as Appendix E).

<sup>91</sup> See The Associated Press, *Jury Convicts Ex-Pa. Lawmaker Mike Veon in Public Corruption Trial*, PENNLIVE, Mar. 22, 2010, [http://www.pennlive.com/midstate/index.ssf/2010/03/mike\\_veon\\_bonusgate\\_trial\\_verd.html](http://www.pennlive.com/midstate/index.ssf/2010/03/mike_veon_bonusgate_trial_verd.html); *Bonusgate Timeline*, PITTSBURGH POST-GAZETTE, Feb. 12, 2012, <http://www.post-gazette.com/state/2012/02/12/Bonusgate-timeline/stories/201202121884>; see also Court of Common Pleas of Dauphin County, Criminal Docket, No. CP-22-CR-0004656-2008, *Commonwealth v. Veon*, at 12-43 (docket entries detailing the progression of the case); *Commonwealth v. Veon*, No. 73 MDA 2011 (Pa. Super. Ct. Dec. 13, 2012) (quashing appeal from *Commonwealth v. Veon*, No. CP-22-CR-0004656-2008 (Ct. Com. Pl. Dauphin County)).



**C. Phase Three: Draft Presentment (March 2010) through McQueary Tip (November 2010)**

By March 15, 2010, Fina was still in trial, Parno had reviewed the draft presentment, and Eshbach had incorporated his suggested changes.<sup>92\*</sup> The draft was forwarded to Sheetz for review. According to Eshbach, she prepared the draft presentment in part because she believed that after a year of looking, the investigation was unlikely to find additional victims, at least until after charges were filed, and because she felt that A.F. deserved to have his allegations heard in court.<sup>93</sup> Eshbach had no illusions that a case against Sandusky, with A.F. as the sole victim, would be easy. Nevertheless, she believed she had adequate corroboration at that time to charge and try Sandusky; she also hoped that once A.F.'s allegations against Sandusky were made public, other victims would come forward.

Between the time Eshbach prepared the draft presentment in early 2010 and the final decision not to bring charges based on a single victim, Eshbach's efforts in the Sandusky investigation were focused on getting the presentment approved. According to Eshbach, she expected the presentment to be approved promptly, despite the case's apparent weaknesses, in part because she never before submitted a presentment to her supervisors that had not been approved promptly. On March 15, 2010, in the first of just two grand jury sessions related to Sandusky in all of 2010, Eshbach told the grand jurors:

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<sup>92</sup> The March 15, 2010, draft presentment is attached as Appendix F. According to Parno, while he signed off on the form of the presentment, he told Eshbach that he was concerned that the evidence "was thin," particularly given Sandusky's standing in the community; he passed the presentment to his superiors without a recommendation for or against proceeding at that time. \* In responding to this report, Parno asked to clarify this footnote, stating: "1. After reviewing the draft Presentment prepared by DAG Eshbach in March 2010, my concern regarding the viability of a criminal prosecution was based primarily on three factors: (1) Gerald Sandusky's outstanding reputation in the community; (2) insufficient corroborative evidence of AF's allegations; and (3) the inability to locate any additional victims of abuse. 2. Although I did not make a specific recommendation to my superiors with respect to proceeding with a Presentment, I advised both DAG Eshbach and EDAG Sheetz of my aforementioned concerns shortly after reviewing the draft Presentment." See Responses, Glenn A. Parno, at 1.

<sup>93</sup> Fina recalls that in late 2009, while discussing the case with Eshbach, he suggested that she "write it up" so that they could better evaluate the strength of the case.

That is it. I would love to say that I would think you would have the presentment in the next 24 hours, but I think you will get it in the next session. My version of it is done. But it is – there are other eyes reviewing it before it comes to you.<sup>94</sup>

The same day, Eshbach emailed a copy of the draft presentment to Agent Sassano and Tpr.

Rossman, saying:

Here's the draft currently under review by the EDAG and ultimately the AG and First Deputy. I will let you know but suspect the Grand Jury will approve it in April. Then we will talk about coordinating the arrest. I know our press office will have something to say about how it is handled.<sup>95</sup>

Eshbach also communicated her belief that the presentment would likely be approved shortly, and that Sandusky's arrest would soon follow, to A.F.'s psychologist. The psychologist passed this information on to A.F. and his mother, writing a letter outlining plans to deal with media pressures likely to follow a public announcement of charges. As a result, in the spring of 2010, A.F. believed that Sandusky would soon be charged, a fact that led to his increasing frustration over the next 18 months.

On April 1, 2010, Sassano emailed Eshbach asking if she had news on the presentment.<sup>96</sup>

Eshbach forwarded Sassano's email to Parno and Sheetz, asking: "Where do we stand?"<sup>97</sup>

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<sup>94</sup> Thirtieth Statewide Investigating Grand Jury, In re: Notice No. 29, Transcript of Proceedings, Witness: Anthony Sassano, March 15, 2010, at 9. At the same session, Agent Sassano testified about the offer of Eagles tickets that A.F.'s mother had received in 2009. Sassano explained that his investigation revealed that the offer was not for free tickets but for the opportunity to purchase tickets, and that the call was unrelated to A.F.'s allegations against Sandusky.

<sup>95</sup> Email from Jonelle H. Eshbach, Senior Deputy Attorney Gen., Pa. Office of Attorney Gen., to Anthony Sassano, Agent, Pa. Office of Attorney Gen., and Scott F. Rossman, Trooper, Pa. State Police (Mar. 15, 2010, 11:45 AM) (contained in Appendix G).

<sup>96</sup> Email from Anthony Sassano, Agent, Pa. Office of Attorney Gen., to Jonelle H. Eshbach, Senior Deputy Attorney Gen., Pa. Office of Attorney Gen., and cc Scott Rossman, Trooper, Pa. State Police (Apr. 01, 2010, 10:32 AM) (contained in Appendix G).

<sup>97</sup> Email from Jonelle H. Eshbach, Senior Deputy Attorney Gen., Pa. Office of Attorney Gen., to Glenn A. Parno, Chief Deputy Attorney Gen., Pa. Office of Attorney Gen., and Richard A. Sheetz, Executive Deputy Attorney Gen., Pa. Office of Attorney Gen. (Apr. 01, 2010, 10:55 AM) (contained in Appendix G).

Sheetz in turn forwarded the emails to Fina, saying he was “holding this to talk to you.”<sup>98</sup>

According to Eshbach, she had not heard back from any of her superiors by the time the Grand Jury was scheduled to meet in April,<sup>99</sup> which is what she told Agent Sassano when he asked again on April 19.<sup>100</sup> Sassano inquired again in late May, to which Eshbach responded that she had still “heard nothing.”<sup>101</sup> In the meantime, Eshbach had offered Sandusky, through his attorney, the opportunity to testify in the Grand Jury. Eshbach viewed this offer as one of the final investigative steps to be taken in advance of bringing charges against Sandusky. On May 17, 2010, she reported to Fina and Sheetz that Sandusky, through his attorney, had declined the invitation.

According to Eshbach, at this point she continued to believe that she would soon gain approval to proceed with charging Sandusky. She hoped that Fina’s return to supervising the case would accelerate the pace of its review by those higher in the chain of command. Fina completed the Veon trial in late March 2010 and was back supervising the work of the Criminal Prosecutions Section by late April or early May. It was then that he first reviewed a draft of the Sandusky presentment. Fina recalls that his first reaction to the presentment was the “very strong” belief that the case was too weak to go forward; he believed that Sandusky would be

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<sup>98</sup> Email from Richard A. Sheetz, Executive Deputy Attorney Gen., Pa. Office of Attorney Gen., to Frank G. Fina, Chief Deputy Attorney Gen., Pa. Office of Attorney Gen. (Apr. 01, 2010, 11:40 AM) (contained in Appendix G).

<sup>99</sup> The Grand Jury met the week of April 12.

<sup>100</sup> Email from Anthony Sassano, Agent, Pa. Office of Attorney Gen., to Jonelle H. Eshbach, Senior Deputy Attorney Gen., Pa. Office of Attorney Gen., and cc Scott Rossman, Trooper, Pa. State Police (Apr. 19, 2010, 8:52 AM) (contained in Appendix G); Email from Jonelle H. Eshbach, Senior Deputy Attorney Gen., Pa. Office of Attorney Gen., to Anthony Sassano, Agent, Pa. Office of Attorney Gen. (Apr. 19, 2010, 11:49 AM) (contained in Appendix G).

<sup>101</sup> Email from Anthony Sassano, Agent, Pa. Office of Attorney Gen., to Jonelle H. Eshbach, Senior Deputy Attorney Gen., Pa. Office of Attorney Gen., and cc Scott Rossman, Trooper, Pa. State Police (May 28, 2010, 10:02 AM) (contained in Appendix G); Email from Jonelle H. Eshbach, Senior Deputy Attorney Gen., Pa. Office of Attorney Gen., to Anthony Sassano, Agent, Pa. Office of Attorney Gen. (May 28, 2010, 4:36 PM) (contained in Appendix G).

acquitted at trial (if the case got that far), both because A.F. was not a strong witness and because Sandusky had significant resources and an outstanding reputation in the community. Moreover, he believed that an acquittal would likely doom any subsequent prosecution. In Fina's view, the key was finding more victims before the case was charged. Nevertheless, Fina suggested changes to the presentment, which Eshbach incorporated into the draft.<sup>102</sup> On June 7, 2010, Eshbach sent the revised draft back to Fina,<sup>103</sup> who in turn forwarded it to Sheetz.<sup>104</sup>

On Monday, June 14, 2010, Eshbach sent an email to Sheetz asking if the presentment would be approved for submission to the Grand Jury that week.<sup>105</sup> Sheetz responded by saying that "Bill Ryan was to give it to Tom. I will check."<sup>106</sup> According to Sheetz, at this point he believed that the case was not ready to be charged – the victim was troubled, the investigation had failed to develop significant corroboration, Sandusky was a community icon with considerable resources, and a loss at trial, which Sheetz thought likely, would make a later prosecution extremely difficult. Sheetz explained that he sent the draft presentment to Ryan not because he believed that the case should be charged, but because it was possible that Ryan would view the matter differently, and because both Eshbach and PSP advocated proceeding with charges. According to Ryan, when he first read the draft presentment sometime in the middle of

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<sup>102</sup> See Email from Jonelle H. Eshbach, Senior Deputy Attorney Gen., Pa. Office of Attorney Gen., to Frank G. Fina, Chief Deputy Attorney Gen., Pa. Office of Attorney Gen. (May 28, 2010, 4:38 PM) (contained in Appendix G); Email from Jonelle H. Eshbach, Senior Deputy Attorney Gen., Pa. Office of Attorney Gen., to Frank G. Fina, Chief Deputy Attorney Gen., Pa. Office of Attorney Gen. (June 07, 2010, 12:55 PM) (contained in Appendix G).

<sup>103</sup> The June 7, 2010 draft presentment is attached as Appendix H.

<sup>104</sup> Email from Jonelle H. Eshbach, Senior Deputy Attorney Gen., Pa. Office of Attorney Gen., to Frank G. Fina, Chief Deputy Attorney Gen., Pa. Office of Attorney Gen. (June 07, 2010, 12:55 PM) (contained in Appendix G); Email from Frank G. Fina, Chief Deputy Attorney Gen., Pa. Office of Attorney Gen., to Richard A. Sheetz, Executive Deputy Attorney Gen., Pa. Office of Attorney Gen. (June 07, 2010, 3:32 PM) (contained in Appendix G).

<sup>105</sup> Email from Jonelle H. Eshbach, Senior Deputy Attorney Gen., Pa. Office of Attorney Gen., to Richard A. Sheetz, Executive Deputy Attorney Gen., Pa. Office of Attorney Gen. (June 14, 2010, 3:43 PM) (contained in Appendix G).

<sup>106</sup> Email from Richard A. Sheetz, Executive Deputy Attorney Gen., Pa. Office of Attorney Gen., to Jonelle H. Eshbach, Senior Deputy Attorney Gen., Pa. Office of Attorney Gen. (June 14, 2010, 3:56 PM) (contained in Appendix G).

June, he was concerned that the case was too weak to take to trial for many of the same reasons articulated by Fina and Sheetz. He also believed that Sandusky almost certainly had other victims, particularly because of his relationship with The Second Mile, and that the better course was to continue the search for other victims before charging. At the same time, Ryan concluded that the matter was of sufficient importance that he needed to pass the draft presentment along to the Attorney General before any final decision was made.

According to Eshbach, she heard nothing further during June, and so asked again by email on July 14:

The grand jury asked me again, as they have for the last 4 months, why we don't have that particular presentment for them. They are very anxious to approve it. L[i]kewise, I continue to get calls and mail from the victim's mother and therapist. Can someone please tell me what the hold up is?<sup>107</sup>

Sheetz forwarded Eshbach's email to Ryan, suggesting: "Maybe we can talk to Tom about this on Friday, too?"<sup>108</sup> According to Eshbach, she heard nothing in response to her July 14 email. According to Ryan, he did not participate in a meeting with Corbett about the presentment until early August.

On August 12, 2010, an email from A.F.'s mother prompted Eshbach to ask again, in an email to Sheetz and Fina: "This is my fourth message from the victim's mother on Sandusky. Does anyone want to answer my questions about why we are stalled since winter[?]"<sup>109</sup> This

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<sup>107</sup> Email from Jonelle H. Eshbach, Senior Deputy Attorney Gen., Pa. Office of Attorney Gen., to Richard A. Sheetz, Executive Deputy Attorney Gen., Pa. Office of Attorney Gen., Frank G. Fina, Chief Deputy Attorney Gen., Pa. Office of Attorney Gen., and Christopher D. Carusone, Chief Deputy Attorney Gen., Pa. Office of Attorney Gen. (July 14, 2010, 10:57 AM) (contained in Appendix G).

<sup>108</sup> Email from Richard A. Sheetz, Executive Deputy Attorney Gen., Pa. Office of Attorney Gen., to William H. Ryan, Jr., First Deputy Attorney Gen., Pa. Office of Attorney Gen. (July 14, 2010, 11:28 AM) (contained in Appendix G).

<sup>109</sup> Email from Jonelle H. Eshbach, Senior Deputy Attorney Gen., Pa. Office of Attorney Gen., to Richard A. Sheetz, Executive Deputy Attorney Gen., Pa. Office of Attorney Gen., and Frank G. Fina, Chief Deputy Attorney Gen., Pa. Office of Attorney Gen. (Aug. 12, 2010, 2:26 PM) (contained in Appendix G).

email prompted a definitive response from Fina later the same day, in an email to Sheetz and Eshbach: “We are still working on the case, looking for better corroboration of our single victim. We need to do everything possible to find other victims.”<sup>110</sup> Eshbach understood this to mean that the case would not be charged as it then stood, and that the investigation would continue.<sup>111</sup> She communicated that understanding to A.F.’s mother,<sup>112</sup> and told Agent Sassano and Tpr. Rossman: “My bosses have directed that we try harder to find any other corroboration for [A.F.]. At this point, they are unwilling to allow the presentment to go to Grand Jury as it stands right now.”<sup>113</sup> According to Eshbach, while she did not agree with the decision, she understood it, given the difficulties presented by proceeding with A.F. as the sole victim, and did not object.

According to Agent Sassano, during the time that the draft presentment was being considered, he had serious concerns about whether the case was strong enough to go forward, even though he had no doubt that A.F. was telling the truth. In particular, he feared that the combination of a particularly fragile victim and a potential defendant with significant resources who was revered in the community would lead to an acquittal. He further feared that such an acquittal would make any later prosecution of Sandusky far more difficult. Sassano discussed these concerns with his supervisor, Regional Director Feathers, who agreed. According to

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<sup>110</sup> Email from Frank G. Fina, Chief Deputy Attorney Gen., Pa. Office of Attorney Gen., to Jonelle H. Eshbach, Senior Deputy Attorney Gen., Pa. Office of Attorney Gen., and Richard A. Sheetz, Executive Deputy Attorney Gen., Pa. Office of Attorney Gen. (Aug. 12, 2010 3:40 PM) (contained in Appendix G).

<sup>111</sup> Fina recalls telling Eshbach sometime well before the August 12 email that the case would not go forward as proposed and that investigators needed to find additional victims. He says that he was “highly frustrated” by Eshbach’s email because it was readdressing something that he believed had already been settled. According to Eshbach, the first time she recalls receiving a definitive answer about the proposed presentment, from Fina or anyone else, was in the August 12 email.

<sup>112</sup> Email from Jonelle H. Eshbach, Senior Deputy Attorney Gen., Pa. Office of Attorney Gen., to A.F.’s Mother (Aug. 12, 2010, 3:53 PM) (contained in Appendix G).

<sup>113</sup> Email from Jonelle H. Eshbach, Senior Deputy Attorney Gen., Pa. Office of Attorney Gen., to Anthony Sassano, Agent, Pa. Office of Attorney Gen., and Scott Rossman, Trooper, Pa. State Police (Aug. 18, 2010, 8:50 PM) (contained in Appendix G).

Feathers, another reason not to bring charges at the time was that a Centre County jury would likely be sympathetic to Sandusky and disinclined to convict. Feathers in turn discussed the matter with his boss, Chief of Criminal Investigations Francis Noonan. According to Noonan, he agreed with the concerns expressed by Sassano and Feathers and, at some point before the final decision was made, brought those concerns to Sheetz.

According to Fina, Sheetz, and Ryan, they all shared the same concerns voiced by Sassano and Feathers. In addition, they feared that if Sandusky were tried and acquitted based on a single victim, charging and convicting him based on other victims discovered later would be extremely difficult if not impossible, given the near-certain defense claim of an ill-motivated prosecution. These factors, they say, along with the belief that other victims existed, led them each to the strongly held view that Sandusky should not be charged without more effort to find additional victims.

At some point after July 14, 2010, likely in the first half of August,<sup>114</sup> then-Attorney General Corbett discussed the Sandusky investigation, and the possibility of charging the case with A.F. as the sole victim, at a meeting with Fina, Sheetz, and Ryan. Eshbach was not present at the meeting. When asked why this meeting did not occur earlier, in light of the June 14 email, Ryan explained that there may have been scheduling problems because Corbett was out of the office frequently during that time and, in any event, Ryan did not view the matter as urgent since he, Sheetz, and Fina were all going to recommend not charging at that time. While recollections of the meeting differ in detail, all participants agree that Fina, Sheetz, and Ryan each recommended to Corbett that the case not be charged at that time, and that further efforts be

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<sup>114</sup> Because the OAG email backup system did not store calendar entries, no calendar entries were retrieved during the recovery process.

made to find additional victims. The reasons given were those outlined above. According to Corbett, he agreed with that reasoning and, whether at this meeting or in other discussions, often stated his belief that the investigation needed to keep looking for additional victims.<sup>115</sup> Ryan recalls that at the end of the meeting, Corbett said that he would review the presentment and get back to them. Both Ryan and Sheetz recall that, very soon thereafter, Corbett spoke with Sheetz and told him that he agreed with the recommendation that Sandusky should not be charged at that time, but that instead the investigation should continue. Sheetz relayed this information to Ryan and Fina.

Between Fina's August 12 admonition that the investigation must "do everything possible to find other victims" and the end of October, the investigation did not succeed in identifying any new victims. In September, Tpr. Rossman contacted A.F.'s mother and A.F.'s psychologist to ask if either of them, or A.F., had any additional information that might help the investigation. Initially, those inquiries did not generate any new leads. On October 26, 2010, however, Tpr. Rossman spoke with A.F.'s mother, who alerted Rossman to the existence of recent internet postings that suggested that Sandusky was a child molester. These postings, made largely on websites hosting discussions about Penn State football, appeared to have been prompted by the public announcement, in mid-September, that Sandusky had retired from The Second Mile.<sup>116</sup> Later in 2010 and into early 2011, investigators expended considerable effort in

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<sup>115</sup> Corbett does not recall discussing the details of what had been done or should be tried to identify additional victims, saying that he delegated that responsibility to the professionals in his office, who had a very good track record of conducting successful criminal investigations.

<sup>116</sup> See Brendan Monahan, *Sandusky Retires*, THE DAILY COLLEGIAN, Sept. 15, 2010, [http://www.collegian.psu.edu/archives/article\\_1dde1f91-95fb-586c-8fa0-d16f769a9ba1.html](http://www.collegian.psu.edu/archives/article_1dde1f91-95fb-586c-8fa0-d16f769a9ba1.html); Amanda Clegg, *Second Mile Founder Retires*, THE ALTOONA MIRROR, Sept. 17, 2010, <http://www.altoonamirror.com/page/content.detail/id/542384/Second-Mile-founder-retires.html?nav=742>; see also Christian Red, *Penn State Scandal: Timeline of Sex Abuse Scandal that Has Rocked Happy Valley*, NEW YORK DAILY NEWS, Nov. 13, 2011, <http://www.nydailynews.com/sports/college/penn-state-scandal-timeline-sex-abuse-scandal-rocked-happy-valley-article-1.976843>.



tracking down and interviewing individuals who had posted comments suggesting that Sandusky had engaged in child sexual abuse. In the end, none of the posters interviewed had first-hand knowledge of criminal conduct by Sandusky.

In the fall of 2010, two events involving A.F. consumed additional investigative time. First, A.F. reported to school officials, and then to Tpr. Rossman, that he had been approached in school by a man he did not know who asked A.F. questions about his identity and about his involvement in The Second Mile, questions that made A.F. extremely uncomfortable. Investigators were unable to identify the man described by A.F. Second, on October 21, A.F. was seriously injured in a one-car accident that resulted in him being airlifted to a medical facility for treatment. At first, investigators were concerned that the accident might have been related to the school incident that A.F. had described earlier. They eventually concluded, however, that the school incident and the car accident were unrelated.

As of November 2, 2010, the date of the Pennsylvania gubernatorial election, little progress had been made in finding additional victims. The only identified victim, A.F., was in bad shape both physically and emotionally. Eshbach, fearing for A.F.'s well-being and that the case might be slipping away, sent an email to Sheetz and Fina on November 3, with the subject line "Grand Jury sentiment," saying:

This young man was released from Geissinger [sic] Danville Pediatric unit prematurely. They had to lock the unit down because there were so many security problems. . . . A Centre Daily Times reporter knocked on the family's front door last night asking pointed questions about Sandusky molesting him. The mother denied any knowledge but this keeps percolating and I am worried about this boy.

Can we please meet Thursday about this? It's "critical timing" for this case and this kid.<sup>117</sup>

According to Eshbach, she believed that in terms of finding new victims the investigation was "dead in the water," and she sent the email with the hope that she could persuade her supervisors to allow the case to proceed based on A.F. as the sole victim. The requested meeting never took place, however, chiefly because the next day investigators received a tip about Penn State assistant football coach Michael McQueary, and the course of the investigation changed dramatically.

**D. Phase Four: McQueary Tip (November 2010) through the Filing of Charges (November 2011)**

On November 3, 2010, Centre County District Attorney Stacy Parks Miller received the following email:

Ms Miller,

I am contacting you regarding the Jerry Sandusky investigation. If you have not yet done so, you need to contact and interview Penn State football assistant coach Mike McQueary. He may have witnessed something involving Jerry Sandusky and a child that would be pertinent to the investigation.

Signed,

A Concerned Citizen<sup>118</sup>

After Miller forwarded the email to Tpr. Rossman the next day, Rossman and Agent Sassano reached out to McQueary, meeting with him on November 10 and interviewing him on November 22 at the office of his attorney.<sup>119</sup>

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<sup>117</sup> Email from Jonelle H. Eshbach, Senior Deputy Attorney Gen., Pa. Office of Attorney Gen., to Frank G. Fina, Chief Deputy Attorney Gen., Pa. Office of Attorney Gen., and Richard A. Sheetz, Executive Deputy Attorney Gen., Pa. Office of Attorney Gen. (Nov. 03, 2010, 10:51 AM) (emphasis in original) (attached as Appendix I).

<sup>118</sup> Email to Stacy Parks Miller, District Attorney, Centre County District Attorney's Office (Nov. 03, 2010, 10:35 PM) (attached as Appendix J). According to the author of the email, he had recently heard rumors that Sandusky was being investigated for child abuse and assumed that any such investigation would involve the Centre County District Attorney's Office. In addition, he had recently heard from a member of Michael McQueary's family that McQueary had first-hand information about Sandusky that would be relevant to such an investigation.

Finding McQueary was enormously important to the investigation. Uninvolved third-party witnesses to child sexual abuse are relatively rare, and in an investigation that had thus far identified only one victim, McQueary not only provided significant corroboration for A.F. but also confirmed the belief of investigators and prosecutors that Sandusky had victimized others.<sup>120</sup> McQueary also tied Sandusky's conduct directly to the Penn State campus.

Together with the discovery, in late 2010 or early 2011, of the 1998 allegations against Sandusky, McQueary changed the trajectory of the investigation. From January 2011 through the filing of charges on November 4, 2011, the investigation proceeded rapidly and aggressively, with investigators and prosecutors conducting hundreds of interviews, issuing over one hundred subpoenas, identifying more Sandusky victims, and investigating the conduct of Penn State administrators. This section of the report, rather than attempting to cover in detail all of this investigative activity, instead summarizes the investigation's most important actions by month, with a particular focus on those efforts, finally successful, that led to the identification of additional victims. A more complete list of investigative steps taken during this time period is contained in Part Four: Timeline.

#### November – December 2010

In November and December 2010, the investigation focused both on the information provided by McQueary and on the internet postings suggesting that Sandusky's retirement from The Second Mile was linked to child sexual abuse. Subpoenas were issued to several internet service providers ("ISPs") in an effort to identify the authors of the posts about Sandusky. Agent

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<sup>119</sup> According to Tpr. Rossman's report of the November 10 meeting, McQueary stated that he was willing to cooperate but wanted first to speak to a lawyer.

<sup>120</sup> While investigators did explore the possibility that A.F. was the boy McQueary had observed in the shower, A.F. had not ever described showering with Sandusky, and the time of McQueary's observation did not match the time of the abuse testified to by A.F.

Sassano and Tpr. Rossman found and interviewed one poster in December, but he (like the others eventually tracked down) had no first-hand information.

On December 14, 2010, at the second and final grand jury session of the year related to Sandusky, McQueary testified about what he had heard and seen in the Lasch Building shower room eight or nine years earlier,<sup>121</sup> and what he had then reported to his boss, Penn State head football coach Joseph V. Paterno, and later to Penn State Athletic Director Timothy Curley and Senior Vice President for Finance and Business Gary Schultz. Following McQueary's testimony, the decision was made to subpoena Paterno, Curley, and Schultz to testify before the Grand Jury in January. Sheetz alerted Ryan and Corbett to this plan, and sought and received their approval.<sup>122</sup> In addition, on December 29, Fina approved a records subpoena to Penn State for the following:

Any and all records pertaining to Jerry Sandusky and incidents reported to have occurred on or about March 2002, and any other information concerning Jerry Sandusky and inappropriate contact with underage males both on and off University property. Response shall include any and all correspondence directed to or regarding Jerry Sandusky.<sup>123</sup>

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<sup>121</sup> McQueary was uncertain about the year he had witnessed the conduct in question, but believed it was probably 2002. Later, after the charges were filed against Sandusky but before trial, investigators concluded that the incident actually had occurred in 2001.

<sup>122</sup> See Email from Richard A. Sheetz, Executive Deputy Attorney Gen., Pa. Office of Attorney Gen., to Tom Corbett, Attorney Gen., Pa. Office of Attorney Gen., William H. Ryan, Jr., First Deputy Attorney Gen., Pa. Office of Attorney Gen., and Annmarie Kaiser, Director of Legislative Affairs, Pa. Office of Attorney Gen. (Dec. 20, 2010, 4:45 PM) (attached as Appendix K); Email from Richard A. Sheetz, Executive Deputy Attorney Gen., Pa. Office of Attorney Gen., to Tom Corbett, Attorney Gen., Pa. Office of Attorney Gen., William H. Ryan, Jr., First Deputy Attorney Gen., Pa. Office of Attorney Gen., and Annmarie Kaiser, Director of Legislative Affairs, Pa. Office of Attorney Gen. (Dec. 22, 2010, 12:37 PM) (attached as Appendix K).

<sup>123</sup> Commonwealth of Pennsylvania Statewide Investigating Grand Jury Subpoena, to Custodian of Records—Pennsylvania State University—c/o Cynthia Baldwin (Counsel for PSU), Notice 29, Subpoena 1179 (Dec. 29, 2010).

### January 2011

On January 3, 2011, Cpl. Joseph A. Leiter and Tpr. Rossman went to the office of the Deputy Director of the Penn State Police Department, and asked for copies of all criminal reports relating to Sandusky. They did so independent of the grand jury subpoena issued the week before, even though their request was at least partially covered by the subpoena. The Deputy Director gave them a report that, like the information provided by McQueary, lent considerable support to the belief that Sandusky had victimized others besides A.F.<sup>124</sup> On or about the same day, Tpr. Rossman and Cpl. Leiter went to the State College Police Department, which has jurisdiction over College Township where Sandusky lived, and asked for all incident reports referencing Sandusky. In addition to reports in which Sandusky was a witness or possible victim, they received a report relating to the 1998 investigation, in which the State College police had provided assistance to the Penn State police.

The report, prepared by Penn State Police Investigator Ronald Schreffler, described Schreffler's 1998 investigation of an allegation made by the mother of an 11-year-old boy who had met Sandusky through The Second Mile. According to the report, Sandusky invited the boy in question, Z.K. (Victim 6 in the Sandusky presentment), to accompany him to the Lasch Building at Penn State to "work out." Z.K. agreed, and Sandusky picked him up and drove him to the campus. Once there, Sandusky and Z.K. lifted weights and played games. Sandusky then asked Z.K. to join him in the shower, where Sandusky gave Z.K. a bear hug, growled in his ear, and lifted him up by his legs and held him under the shower head. Both Sandusky and Z.K. were

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<sup>124</sup> According to Fina, he remembers receiving a partial copy of this report on an informal basis somewhat earlier than January 3, most likely in November or December 2010.

naked. The report further described Schreffler's subsequent investigation<sup>125</sup> and the decision of the Centre County District Attorney not to prosecute.<sup>126</sup>

Armed with the 1998 report, Cpl. Leiter soon interviewed Schreffler, who had since retired from Penn State, Z.K.,<sup>127</sup> and Z.K.'s mother. Significantly, Z.K.'s mother described two additional possible victims, subsequently identified as M.K. (Victim 5) and D.S. (Victim 7). Later in the month, Cpl. Leiter spoke again by telephone with Z.K., who also described D.S. as a possible victim. Cpl. Leiter and Tpr. Rossman then went to D.S.'s residence and, finding no one home, left a card with instructions to call.<sup>128</sup> Additional interviews in January focused on the 1998 incident, finding corroboration for McQueary, and learning more about Sandusky's conduct at Penn State.

In the meantime, on January 12, Paterno, Curley, and Schultz all testified in the Grand Jury. While Eshbach handled most of the questioning of these three witnesses, her supervisor Fina was present in the Grand Jury (for the first time during the Sandusky investigation) and asked questions as well. The testimony of Curley and Schultz, which later formed the basis for perjury charges against them, led Eshbach and Fina to believe that the Penn State administrators might have criminal exposure. It thus opened a new avenue of investigation that ran in conjunction with the investigation of Sandusky.

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<sup>125</sup> Schreffler's investigation led him to a second youth, B.K., who described conduct similar to that described by Z.K. While B.K. is referenced in the November 4, 2011, Sandusky presentment, PSP and OAG investigators were unable to interview him at the time and Sandusky was not charged with committing any crime with B.K. as his victim.

<sup>126</sup> As noted above, the merits of the 1998 decision not to prosecute are beyond the scope of this report.

<sup>127</sup> Z.K. was living out of state at the time, so his interview was by telephone. He would not return to Pennsylvania for an in-person interview until June.

<sup>128</sup> The first interview of D.S. took place in early February.

The term of the Thirtieth Statewide Investigating Grand Jury expired following the testimony of Paterno, Schultz, and Curley, requiring that the investigation be transferred to a new grand jury. On January 27, OAG submitted the Sandusky investigation to the Thirty-Third Statewide Investigating Grand Jury, which submission was accepted by the supervising grand jury judge on January 28. Also on January 28, grand jury subpoenas were issued to, among others, The Second Mile and the Centre County Office of Children and Youth Services (“Centre County CYS”) for records related to Sandusky.

### February 2011

In February, investigators continued their efforts to find additional victims and to corroborate the victims they had already identified. Most significantly, Cpl. Leiter and Tpr. Rossman interviewed D.S., who was later described in the Sandusky presentment as Victim 7. At an interview on February 3, D.S. told the investigators that he had met Sandusky through The Second Mile and described conduct by Sandusky that was strikingly similar to that related by A.F. and Z.K. According to D.S., Sandusky: frequently put his hand on D.S.’s knee and occasionally tried to slide his hand under the waistband of D.S.’s underwear when D.S. was a passenger in Sandusky’s car; often got into bed with and “cuddled” D.S. when D.S. spent the night at the Sandusky residence; gave D.S. frequent “bear hugs”; and worked out and showered with D.S. at Holuba Hall. By the time of this interview, Cpl. Leiter had obtained a copy of Sandusky’s autobiography, *Touched*.<sup>129</sup> He showed photographs from the book to D.S., who identified not only himself but several other boys in the photographs, including B.S.H. (later described as Victim 4) and M.K. (later described as Victim 5).

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<sup>129</sup> JERRY SANDUSKY, *TOUCHED: THE JERRY SANDUSKY STORY* (Sports Publishing LLC, 2001).

Also in February, Agent Sassano, Tpr. Rossman, and Cpl. Leiter continued to pursue existing leads, interviewing more Penn State coaches and athletic department personnel and additional individuals who had posted comments about Sandusky on websites concerned with Penn State football. While there was no Sandusky-related grand jury testimony in February, the Grand Jury did issue several subpoenas for documents, chiefly to Commonwealth and county agencies for information about allegations against Sandusky and for records related to Sandusky adoptions and foster children. The subpoenas that sought records of previous allegations against Sandusky (to the ChildLine and Abuse Registry of DPW and to Centre County CYS) did not generate any such records; as discussed above, any reports referencing the 1998 allegations against Sandusky had been expunged.<sup>130</sup> Later interviews of individuals at those entities, however, uncovered information about the 1998 incident.

### March 2011

In March, the search for additional victims and added corroboration continued, with more subpoenas for records (to Centre County agencies, DPW, Penn State, The Second Mile, and an ISP), more interviews (about the 1998 incident, other possible victims, and the McQueary incident), and more grand jury testimony. March also witnessed further investigation into how Penn State administrators handled the information provided by McQueary and a front-page news story that revealed the existence of the grand jury investigation.

On March 10, the newly-empaneled Thirty-Third Statewide Investigating Grand Jury heard testimony from six witnesses in the Sandusky investigation. Agent Sassano and Tpr. Rossman both gave the new grand jurors, who were hearing testimony about Sandusky for the

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<sup>130</sup> See *supra* note 51 and accompanying text.



first time,<sup>131</sup> background information about the investigation. Ronald Schreffler, the retired Penn State Police Investigator, provided details about his 1998 investigation of Sandusky. A former Centre County assistant district attorney also testified about the 1998 investigation, including the decision of the District Attorney, Ray Gricar, not to prosecute. The director of Centre County CYS testified about the 1998 investigation and expungement of records under the CPSL. Katherine Genovese, executive vice president of The Second Mile, testified about Second Mile travel and expense records related to Sandusky that appeared to be missing, and about The Second Mile learning of allegations against Sandusky. On March 11, the Grand Jury heard testimony from two additional witnesses, John McQueary and Jonathan Dranov, about the McQueary incident.<sup>132</sup>

On March 22, 2011, Fina and Eshbach, along with Agent Sassano and Tpr. Rossman, interviewed Penn State President Graham Spanier. The interview covered, among other things, Spanier's knowledge of the McQueary incident, his claimed lack of knowledge of the 1998 incident, and his level of knowledge of Penn State Police Department investigations. After the interview, Fina and Eshbach both believed that Spanier should be subpoenaed to testify under oath in the Grand Jury.

On March 31, *The Patriot-News* and the *Centre Daily Times* each published a story written by Sara Ganim about the grand jury investigation of Sandusky. The story began:

Penn State football legend Jerry Sandusky is the subject of a grand jury investigation into allegations that he indecently assaulted a teenage boy. According to five people with knowledge of the case, a grand jury meeting in

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<sup>131</sup> All previous testimony had been before the Thirtieth Statewide Investigating Grand Jury, the term of which had expired in January.

<sup>132</sup> Schreffler, John McQueary, and Dranov all testified at Sandusky's trial. The Centre County assistant district attorney, the director of Centre County CYS, and Genovese did not, though documents obtained from The Second Mile were introduced.

Harrisburg has been hearing testimony for at least 18 months about the allegation, which was made in 2009 by a 15-year-old from Clinton County. The teen told authorities that Sandusky had inappropriate contact with him over a four-year period, starting when he was 10.<sup>133</sup>

It went on to describe Sandusky's career at Penn State and his work at The Second Mile, the manner in which the investigation had made its way to OAG, the original and current investigation of the 1998 allegations, and the fact that Paterno, Curley, and Schultz had testified in the Grand Jury. The publication of Ganim's story had two almost immediate consequences. First, it raised within the investigation the alarming prospect of a leak of grand jury information.<sup>134</sup> Second, it generated two significant leads on additional criminal conduct by Sandusky.

On the afternoon of March 31, Ronald Petrosky, Jr., called the PSP and spoke to Tpr. James Ellis.<sup>135</sup> Petrosky explained that he had read the story in the *Centre Daily Times* earlier that day and believed he might have information relevant to the investigation. Specifically, Petrosky told Tpr. Ellis that while working as a janitor in the Lasch Building at Penn State in the late 1990s, another janitor named Jim approached him, shaking and crying, and told him that he had witnessed Sandusky doing inappropriate things to a young boy in the shower. According to Tpr. Ellis's report, Petrosky also told him that Petrosky had personally seen "four legs" in the shower, and that he and Jim (and other janitors that Jim told) had considered reporting the

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<sup>133</sup> Sara Ganim, *Jerry Sandusky, Former Penn State Football Staffer, Subject of Grand Jury Investigation*, PENNLIVE, Mar. 31, 2011, [http://www.pennlive.com/midstate/index.ssf/2011/03/jerry\\_sandusky\\_former\\_penn\\_sta.html](http://www.pennlive.com/midstate/index.ssf/2011/03/jerry_sandusky_former_penn_sta.html) (attached as Appendix L). A copy of Sara Ganim's March 31 news story is not available on the *Centre Daily Times* website, CentreDaily.com. The news story was published in the *Centre Daily Times*' print-version on March 31, 2011, but it was not posted to CentreDaily.com because it was not a *Centre Daily Times* story. See *Today's Story on Sandusky Case*, CENTRE DAILY TIMES—CENTREDAILY.COM, Mar. 31, 2011, <http://www.centredaily.com/2011/03/31/2618318/todays-story-on-sandusky-case.html>.

<sup>134</sup> Subsequent efforts within OAG to determine whether anyone within law enforcement had violated their grand-jury-secrecy obligations were unsuccessful.

<sup>135</sup> Ellis had recently been assigned to assist in the Sandusky investigation.

incident to the police but decided not to out of fear that they would not be believed. Tpr. Ellis passed Petrosky's information on to Tpr. Rossman, triggering an intensive search for "Jim" and for more information about what Jim had witnessed ("the janitor incident"). Petrosky's report created the possibility of finding another victim, as well as another third-party witness, like McQueary, to corroborate existing victims.

#### April 2011

In April, the investigation continued to gain momentum, with the assignment of two additional agents from OAG, the identification and confirmation of additional victims, three days of testimony before the Grand Jury, and the gathering of further information about the 1998 incident.

On April 1, OAG Agent Timothy Shaffer received a phone call from attorney Benjamin Andreozzi, who said that he was scheduled to meet the next day with an adult male who had been sexually assaulted by Sandusky when he was younger but had never before reported the assault. As discussed below, the male proved to be B.S.H., who came forward as a result of the press accounts about the investigation published the day before.<sup>136</sup> Agent Shaffer, who, along with OAG Agent Michael Cranga, had recently been assigned to the Sandusky investigation,<sup>137</sup> passed the information from the attorney on to Eshbach.

Eshbach and Agent Cranga met with Andreozzi on April 5 for an "attorney proffer," during which Andreozzi described his client's relationship with Sandusky but did not reveal his

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<sup>136</sup> According to his trial testimony, B.S.H. learned of the March 31 press accounts about Sandusky in a phone call from his father. See Transcript of Proceedings (Jury Trial—Day1) at 164-66, Commonwealth v. Sandusky, Nos. CP-14-CR-2421-2011 & CP-14-CR-2422-2011 (Ct. Com. Pl. Centre County, June 11, 2012). Based on that phone conversation, B.S.H.'s father contacted Andreozzi, who in turn contacted Agent Shaffer at OAG.

<sup>137</sup> According to Shaffer and Cranga, they had spent the past several years working almost exclusively on the Bonusgate-related investigations and prosecutions. Sometime in February or March of 2011, they had been directed to wrap up their work on Bonusgate and by early April were working full time on Sandusky.

client's identity. Coincidentally, on April 7, Cpl. Leiter went to B.S.H.'s home and attempted to interview him. Cpl. Leiter's visit was based not on the attorney proffer but on D.S.'s earlier identification of B.S.H. in a photograph in Sandusky's book *Touched*. B.S.H. declined to be interviewed, telling Cpl. Leiter that while he was aware of the investigation from press accounts and had relevant information, he wanted to speak with his attorney before being interviewed. As discussed below, B.S.H. was eventually interviewed later in the month, in the presence of his attorney.

On April 11, the Thirty-Third Statewide Investigating Grand Jury heard testimony related to Sandusky from five witnesses. One of the five was A.F., whose two prior appearances had been before the now-expired Thirtieth Statewide Investigating Grand Jury. This appearance for A.F. consisted almost entirely of his reading to the new Grand Jury his prior testimony, although he was asked to answer one additional question. Another victim-witness was D.S., who described Sandusky's conduct in somewhat more detail than he had during his February 3 interview with Cpl. Leiter and Tpr. Rossman. With his testimony, D.S. became the second victim (A.F. being the first) later included in the charges against Sandusky who confirmed being a victim of criminal conduct. The other April 11 witnesses were: M.S., who denied that Sandusky had ever touched him inappropriately; M.S.'s mother, who described M.S.'s relationship with Sandusky; and Second Mile President and CEO John Raykovitz, who testified about The Second Mile and Sandusky's role there, about learning of allegations of inappropriate sexual conduct by Sandusky, about Sandusky's retirement from The Second Mile, and about Second Mile children with whom Sandusky had had significant contact.<sup>138</sup>

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<sup>138</sup> Of the April 11 grand jury witnesses, only A.F. and D.S. testified at Sandusky's trial.

The Grand Jury met again on April 13 to hear the testimony of Penn State President Graham Spanier. Spanier, questioned by Fina, covered much of the same ground addressed in his March 22 interview. Spanier's testimony formed part of the basis for charges filed against him in 2012. On April 14, the Grand Jury heard Sandusky-related testimony from six additional witnesses, including: Thomas Harmon, former director of the Penn State Police Department, who testified about department procedures, his reporting obligations to University officials, and the 1998 incident; a former director of Centre County CYs testified about the 1998 allegations and their referral to DPW because of a conflict of interest,<sup>139</sup> as well as about the ChildLine expungement process; Z.K.'s mother, who testified about the 1998 incident involving her son; Tpr. Rossman, who summarized the Penn State Police Department report of the 1998 investigation and explained how he and Cpl. Leiter had obtained that report; and a former Centre County CYs worker and a former Penn State Police Department supervisor who each testified about their roles in the investigation of the 1998 allegations.<sup>140</sup>

On April 14, before the Grand Jury began to hear testimony for the day, Fina sought and received a protective order from the supervising grand jury judge directing the witnesses not to disclose the fact or substance of their testimony to anyone other than their own attorneys.<sup>141</sup>

Unlike other participants in the grand jury process, grand jury witnesses ordinarily are permitted to disclose their testimony to others.<sup>142</sup> The supervising judge may prohibit such disclosure,

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<sup>139</sup> The former director described the conflict of interest as based on the fact that his office had placed both foster children and adoptive children with Sandusky and his wife.

<sup>140</sup> Tpr. Rossman testified at Sandusky's trial. The remaining April 14 witnesses did not.

<sup>141</sup> Thirty-Third Statewide Investigating Grand Jury, In re: Notice Nos. 1, 16, Transcript of Proceedings, April 14, 2011, at 8-13.

<sup>142</sup> Compare 42 PA. CONS. STAT. § 4549(d) ("Disclosure of proceedings by witnesses.--No witness shall be prohibited from disclosing his testimony before the investigating grand jury except for cause shown in a hearing before the supervising judge. In no event may a witness be prevented from disclosing his testimony to his attorney."), with 42 PA. CONS. STAT. § 4549(b) ("Disclosure of proceedings by participants other than witnesses"). Section 4549(b) provides:

other than to their attorneys, “for cause shown.”<sup>143</sup> Fina explained to the supervising judge his concern that “public revelation of what we are asking and inquiring of in this case” could “have a chilling [e]ffect upon young men and their willingness to come forward and express to us in a candid fashion what may have been very traumatic and horrible experiences that they went through.”<sup>144</sup> The judge accepted this explanation as “cause” under the statute and instructed the witnesses accordingly.<sup>145</sup>

On April 21, Tpr. Rossman and Cpl. Leiter interviewed B.S.H. in the presence of his attorney. During the course of the interview, B.S.H. discussed meeting Sandusky through The Second Mile when he was 11 or 12 years old, described Sandusky’s subsequent “grooming” behavior, and disclosed explicitly sexual conduct. According to B.S.H., Sandusky, among other things: touched B.S.H.’s genitals while they played in the water while swimming; often put his hand on B.S.H.’s knee and worked his way up to B.S.H.’s genital area when B.S.H. was a passenger in Sandusky’s car; often took B.S.H. to Holuba Hall to lift weights, wrestle, and

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Disclosure of matters occurring before the grand jury other than its deliberations and the vote of any juror may be made to the attorneys for the Commonwealth for use in the performance of their duties. The attorneys for the Commonwealth may with the approval of the supervising judge disclose matters occurring before the investigating grand jury including transcripts of testimony to local, State, other state or Federal law enforcement or investigating agencies to assist them in investigating crimes under their investigative jurisdiction. Otherwise a juror, attorney, interpreter, stenographer, operator of a recording device, or any typist who transcribes recorded testimony may disclose matters occurring before the grand jury only when so directed by the court. All such persons shall be sworn to secrecy, and shall be in contempt of court if they reveal any information which they are sworn to keep secret.

42 PA. CONS. STAT. § 4549(b).

<sup>143</sup> 42 PA. CONS. STAT. § 4549(d); *see also* In re Dauphin County Fourth Investigating Grand Jury, 610 Pa. 296, 317, 19 A.3d 491, 503 (2011).

<sup>144</sup> Thirty-Third Statewide Investigating Grand Jury, In re: Notice Nos. 1, 16, Transcript of Proceedings, April 14, 2011, at 9. Fina further stated: “So we do not want to empower in any way, shape, or form a potential perpetrator in his ability to tell his victims, if you go and cooperate with the authorities, you’re going to end up on the front page of the newspaper.” *Id.*

<sup>145</sup> Fina’s motion, and the judge’s instructions, did not apply to witnesses who had testified in the Grand Jury before April 14.

shower, during which Sandusky would initiate “soap battles” that led to sexual contact; and took B.S.H. to hotel rooms both in-state and out-of-state, also leading to sexual contact.

As of the end of April 2011, in addition to A.F. (Victim 1), the investigation had succeeded in identifying and securing the statements of D.S. and B.S.H. as Sandusky victims. In addition, investigators were aware of the 1998 incident and had spoken to, but not yet formally interviewed, Z.K., had interviewed and partially corroborated Michael McQueary, and had learned of the janitor incident and were working to identify the first-hand witness to that incident. They also believed that Sandusky had victimized others, and that Penn State administrators may have covered up Sandusky’s conduct.

#### May 2011

May 2011 was undoubtedly the most active month of the investigation to date. Along with OAG agents Cranga and Shaffer, PSP troopers Mark Yakicic and Robert Yakicic had been added to the Sandusky team, now described informally as a task force, and OAG secured separate office space to house team members so that they could meet and work in close proximity. According to Agent Sassano, by this time he had been freed of his other responsibilities, was working on the Sandusky investigation full time, and had been directed to take a leadership role in the investigation. In May alone, Agent Sassano, Tpr. Rossman, Cpl. Leiter and these new investigators conducted over 60 interviews. As before, the focus of these interviews was on finding additional victims and learning more about the victims and incidents

that had already been uncovered. As additional victims were identified, investigators were tasked with finding evidence to corroborate those victims' accounts.<sup>146</sup>

Tprs. Yakicic and Yakicic<sup>147</sup> focused first on the janitor incident, beginning by interviewing several current and former Penn State employees. Eventually, based on a lead provided by Agent Sassano, they identified (through a local veterans' affairs office) and interviewed James Calhoun, who was the "Jim" referred to by Ronald Petrosky. They largely completed their investigation of the janitor incident by early June, although their efforts to identify the boy Calhoun saw in the shower continued into the fall.

Agents Cranga and Shaffer concentrated on current and former employees of Centre County CYC, asking about any prior allegations against Sandusky, as well as about adoptions by and foster children assigned to Sandusky and his wife. Agent Sassano, Cpl. Leiter, and Tpr. Rossman, separately and in combination, addressed a wide range of subjects in May, including the 1998 incident, Penn State Police reporting procedures, the configuration of and access to Penn State football-related facilities, the circumstances surrounding Sandusky's resignation as Penn State's defensive coordinator, and corroboration for other already-identified victims.

On May 19, nine witnesses testified before the Grand Jury. B.S.H. (Victim 4) gave testimony that largely tracked the substance of his interview in April. Ronald Petrosky testified about the janitor incident, including what James Calhoun had told him and others at the time. Tpr. Robert Yakicic described his efforts, along with his brother, to find and interview Calhoun.

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<sup>146</sup> See, e.g., email from Anthony Sassano, Agent, Pa. Office of Attorney Gen., to Joseph A. Leiter, Corporal, Pa. State Police, Scott F. Rossman, Trooper, Pa. State Police, Mark Yakicic, Trooper, Pa. State Police, Robert E. Yakicic, Trooper, Pa. State Police, Jonelle H. Eshbach, Senior Deputy Attorney Gen., Pa. Office of Attorney Gen., Timothy Shaffer, Agent, Pa. Office of Attorney Gen., Michael J. Cranga, Agent, Pa. Office of Attorney Gen., Frank G. Fina, Chief Deputy Attorney Gen., Pa. Office of Attorney Gen., and cc Randy Feathers, Regional Director, Pa. Office of Attorney Gen. (May 23, 2011, 4:12 PM) (attached as Appendix M).

<sup>147</sup> Tprs. Robert Yakicic and Mark Yakicic are brothers.



Three Penn State employees testified about Penn State football-related facilities, including the layout of and access to those facilities. One of the employees also testified about travel to bowl games in the late 1990s, while the other two described conversations each had had with Michael McQueary about Sandusky. In addition, two individuals involved with the investigation of the 1998 allegations also testified, and Tpr. Rossman briefly read from parts of the 1998 investigative report prepared by Ronald Schreffler.<sup>148</sup>

On May 27, Linda Kelly was sworn in as Attorney General.<sup>149</sup> Acting Attorney General Ryan returned to his position as First Deputy.

### June 2011

In June, the investigation proceeded apace, with investigators continuing to interview former Second Mile participants, current and former Centre County CYs employees, and other witnesses who might have had information about already-identified victims and incidents. On June 3, Cpl. Leiter and Tpr. Rossman interviewed Z.K. (Victim 6), who had recently returned from out-of-state. Z.K. thus became the fourth victim, after A.F., D.S., and B.S.H., who confirmed conduct that was later included in the charges against Sandusky.

Also on June 3, Agent Sassano sent an email and attached memorandum to Regional Director Feathers giving reasons why Sandusky should be charged “asap.”<sup>150</sup> Agent Sassano proposed obtaining a presentment from the Grand Jury in July and arresting Sandusky as soon as possible thereafter. He argued that the case was strong—with four victims willing to testify

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<sup>148</sup> Of the witnesses who testified before the Grand Jury on May 19, B.S.H, Petrosky, and Tpr. Rossman testified at Sandusky’s trial.

<sup>149</sup> According to Corbett, his nomination of Kelly was based in part on her experience in handling cases involving child victims and his hope that she would bring a fresh set of eyes to the Sandusky investigation.

<sup>150</sup> Email from Anthony Sassano, Agent, Pa. Office of Attorney Gen., to Randy Feathers, Regional Director, Pa. Office of Attorney Gen. (June 03, 2011, 1:45 PM) (attached as part of Appendix N).

(A.F., B.S.H, D.S., and Z.K.), along with the McQueary incident and the janitor incident—and not likely to get much stronger with further investigation. He also suggested that the case might get weaker, with Jim Calhoun in failing health and the possibility that A.F.’s frustration might lead him to become unwilling to testify if the arrest did not happen soon. Finally, he argued that once charges were brought other victims were likely to come forward, and “[t]he longer we wait to file charges, the greater the potential for Sandusky to molest other kids.”<sup>151</sup> Feathers forwarded Sassano’s email and memorandum to Fina and Eshbach and asked for their thoughts.<sup>152</sup> Later, Fina and Feathers discussed the matter. According to Fina, he concluded that the case was not yet ready to be charged but might be relatively soon, depending on the progress made by investigators. According to then-Attorney General Kelly, she was not aware of these discussions at the time, and was not briefed in detail about the Sandusky investigation until late September or early October 2011.<sup>153</sup>

On June 7, Agent Sassano and Tpr. Rossman interviewed M.K., who had been mentioned by Z.K.’s mother as a possible Sandusky victim and identified by D.S. in a photograph in *Touched*.<sup>154</sup> During the June 7 interview, M.K. told investigators that he had met Sandusky through The Second Mile when he was about 10 years old. He went on to describe conduct that again was similar to that described by other victims: Sandusky frequently squeezed M.K.’s leg while the two of them were driving together; and Sandusky took M.K. to a football building on the Penn State campus to play games, work out, and shower. M.K. recounted a particular event

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<sup>151</sup> *Id.*

<sup>152</sup> Email from Randy Feathers, Regional Director, Pa. Office of Attorney Gen., to Frank G. Fina, Chief Deputy Attorney Gen., Pa. Office of Attorney Gen., and cc Jonelle H. Eshbach, Senior Deputy Attorney Gen., Pa. Office of Attorney Gen. (June 03, 2011, 1:56 PM) (attached as part of Appendix N).

<sup>153</sup> At the time Kelly took office, she received a Criminal Law Division briefing book that included summaries briefly describing significant matters, including Sandusky. Fina recalls that he and Sheetz gave a short oral briefing to Kelly about Sandusky not long after she had taken office.

<sup>154</sup> Investigators had been trying to locate M.K. for several months.

in the shower when Sandusky, after rubbing M.K.'s back and shoulders and pressing his chest against M.K.'s back, grabbed M.K.'s hand and placed it on Sandusky's erect penis. M.K. said that he struggled and eventually managed to free his hand and get out of the shower. With this interview, M.K. became the fifth victim later included in the charges against Sandusky who confirmed being a victim of criminal conduct.

The Grand Jury heard three days of testimony in June. The first two, on June 14 and June 16, consisted of OAG agents reading to the new Grand Jury transcripts of testimony given before the prior Grand Jury.<sup>155</sup> On June 17, the Grand Jury heard live testimony from seven witnesses. Those witnesses included: M.K. and Z.K., who each testified about the conduct by Sandusky that they had earlier described to investigators; another Second Mile participant who knew both Sandusky and B.S.H.; a Penn State maintenance employee who testified about the janitor incident; two other Penn State employees (one assistant football coach and one maintenance worker) who testified about other incidents involving Sandusky; and a records custodian who testified about missing Second Mile records.<sup>156</sup>

The most significant remaining event in June was the execution of a search warrant at Sandusky's residence on June 21.<sup>157</sup> The warrant, signed by the supervising grand jury judge, authorized a search for the following:

Photo albums; photographs of boys and young men; records or evidence of contact between Jerry Sandusky and boys and/or young men; mementos or

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<sup>155</sup> According the current Chief Deputy Attorney General for Appeals and Legal Services, when an investigation moves from an expiring grand jury to a new grand jury, it was and remains the practice of OAG to inform the new grand jury of important testimony that took place before its predecessor. This is typically accomplished either by reading the prior testimony to the new grand jury or by having a witness summarize the prior testimony. When the summary approach is taken, the new grand jury is also given access to the full transcripts of the earlier testimony.

<sup>156</sup> Of these witnesses, M.K. and Z.K. testified at Sandusky's trial.

<sup>157</sup> Agent Sassano had suggested searching Sandusky's computer in an email on September 3, 2009, attached as Appendix D.

souvenirs of past contact with boys and/or young men; personal computers, computer disks, computer jump drives and any items used for mass storage of photographs; cameras and camera storage, all undeveloped film, letters, records; address books or lists and any other item which may be used to establish the identity of children preyed upon by Sandusky; child pornography.<sup>158</sup>

The search uncovered, among other things, many photographs of already-identified Sandusky victims, including 16 of A.F., eight of Z.K., four of D.S., 13 of B.S.H., and two of M.K., as well as three photographs of S.P.,<sup>159</sup> who was not identified as a victim until after the initial charges were filed against Sandusky in November 2011. Searchers also found several typed lists of Second Mile participants, with the names of some participants highlighted with hand-written asterisks. Two of the “asterisk kids” on the lists found at Sandusky’s home – A.F. and S.P – formed the basis for charges against Sandusky.<sup>160</sup>

On June 27, Tpr. Rossman and Cpl. Leiter interviewed Jessica Dershem, the Clinton County CYS caseworker who had interviewed A.F. when he first came to the CYS offices on November 20, 2008. Dershem, who had been interviewed by Tpr. Cavanaugh in January 2009, provided Rossman and Leiter with a copy of her report.

### July 2011

In July, investigators continued the search for more victims and worked toward completing the corroboration of identified victims through additional grand jury subpoenas, more interviews, and the review of items supplied in response to earlier subpoenas as well as items found in the search of Sandusky’s residence. On July 21, the month’s only grand jury witness,

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<sup>158</sup> Search Warrant for Residence at 130 Grandview Road State College, PA 16801, College Township, Centre County, issued June 20, 2011 (attached as Appendix O).

<sup>159</sup> None of these photographs were sexual in nature.

<sup>160</sup> Other lists of Second Mile participants with hand-written asterisks were discovered during a review of materials belonging to Sandusky found in an office on the Penn State campus on April 12, 2012. After the discovery of those additional lists, investigators sought to interview the individuals who had been highlighted with asterisks but who had not previously been interviewed.

an OAG agent, testified about plane, bus, hotel, and travel-itinerary records that corroborated B.S.H.'s testimony that he had traveled with Sandusky and the Penn State football team to bowl games at the end of the 1998 and 1999 seasons. Following this testimony, Eshbach told the grand jurors: "You aren't going to get a presentment at this time. . . . [W]e're tying up every end and things are still coming in . . . ." <sup>161</sup>

The most time-consuming investigative activity in July was a concerted, systematic effort to identify Sandusky victims by interviewing selected Second Mile participants. Tpr. Rossman explained the process to the Grand Jury as follows:

We went through a Second Mile list and comprised a list of about 250-some kids. . . . What we figured was there was a general area that Mr. Sandusky is probably willing to travel. Based on some of the other victims, it usually was within an hour . . . travel distance. So we did a circumference of roughly an hour distance from his home in State College and we came up with areas like Mill Hall, Clinton County, Altoona, Snow Shoe, Moshannon, Jersey Shore and Renovo. We came up with 250-some kids that met that criteria and then we divided that up among the individuals that were working on this case. Then we went out and sought those kids out and interviewed whatever kids we could come into contact with. Some of those kids we didn't have any current information on and we couldn't locate them. <sup>162</sup>

In July, investigators conducted more than 100 interviews pursuant to this plan, and attempted many others. One of the persons interviewed in July was J.S., who was later described as Victim 3 in the Sandusky presentment. At a July 19 interview, J.S. told Tprs. Yakicic and Yakicic that he had had extensive contact with Sandusky, including staying overnight at his house and going to Penn State facilities where they worked out, played games, and showered together. At the July interview, however, J.S. denied that Sandusky had ever done anything

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<sup>161</sup> Thirty-Third Statewide Investigating Grand Jury, In re: Notice No. 1, Transcript of Proceedings, Witness: Pa. Office of Attorney Gen. Agent, July 21, 2011, at 14.

<sup>162</sup> Thirty-Third Statewide Investigating Grand Jury, In re: Notice Nos. 1, 21, Transcript of Proceedings, August 18, 2011, at 39-40. The investigative plan was set out in an email authored by Agent Sassano on June 30, 2011.

inappropriate to him, other than placing his hand on J.S.'s knee while the two of them were driving together.

### August 2011

The interviews of Second Mile participants continued into August, as did efforts to corroborate already-identified victims and the review of records seized during the search of Sandusky's residence. Also in August, the Grand Jury heard testimony from two witnesses, and OAG officials met with A.F., his mother, and his psychologist, at their request, to discuss the status of the investigation.

Several August interviews concerned A.F.'s report to Clinton County CYS in November 2008. On August 15, Cpl. Rossman<sup>163</sup> and Agent Sassano interviewed former Clinton County CYS employee Erin Rutt. Rutt explained that A.F.'s mother had told her about A.F.'s initial report to CMHS and that Rutt promptly relayed that report to Clinton County CYS Director Gerald Rosamilia.<sup>164</sup> Rutt also described Rosamilia's decision to terminate their organization's relationship with The Second Mile. On August 19, Cpl. Leiter and Cpl. Rossman interviewed Rosamilia, who explained how he had learned about the allegations against Sandusky and described his subsequent conversation with Second Mile Executive Vice President Katherine Genovese.<sup>165</sup>

On August 18, J.S. was re-interviewed based upon information provided to Agent Sassano by another Second Mile participant. This time, unlike in July, J.S. described explicitly sexual conduct by Sandusky. In particular, J.S. said that when he and Sandusky showered

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<sup>163</sup> Rossman had recently been promoted.

<sup>164</sup> See discussion *supra* Part One, Section A.

<sup>165</sup> *Id.*

together after working out at Penn State, Sandusky rubbed J.S.'s back and shoulders, pressed the front of his body against J.S.'s back, and gave J.S. bear hugs and lifted him into the air, all while both were naked. J.S. said that when Sandusky hugged him in the shower he felt Sandusky's penis rub against him, and that on several occasions Sandusky's penis was erect. J.S. also described Sandusky engaging in sexual conduct while J.S. spent the night at Sandusky's house, and while the two of them stayed in a hotel room in New York State. With this interview, J.S. became the sixth and final victim later included in the November 2011 charges against Sandusky who confirmed being a victim of criminal conduct.

The Grand Jury met on August 18 and heard testimony from two Sandusky-related witnesses. J.S. essentially repeated the information that he had provided to Cpl. Rossman earlier in the day. Z.K.'s sister also testified, describing a conversation she had had with M.K. that corroborated what M.K. had told investigators about Sandusky.

As the investigation proceeded through 2011, A.F., along with his mother, became increasingly upset that charges had not yet been brought. According to Eshbach, she heard this not only from A.F.'s mother and psychologist, but also from Tpr. Rossman and Cpl. Leiter, who told her that A.F. was frustrated and might decide not to testify. Eventually, A.F., his mother, and his psychologist asked for a meeting with prosecutors to discuss their concerns. That meeting took place in Harrisburg on August 5, attended by A.F., A.F.'s mother, A.F.'s psychologist, Fina, Eshbach, and Agent Sassano. While individual recollections of the meeting's details differ, all agree that A.F. expressed his frustration over the fact that charges had not been brought earlier and threatened to stop cooperating with the investigation. Before the meeting ended, Fina told A.F. that charges would be brought by the end of the year.

### September – October 2011

In September and October, the effort to find additional victims and corroborate existing victims continued, with more interviews, additional subpoenas, and the review of evidence obtained pursuant to earlier subpoenas and the June search. At the same time, prosecutors focused on those things they believed necessary to prepare the case to be charged. Among other things, they needed to make a wide range of charging decisions in terms of defendants, counts, and victims.

Most of the interviews in September and October were of former Second Mile participants and members of their families. While none of these interviewees said that Sandusky had engaged in sexual conduct with them, several of the former Second Mile participants did describe conduct similar to the “grooming” behavior described by Sandusky victims. Other interviews concerned the 1998 incident – Agent Sassano interviewed Detective Ralph Ralston of the State College Police Department, who had assisted in that investigation – and the McQueary incident. In addition to conducting interviews, Agent Sassano reviewed responses to document subpoenas to determine what information called for in those subpoenas had not been turned over. Together with Eshbach, he worked to identify and then retrieve missing information.

The Thirty-Third Statewide Investigating Grand Jury was scheduled to meet in Harrisburg for the week of September 5, 2011. Several Sandusky-related witnesses were slated to testify before the Grand Jury on September 8. Because of severe flooding in the Harrisburg area,<sup>166</sup> however, the Grand Jury did not meet on September 8 and those witnesses did not testify

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<sup>166</sup> See George A. Ginter, *Map: Tropical Storm Lee Dumped More Than 13 Inches of Rain in Some Central Pennsylvania Towns*, PENNLIVE, Sept. 11, 2011, [http://www.pennlive.com/midstate/index.ssf/2011/09/tropical\\_storm\\_lee\\_dumped\\_more.html](http://www.pennlive.com/midstate/index.ssf/2011/09/tropical_storm_lee_dumped_more.html); Associated Press, *Tropical Storm Lee Drenches Northeast, Prompting Evacuations Due to Flooding*, FOXNEWS.COM, Sept. 9, 2011, <http://www.foxnews.com/weather/2011/09/08/remnants-lee-bring-fresh-flood-worries-to-east/>.



until October.<sup>167</sup> On October 3, the Grand Jury heard testimony from five witnesses, four of whom had been scheduled for September. State College Police Detective Ralph Ralston testified about his role in investigating the 1998 incident, including overhearing two conversations between Sandusky and Z.K.'s mother. Former Clinton County CYS employee Erin Rutt testified about her role in reporting A.F.'s allegations about Sandusky to her boss, Clinton County CYS Director Gerald Rosamilia.<sup>168</sup> Rosamilia testified about the reports his office received of A.F.'s allegations from Rutt and from CMHS, about his office's investigation of those allegations and referral of the matter to PSP, and about his conversation with Second Mile Executive Vice President Katherine Genovese.<sup>169</sup> Finally, the mothers of M.K. and J.S. each testified about her son's involvement in The Second Mile and his relationship with Sandusky.<sup>170</sup>

The task of drafting a grand jury presentment incorporating the facts developed during the investigation and recommending charges fell first to Eshbach. She began in early September with the final version of the draft she had circulated in 2010, with A.F. as the sole victim and Sandusky as the sole defendant. She then added additional victims – the unidentified victim witnessed by McQueary, B.S.H., J.S., M.K, Z.K., and D.S. – as well as the facts that had been developed to corroborate those victims and details concerning the testimony of Curley and

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<sup>167</sup> On September 7, the supervising grand jury judge held a brief hearing on a motion for contempt filed by OAG against The Second Mile based on that entity's failure to produce certain records that had been subpoenaed back in January 2011. Representatives of The Second Mile and of the facility storing Second Mile records had testified that the records in question were missing and could not be found. OAG's motion for contempt was based chiefly on the argument that not enough effort had been made to find the records. At the September 7 hearing, Eshbach and an attorney for The Second Mile reported that they had resolved the matter with an agreed-upon plan for a more extensive search. In the end, some but not all of the missing records were recovered and turned over to OAG.

<sup>168</sup> See discussion *supra* Part One, Section A.

<sup>169</sup> *Id.*

<sup>170</sup> None of the October 3, 2011, grand jury witnesses testified at Sandusky's trial.

Schultz. Eshbach submitted a draft in late September first to Fina and then to Sheetz.<sup>171</sup> Sheetz suggested several changes, which Eshbach incorporated.

By this time, Attorney General Kelly had brought in two prosecutors to the OAG Executive Office: Bruce Beemer as Chief of Staff and William Conley as First Deputy.<sup>172</sup> Conley, who started on September 6, 2011, replaced William Ryan, who had left for the Pennsylvania Gaming Control Board in August. Beemer, who started on September 26, 2011, and Conley, along with Kelly, soon became involved in the charging decisions made in October. According to Kelly, she first received a detailed briefing about the Sandusky investigation not long after Beemer's first day in the office. It was at this briefing, which likely occurred in early October, that Kelly says she first learned of the extent of Sandusky's criminal conduct. Kelly asked what was being done to make sure Sandusky was not victimizing others. She was told that Sandusky no longer had access to children through The Second Mile and that he had been barred from bringing children onto the Penn State campus. According to Kelly, she came to the conclusion at that first briefing that the case needed to be charged as soon as possible.

By the end of October, most important decisions about victims, defendants, and charges had been made, including the decision to add the incident witnessed by Penn State janitor James

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<sup>171</sup> In late September, Fina began another lengthy Bonusgate-related trial that did not end until November. *See* The Associated Press, 'Computergate' Trial to Begin Monday for 3 GOP Defendants, PENNLIVE, Sept. 24, 2011, [http://www.pennlive.com/midstate/index.ssf/2011/09/computergate\\_trial\\_to\\_begin\\_mo.html](http://www.pennlive.com/midstate/index.ssf/2011/09/computergate_trial_to_begin_mo.html); Angela Coulombis, *Feese Convicted On All Counts In 'Computergate' Trial*, PHILLY.COM, Nov. 8, 2011, [http://articles.philly.com/2011-11-08/news/30373763\\_1\\_guilty-verdicts-courtroom-trial](http://articles.philly.com/2011-11-08/news/30373763_1_guilty-verdicts-courtroom-trial). As a result, his ability to participate in the drafting and review of the presentment was severely limited.

<sup>172</sup> These were Attorney General Kelly's first two attorney hires to her senior management team. Conley started on September 6, 2011. Beemer started on September 26, 2011.

Calhoun to the charges.<sup>173</sup> By the start of November, the presentment was basically ready to be submitted to the Grand Jury and plans were being made for Sandusky's arrest.

November 1 – 5, 2011

On November 3, 2011, after hearing brief testimony on the previous two days,<sup>174</sup> the Grand Jury voted to approve the presentment and recommend criminal charges against Sandusky, Curley, and Schultz.<sup>175</sup> With respect to Sandusky, the presentment discussed six identified victims – A.F. (Victim 1), J.S. (Victim 3), B.S.H. (Victim 4), M.K. (Victim 5), Z.K. (Victim 6), and D.S. (Victim 7) – and two unidentified victims – Victim 2 (witnessed by McQueary) and Victim 8 (witnessed by James Calhoun). It recommended charging Sandusky with involuntary deviate sexual intercourse,<sup>176</sup> aggravated indecent assault,<sup>177</sup> indecent assault,<sup>178</sup> attempt to commit indecent assault,<sup>179</sup> unlawful contact with a minor,<sup>180</sup> corruption of minors,<sup>181</sup> and endangering the welfare of children.<sup>182</sup> With respect to Curley and Schultz, the presentment found that each made a materially false statement to the Grand Jury and

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<sup>173</sup> By the fall of 2011, there was reason to doubt Calhoun's ability to testify at trial. As it turned out, he did not, and his statements about what he had witnessed were admitted through the testimony of Ronald Petrosky, under the "excited utterance" exception to the hearsay ban. See PA. R. EVID. 803(2) (permitting the admission of the statement of a person not testifying at trial if the statement was "relating to a startling event or condition, made while the declarant was under the stress of excitement that it caused").

<sup>174</sup> On November 1, a Penn State employee testified about the janitor incident. On November 2, Agent Cranga described the interview of Sandusky at the conclusion of the 1998 investigation, detailed in Schreffler's 1998 report, during which Sandusky was told that he should not shower with boys again, to which Sandusky agreed.

<sup>175</sup> A copy of the presentment, along with the order of the supervising grand jury judge accepting it and placing it under seal, is attached as Appendix P.

<sup>176</sup> 18 PA. CONS. STAT. § 3123(a)(7).

<sup>177</sup> *Id.* § 3125(a)(8).

<sup>178</sup> *Id.* § 3126(a)(7), (8).

<sup>179</sup> *Id.* §§ 901, 3126(a)(8).

<sup>180</sup> *Id.* § 6318(a)(1), (5).

<sup>181</sup> *Id.* § 6301(a)(1)(ii).

<sup>182</sup> *Id.* § 4304.

recommended that they be charged with perjury<sup>183</sup> and be penalized for failing to report or refer a case of suspected child abuse.<sup>184</sup>

On Friday, November 4, the supervising grand jury judge accepted the presentment and placed it under seal. Also on November 4, Agent Sassano and Cpl. Rossman filed criminal complaints and secured arrest warrants for Sandusky, Curley, and Schultz. The charges in the complaints tracked the recommendations in the grand jury presentment. Despite the sealing order, the charges against Sandusky were posted on a court website on Friday afternoon, apparently by mistake, and then promptly reported in the press.<sup>185</sup> As a result, Sandusky, who was out of state at the time, learned of the charges before he could be arrested. Through his attorney, he arranged to turn himself in the next day, at which time he was arraigned and released on bail.<sup>186</sup>

#### **E. Selected Post-Charging Events**

On Monday, November 7, 2011, Attorney General Kelly and PSP Commissioner Noonan issued a statement concerning the Sandusky investigation that, among other things, encouraged “anyone . . . who has any information related to this case to please contact” one of two toll-free

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<sup>183</sup> *Id.* § 4902.

<sup>184</sup> 23 PA. CONS. STAT. § 6319 (2008), *amended by* Act of Apr. 15, 2014, P.L. 414, No. 32 (effective in 60 days).

<sup>185</sup> *See, e.g.,* Sara Ganim, *Jerry Sandusky, A Penn State University Football Legend and Founder of The Second Mile, Faces Charges of Sex Crimes*, PENNLIVE, Nov. 4, 2011, [http://www.pennlive.com/midstate/index.ssf/2011/11/jerry\\_sandusky\\_a\\_penn\\_state\\_un.html](http://www.pennlive.com/midstate/index.ssf/2011/11/jerry_sandusky_a_penn_state_un.html); Sara Ganim, *Attorney General to Investigate Early Release of Sandusky Charges As Grand Jury Probe Continues*, PENNLIVE, Nov. 5, 2011, [http://www.pennlive.com/midstate/index.ssf/2011/11/ag\\_to\\_investigate\\_early\\_releas.html](http://www.pennlive.com/midstate/index.ssf/2011/11/ag_to_investigate_early_releas.html); John Taylor, *Ex-Penn State Coach Indicted On Child Sex Charges*, NBC SPORTS, Nov. 4, 2011, <http://collegefootballtalk.nbcsports.com/2011/11/04/ex-penn-state-coach-indicted-on-child-sex-charges/>; Dick Weiss, *Former Penn State Defensive Coordinator Jerry Sandusky Charged With Sex Abuse*, NYDAILYNEWS.COM, Nov. 4, 2011, <http://www.nydailynews.com/blogs/weiss/2011/11/former-penn-state-defensive-coordinator-jerry-sandusky-charged-with-sex-abuse>; Adam Jacobi, *Former PSU Coach Sandusky Indicted For Sex Crimes*, CBSSPORTS.COM, Nov. 4, 2011, <http://www.cbssports.com/mcc/blogs/entry/24156338/33108695>.

<sup>186</sup> On Monday, November 7, Curley and Schultz surrendered to authorities and were arraigned and released on bail.

numbers.<sup>187</sup> Both before and after that statement was issued, investigators were contacted by individuals who stated that they, or people they knew, had been abused by Sandusky.

On November 9, 2011, Tpr. Michael Elder received a telephone call from a Mifflin County School District official who identified S.P. (later designated Victim 9), a student and former Second Mile participant, as a possible Sandusky victim.<sup>188</sup> Later that day, Tpr. Elder interviewed S.P., who described sexually explicit conduct by Sandusky. On November 16, R.R. (later designated Victim 10) contacted OAG through its Child Sexual Exploitation Tipline. During an interview on November 28, R.R. described to Agent Cranga sexually explicit conduct by Sandusky. S.P. and R.R. each testified before the Grand Jury on December 5. On December 7, the Grand Jury voted to approve a second presentment concerning Sandusky, this one recommending that he be charged with committing crimes against S.P. and R.R.<sup>189</sup> On December 7, 2011, investigators filed a complaint, secured an arrest warrant, and arrested Sandusky on the new charges. On December 8, 2011, Sandusky posted bail and was released.

On June 22, 2012, after a trial that began on June 11, a jury convicted Sandusky of 45 counts relating to the sexual abuse of the eight identified and two unidentified victims described in the two presentments.<sup>190</sup> On October 9, 2012, the trial court found Sandusky to be a sexually violent predator and imposed an aggregate sentence of imprisonment of 30 to 60 years. After the trial court denied Sandusky's post-trial motions, Sandusky appealed. On October 2, 2013, the

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<sup>187</sup> *Attorney General Kelly and PA State Police Commissioner Noonan Issue Statements Regarding Jerry Sandusky Sex Crimes Investigation*, PENNSYLVANIA OFFICE OF ATTORNEY GENERAL, Nov. 7, 2011, <http://www.attorneygeneral.gov/press.aspx?id=6277>.

<sup>188</sup> Earlier that day, S.P.'s mother had contacted an assistant principal at S.P.'s school to say that S.P. had received a telephone call from Sandusky asking for help in defending against the charges filed the week before. The assistant principal contacted the official who in turn called Tpr. Elder.

<sup>189</sup> A copy of the presentment, along with the order of the supervising grand jury judge accepting it and placing it under seal, is attached as Appendix Q.

<sup>190</sup> The jury acquitted Sandusky on three counts. Several other counts had been dropped or withdrawn during trial.

Superior Court affirmed Sandusky's conviction and sentence.<sup>191</sup> Sandusky's subsequent Petition for Allowance of Appeal to the Pennsylvania Supreme Court was denied on April 2, 2014.<sup>192</sup>

In the meantime, the investigation of Penn State administrators continued, and on November 1, 2012, Curley, Schultz, and Spanier were charged with endangering the welfare of children,<sup>193</sup> obstruction of a criminal investigation,<sup>194</sup> and criminal conspiracy;<sup>195</sup> Spanier was also charged with committing perjury during his grand jury testimony on April 13, 2011,<sup>196</sup> and with failing to report or refer a case of suspected child abuse.<sup>197</sup> These charges, along with the charges filed against Curley and Schultz in November 2011, are awaiting trial.

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<sup>191</sup> Commonwealth v. Sandusky, 77 A.3d 663 (Pa. Super. 2013).

<sup>192</sup> Commonwealth v. Sandusky, Nos. 835 & 836 MAL 2013 (Pa. Apr. 2, 2014) (denying petition for allowance of appeal).

<sup>193</sup> 18 PA. CONS. STAT. § 4304.

<sup>194</sup> *Id.* § 5101.

<sup>195</sup> *Id.* § 903.

<sup>196</sup> *Id.* § 4902.

<sup>197</sup> 23 PA. CONS. STAT. § 6319 (2008), amended by Act of Apr. 15, 2014, P.L. 414, No. 32 (effective in 60 days). See *Former Penn State President Graham Spanier Charged in "Conspiracy of Silence;" Gary Schultz & Tim Curley Face Additional Charges*, PENNSYLVANIA OFFICE OF ATTORNEY GENERAL, Nov. 1, 2012, <http://www.attorneygeneral.gov/press.aspx?id=6699>.

## **PART TWO: ANALYSIS**

Part Two of this report addresses the central issues raised by the events described in Part One. With respect to many of those issues, several of which touch on matters of prosecutorial discretion, the report sets out competing considerations rather than attempting a definitive resolution.

Section A discusses the initial report by Keystone Central School District to Clinton County CYS. Section B examines the actions of Clinton County CYS and law enforcement between the time of A.F.'s initial complaint and the transfer of the case to OAG. Section C addresses the use of the grand jury to investigate Sandusky, chiefly at the macro level – the decision to conduct a grand jury investigation rather than rely on ordinary police work – but also at the micro level – certain choices made about how to use the powers of the Grand Jury in this investigation. Section D addresses the concern that electoral politics may have shaped important decisions in the investigation. Section E discusses whether the assignment of additional investigative resources earlier in the investigation would have resulted in the earlier identification of additional victims. Section F examines the question whether Sandusky should have been charged earlier, either based on the testimony of a single victim in 2009 or 2010, or based on the growing number of identified victims in 2011. Finally, Section G examines the overarching and complex question of why the Sandusky investigation took as long as it did.

### **A. The Initial Report by Keystone Central School District**

On November 19, 2008, A.F. reported to officials at CMHS that he had been subjected to inappropriate conduct by Gerald Sandusky. While the conduct A.F. described was not explicitly sexual, school officials, along with the acting district superintendent and a local solicitor,

concluded that it did warrant reporting under Pennsylvania’s Child Protective Services Law (“CPSL”). They made their report to Clinton County CYS the next day. Nevertheless, numerous published accounts, both at the time charges were filed against Sandusky and more recently, have suggested that the District did not properly report A.F.’s allegations.<sup>198</sup> In contrast, then-Attorney General Linda Kelly, at a press conference announcing the charges against Sandusky, described district officials as having “promptly reported” and their report as being a “catalyst that started this entire investigation.”<sup>199</sup> These arguably conflicting interpretations raise the question whether the District and its officials satisfied their obligations under the law.

Despite important areas for improvement of the District’s handling of A.F.’s complaint, discussed below, the District and its officials substantially complied with their obligations under the CPSL. That law provides that mandated reporters, which include the school district officials involved here,<sup>200</sup> shall make a report “when the person has reasonable cause to suspect . . . that a child under the care, supervision, guidance or training of that person or of an agency, institution,

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<sup>198</sup> See, e.g., Jim Runkle, *Scandal May Include Keystone Central*, SUNGAZETTE.COM, Nov. 12, 2011, <http://www.sungazette.com/page/content.detail/id/570961/Scandal-may-include-Keystone-Central.html?nav=5011>; Jim Runkle, *Victim’s Mother: I Have Proof School Delayed Reporting Sandusky Abuse*, SUNGAZETTE.COM, Nov. 2, 2012, <http://sungazette.com/page/content.detail/id/585275/Victim-s-mother--I-have-proof-school-delayed-reporting-Sandusky-abuse.html>; Sara Ganim, *They Didn’t Believe Me’: Jerry Sandusky Victim’s Allegations Ignored In Hometown Of Lock Haven*, PENNLIVE, Nov. 3, 2012, [http://www.pennlive.com/midstate/index.ssf/2012/11/jerry\\_sandusky\\_victims\\_allegat.html](http://www.pennlive.com/midstate/index.ssf/2012/11/jerry_sandusky_victims_allegat.html); Kevin Johnson, *Pa. Reviewing Original Sandusky Allegation: “Victim 1” and Mother Say High School Did Not Handle The Report Of Sexual Abuse Properly*, USA TODAY, Oct. 8, 2013, <http://www.usatoday.com/story/news/nation/2013/10/07/pa-reviewing-original-sandusky-allegation-/2940009/>; SILENT NO MORE: VICTIM 1’S FIGHT FOR JUSTICE AGAINST JERRY SANDUSKY (2012).

<sup>199</sup> See Attorney General Linda Kelly Q+A on Jerry Sandusky Sex Abuse Case (PennLive video Nov. 7, 2011), [http://videos.pennlive.com/patriot-news/2011/11/attorney\\_general\\_linda\\_kelly\\_q.html](http://videos.pennlive.com/patriot-news/2011/11/attorney_general_linda_kelly_q.html). According to Kelly, she made these statements based on the information available to her at the time and was attempting to contrast the District’s reporting with the failure to report by officials at Penn State.

<sup>200</sup> See 23 PA. CONS. STAT. § 6311(a), (b) (2008), amended by Act of Apr. 15, 2014, P.L. 414, No. 32 (effective in 60 days), and Act of Apr. 15, 2014, P.L. 417, No. 33 (effective Dec. 31, 2014).



organization or other entity with which that person is affiliated is a victim of child abuse.”<sup>201</sup> In this case, A.F. met with the principal and a guidance counselor at CMHS on the afternoon of Wednesday, November 19, 2008. The following morning, the principal discussed A.F.’s report with her supervisor, the District’s interim superintendent.<sup>202</sup> The superintendent, along with the principal, then contacted a local solicitor<sup>203</sup> to discuss the matter by telephone. In that November 20 call, district officials described what A.F. had said and affirmed that they found him and his allegations to be credible. The solicitor responded that a report was mandated, confirming what district officials already believed. At the conclusion of the phone call with the solicitor, the principal called Clinton County CYS and made her report.

Several objections to the District’s handling of this matter have been raised. These include: first, that the report to CYS was not made until the day after the meeting with A.F. and, therefore, was not made “immediately” within the meaning of the CPSL;<sup>204</sup> second, that CMHS

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<sup>201</sup> 23 PA. CONS. STAT. § 6311(a) (2008), *amended by* Act of Apr. 15, 2014, P.L. 414, No. 32 (effective in 60 days), and Act of Apr. 15, 2014, P.L. 417, No. 33 (effective Dec. 31, 2014). “Child abuse” is defined to include, among other things, “[a]n act or failure to act by a perpetrator which causes nonaccidental serious mental injury to or sexual abuse or sexual exploitation of a child under 18 years of age,” 23 PA. CONS. STAT. § 6303(b)(1)(ii) (2008), *amended by* Act of Dec. 18, 2013, P.L. 1170, No. 108 (effective Dec. 31, 2014), and “[a]ny recent act, failure to act or series of such acts or failures to act by a perpetrator which creates an imminent risk of serious physical injury to or sexual abuse or sexual exploitation of a child under 18 years of age,” *id.* § 6303(b)(1)(iii) (2008), *amended by* Act of Dec. 18, 2013, P.L. 1170, No. 108 (effective Dec. 31, 2014).

<sup>202</sup> Both the CPSL and applicable regulations at the time provided that mandated reporters who work at a school or other institution shall, upon receiving a report of alleged child abuse, “immediately notify the person in charge of the institution[ or] school.” 23 PA. CONS. STAT. § 6311(a), (c) (2008), *amended by* Act of Apr. 15, 2014, P.L. 414, No. 32 (effective in 60 days), Act of Apr. 15, 2014, P.L. 417, No. 33 (effective Dec. 31, 2014), and Act of May 14, 2014, P.L. 645, No. 44 (effective Dec. 31, 2014); 55 PA. CODE § 3490.13(a). The person in charge, or his or her designee, then becomes responsible to make a report to the appropriate authorities. 23 PA. CONS. STAT. § 6311(c) (2008), *amended by* Act of Apr. 15, 2014, P.L. 417, No. 33 (effective Dec. 31, 2014), and Act of May 14, 2014, P.L. 645, No. 44 (effective Dec. 31, 2014); 55 PA. CODE § 3490.13(a). For a description of relevant changes that will take effect at the end of this year, *see infra* note 219.

<sup>203</sup> Because the superintendent was unable to reach the District’s regular solicitor, he called the solicitor for a nearby district where the superintendent had worked previously.

<sup>204</sup> *See* 23 PA. CONS. STAT. § 6313(a) (2008) (providing: “Reports from persons required to report under section 6311 (relating to persons required to report suspected child abuse) shall be made immediately by telephone and in writing within 48 hours after the oral report.”), *amended by* Act of Apr. 15, 2014, P.L. 417, No. 33 (effective Dec. 31, 2014).

officials tried to discourage A.F. and his mother from making a report to appropriate authorities themselves; and third, that a CMHS official suggested to CYS that A.F.’s account might not be true.

Neither the Pennsylvania legislature nor Pennsylvania appellate courts have defined the term “immediately” as used in the CPSL. Under Pennsylvania law, where a statutory term is not defined, “[w]ords and phrases shall be construed according to [the] rules of grammar and according to their common and approved usage.”<sup>205</sup> “[I]n ascertaining the common and approved usage or meaning, [courts] may have resort to the dictionary definitions of the terms left undefined by the legislature.”<sup>206</sup> “Immediately,” although often defined as “[w]ithout delay”<sup>207</sup> and “without interval of time,”<sup>208</sup> also “admits of many varieties of definition[,]”<sup>209</sup> including “within a reasonable time” and “as soon as practicable.”<sup>210</sup>

In the absence of an authoritative definition, it is difficult to say with certainty whether the report by district officials on November 20 was made “immediately” within the meaning of the CPSL. Ideally, the report would have been made on November 19, after the meeting with A.F. and his mother.<sup>211</sup> Today, according to district officials, the report would have been made

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<sup>205</sup> 1 PA. CONS. STAT. § 1903(a).

<sup>206</sup> P.R. v. Pennsylvania Dep’t of Pub. Welfare, 759 A.2d 434, 437 (Pa. Cmwlth. Ct. 2000) (citing cases).

<sup>207</sup> AMERICAN HERITAGE® DICTIONARY OF THE ENGLISH LANGUAGE (5th ed. 2013) (defining “immediately”), available at <http://www.ahdictionary.com/word/search.html?q=immediately>.

<sup>208</sup> MERRIAM-WEBSTER, <http://www.merriam-webster.com/dictionary/immediately> (last visited Dec. 26, 2013) (defining “immediately”).

<sup>209</sup> Sussick v. Glen Alden Coal Co., 165 A. 658, 659 (Pa. Super. 1933).

<sup>210</sup> *Id.* See also Drumbar v. Jeddo-Highland Coal Co., 37 A.2d 25, 27 (Pa. Super. 1944) (“We have held that ‘immediately’ does not mean instantaneously, but within a reasonable time.”).

<sup>211</sup> Principal Probst offered several explanations for the delay, including: the need to reach her supervisor (Acting Superintendent DiNunzio); the fact that Clinton County offices were closed at the time of the meeting on November 19; her understanding that a report would be timely if made within 24 hours; her belief that no harm would come to A.F. from the delay, since he was going home with his mother and would not be accessible to Sandusky; and her belief that A.F. and his mother needed time to decide how they wanted to proceed.

on the same day the information was received from the student, under district policies implemented after this matter arose.<sup>212</sup> Nevertheless, with respect to the timing of their report, district officials appear to have been in substantial compliance with their obligations under the CPSL.<sup>213</sup> It bears noting that the Pennsylvania Department of Education (“PDE”) reviewed similar allegations and concluded that the conduct of district officials did not warrant state-level discipline.<sup>214</sup>

While there is considerable agreement among the participants about what A.F. told school officials concerning Sandusky’s conduct, the participants disagree about other aspects of the November 19 meeting. Some of the differences in recollection may be the product of differing perspectives, as well as a shared sense of shock about the nature of the allegations. Other differences are not so easily explained. Of particular note is the claim by both A.F. and his mother that district officials discouraged them from reporting A.F.’s allegations about Sandusky to law enforcement or CYS. District officials adamantly deny that contention. All parties agree that district officials encouraged A.F. and his mother, who were undeniably distraught, to go home and think things through. A.F. and his mother say that they understood this as a

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<sup>212</sup> There is no reason to believe that making the report on November 20, rather than on November 19, had any material impact on the safety of the child or on the subsequent investigations by CYS and law enforcement.

<sup>213</sup> Similar but more technical objections are (1) that the District reported to the local county agency (Clinton County CYS) while the CPSL requires a report to ChildLine at DPW, *see* 23 PA. CONS. STAT. § 6313(b) (2008), *amended by* Act of Apr. 15, 2014, P.L. 417, No. 33 (effective Dec. 31, 2014); 55 PA. CODE § 3490.12; and (2) that the District did not follow up its oral report with a written report, *see* 23 PA. CONS. STAT. § 6313(a) (2008), *amended by* Act of Apr. 15, 2014, P.L. 417, No. 33 (effective Dec. 31, 2014). Here again, there is no evidence that these alleged failures had any impact on the safety of the child or on subsequent investigations. CYS promptly reported to ChildLine upon receipt of the report from the District and never requested a written report from the District.

<sup>214</sup> According to PDE, it began a preliminary investigation of the District’s handling of the matter based on concerns raised in several media reports. PDE interviewed A.F., A.F.’s mother, and a Clinton County CYS employee who has stated that in the morning of November 20, 2008, before the formal report was made, the CMHS principal called CYS to say that A.F. and his mother were on their way to CYS and that CYS should, in evaluating their allegations, “consider the source.” *See supra* note 48. Based on those interviews, and after meetings with me and Agent Peifer at which we shared relevant information, PDE decided to close the matter. PDE concluded that while the District’s handling of the matter did not comport with best practices, no state-level discipline was warranted.

recommendation that they consider not reporting the allegations further. District officials contend that the suggestion to go home was based on the need for A.F. and his mother to talk through next steps, including how to tell family members about Sandusky's conduct, and that the meeting concluded with the agreement that Principal Probst and A.F.'s mother would speak the next morning about what should happen next.

Any effort to discourage a report of child abuse would of course be indefensible.<sup>215</sup> Current training emphasizes the importance of mandatory reporters being supportive of the complaining child and not making or suggesting any judgments about credibility.<sup>216</sup> Moreover, even in the absence of an actual intent to discourage, any words or conduct that conveyed the impression to a vulnerable student and his mother that officials were discouraging a report or disbelieved the student would be highly regrettable. Despite the seemingly irreconcilable accounts offered by student and parent on the one hand and school officials on the other, the bottom line is that all parties reported promptly to Clinton County CYs and the subsequent

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<sup>215</sup> The available evidence suggests, however, that district officials did not harbor the intent to discourage a report, at least not ultimately, given their own nearly contemporaneous notes and a contemporaneous email from the solicitor they contacted.

<sup>216</sup> For example, a pamphlet distributed by the Pennsylvania Coalition Against Rape, entitled "Child Sexual Abuse," provides the following guidance:

***What should I do if a child tells me about sexual abuse?***

*Keep outwardly calm.* Avoid expressing disbelief or showing anger, tears or other strong emotions that may scare or confuse the child.

...

*Believe the child.* Make it clear that you are glad the child told you and that you know the abuse is not the child's fault. Now is not the time to ask the child questions for more details, but to assure that you are going to be supportive.

*Allow the proper authorities to deal with the abuse.* Do not interrogate the child or attempt to gather all of the information, but instead tell the child you are glad they told you and you want to help them. Leave investigations up to proper authorities.

PA. COAL. AGAINST RAPE, CHILD SEXUAL ABUSE (2012). Cf. PENNSYLVANIA DEPARTMENT OF PUBLIC WELFARE, MANDATED REPORTERS: PROFESSIONALS WHO WORK WITH CHILDREN, [http://www.dpw.state.pa.us/ucmprd/groups/webcontent/documents/communication/p\\_011835.pdf](http://www.dpw.state.pa.us/ucmprd/groups/webcontent/documents/communication/p_011835.pdf) (last visited Dec. 26, 2013).

investigation appears to have been unaffected. Here again, PDE reviewed similar allegations and concluded that the conduct of district officials was not a matter for state-level discipline.

A final objection to the District's handling of this matter – the claim that a school official made a separate call to Clinton County CYS suggesting that A.F.'s allegations should be viewed skeptically – is similarly based on a highly contested claim about the relevant facts.<sup>217</sup> The positions of the alleged participants in the call are irreconcilable, and neither the District nor CYS apparently possesses records that would resolve the matter. Even if such a call had been made, however, no one at CYS or in law enforcement who participated in the investigation of A.F.'s report was told about it at the time, so there is little chance it had any impact on the investigation. PDE reviewed the same allegation and concluded that, even had the call been made as described, it would not have warranted discipline at the state level.

Mandated reporters, including school teachers, administrators, and other employees, are a critical component of the Commonwealth's efforts to protect children and prevent and investigate child abuse. Unless mandated reporters are properly trained, there is a substantial risk that they may not respond appropriately to allegations of such abuse. In recognition of that reality, the Public School Code was amended in July 2012 to require that school entities and their independent contractors provide to their employees who have direct contact with children three hours of mandatory training on child abuse recognition and reporting every five years.<sup>218</sup>

Properly trained mandated reporters understand that their role is to be supportive of the child

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<sup>217</sup> In particular, a CYS employee has stated that in the morning of November 20, 2008, before the formal report was made, the CMHS principal called CYS to say that A.F. and his mother were on their way to CYS and that CYS should, in evaluating their allegations, "consider the source." The CYS employee who received the call did not make a record of the call and, according to other CYS employees, did not disclose the existence of the call until roughly two years later. The CMHS principal denies making the call in question or suggesting that A.F. and his mother should not be believed.

<sup>218</sup> See 24 PA. STAT. ANN § 12-1205.6 (codifying Act of July 5, 2012, P.L. 1084, No. 126, § 1).

alleging the abuse and to relay the child's allegations to their superiors, who in turn must report to the appropriate authorities.<sup>219</sup> School employees should not question the child's veracity or discourage a report in any way. Further investigation should be left to professionals trained to conduct such investigations. Indeed, the sooner that both law enforcement and child protection experts are involved, the sooner that child safety can be assured and that critical evidence can be gathered.<sup>220</sup> As discussed above, district officials substantially complied with their obligations under the CPSL. Nevertheless, fairly or not, A.F. and his mother were left with the impression that the officials doubted their story and questioned the wisdom of further reporting. With better training and policy changes generated by the Sandusky case, there is strong reason to believe that those officials will take great care not to convey such an impression in the future.

**B. The Actions of Clinton County Children and Youth Services and Law Enforcement before the Matter was Sent to the Office of Attorney General**

In several respects, Clinton County CYS responded to A.F.'s allegations of sexual abuse in textbook fashion. A CYS employee who knew A.F.'s family received the mother's informal report, passed the information on to the CYS director, and, as instructed by the director, picked up the mother and A.F. in a CYS van and brought them to the CYS office. The caseworker assigned to the matter interviewed A.F. with skill and compassion,<sup>221</sup> reported the allegations to

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<sup>219</sup> Beginning December 31, 2014, whenever a mandated reporter is a staff member at a school, institution, agency, or facility and is required to make a report of suspected child abuse, the person must first immediately report directly to DPW and, thereafter, must immediately notify the individual in charge of the school, institution, agency, or facility. *See* Act of Apr. 15, 2014, P.L. 417, No. 33 (effective Dec. 31, 2014), and Act of May 14, 2014, P.L. 645, No. 44 (effective Dec. 31, 2014).

<sup>220</sup> When the alleged perpetrator is a school employee, the CPSL currently mandates that the report be made directly "to law enforcement officials and the appropriate district attorney," 23 PA. CONS. STAT. § 6353(a), *repealed* by Act of May 14, 2014, P.L. 645, No. 44 (effective Dec. 31, 2014), and Act of May 14, 2014, P.L. \_\_\_\_, No. 45 (effective Dec. 31, 2014). A significant advantage of this approach is that law enforcement becomes involved in the process immediately, rather than possibly a day or two later, reducing the chance that critical evidence will be lost.

<sup>221</sup> In June 2013, the caseworker received a statewide award from the Pennsylvania Children and Youth Administrators Association for her work on the Sandusky investigation. *See* Jim Runkle, *Local Caseworker Honored by State for Sandusky Work*, THE EXPRESS, June 25, 2013,

ChildLine the same afternoon, and notified the Pennsylvania State Police the next day. After an appropriate investigation, which included notifying and interviewing Sandusky, CYS found A.F.'s allegations "indicated," which had a potential effect on Sandusky's child abuse history clearance.<sup>222</sup> CYS also provided additional support services to A.F. that he greatly valued and that he credits, among other things, with allowing him eventually to make a full disclosure of the abuse he suffered.

Nevertheless, the level of coordination between Clinton County CYS and its law enforcement partners, in this case the Pennsylvania State Police and the Clinton County District Attorney's Office, was not ideal. Since March 1999, the CPSL has mandated that, in order to assist in the prevention, investigation, and treatment of child abuse, county agencies such as the Clinton County CYS, along with the county district attorney, develop a protocol for the convening of "investigative teams" in appropriate cases, including allegations of child sexual abuse. In particular,

[t]he county protocol shall include standards and procedures to be used in receiving and referring reports and coordinating investigations of reported cases of child abuse and a system for sharing the information obtained as a result of any interview. The protocol shall include any other standards and procedures to avoid duplication of fact-finding efforts and interviews to minimize the trauma to the child. The district attorney shall convene an investigative team in accordance with the protocol. The investigative team

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<http://www.lockhaven.com/page/content.detail/id/546136/Local-caseworker-honored-by-state-for-Sandusky-work.html>.

<sup>222</sup> Any future request for child-abuse-history certifications/clearances from DPW would show that Sandusky was named in DPW's central register as the perpetrator of an indicated report of child abuse. See 23 PA. CONS. STAT. § 6344(b)(2) (2008), *amended by* Act of Apr. 7, 2014, P.L. 388, No. 29 (effective Dec. 31, 2014), and Act of May 14, 2014, P.L. \_\_\_, No. 45 (effective Dec. 31, 2014); 23 PA. CONS. STAT. § 6344.2(b) (2008), *amended by* Act of May 14, 2014, P.L. \_\_\_, No. 45 (effective Dec. 31, 2014). While prospective employers, administrators, or supervisors would not be prohibited from hiring the perpetrator of an indicated report of child abuse, see 23 PA. CONS. STAT. §§ 6344(c) (2008), *amended by* Act of May 14, 2014, P.L. \_\_\_, No. 45 (effective Dec. 31, 2014); 23 PA. CONS. STAT. § 6344.2(c), they would be apprised of the fact that the prospective child-care personnel, or person having contact with children, had been named in such a report, see 23 PA. CONS. STAT. § 6344(b)(2) (2008), *amended by* Act of Apr. 7, 2014, P.L. 388, No. 29 (effective Dec. 31, 2014), and Act of May 14, 2014, P.L. \_\_\_, No. 45 (effective Dec. 31, 2014); 23 PA. CONS. STAT. § 6344.2(b) (2008), *amended by* Act of May 14, 2014, P.L. \_\_\_, No. 45 (effective Dec. 31, 2014).

shall consist of those individuals and agencies responsible for investigating the abuse or for providing services to the child and shall at a minimum include a health care provider, county caseworker and law enforcement official.<sup>223</sup>

In November 2008, Clinton County did not yet have a protocol for the convening of an investigative team. The then-District Attorney of Clinton County, Michael Salisbury, does not recall being notified of the investigation until late January 2009, at which point he concluded that the matter should be handled by Centre County District Attorney Michael Madeira. Madeira, in turn, referred the matter to OAG. Neither District Attorney convened an investigative team as described by the CPSL.

To what extent the existence of a protocol for the prompt convening of an investigative team would have made a difference to the investigation is difficult to say with certainty. Had such a team been convened, all interested parties would have been involved in or at least aware of the initial interview of A.F. This not only might have jump started the investigation but also would have comported with best practices in child abuse cases.<sup>224</sup>

One significant missed opportunity in the early stages of the investigation was the interview by CYS of Sandusky on January 15, 2009. As noted in Part One, Section A of this report, the interview was conducted by a CYS caseworker and solicitor. Neither the Pennsylvania State Police nor the Clinton County District Attorney's Office participated in the interview in any way. This was a notable failure, particularly since at no point later in the

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<sup>223</sup> 23 PA. CONS. STAT. § 6365(c) (2008), *amended by* Act of Dec. 18, 2013, P.L. 1235, No. 123 (amending the subtitle from "Investigative team" to "Multidisciplinary investigative team," and adding that "[a] multidisciplinary investigative team shall be used to coordinate child abuse investigations between county agencies and law enforcement").

<sup>224</sup> *See, e.g.,* Lisa M. Jones, Theodore P. Cross, Wendy A. Walsh & Monique Simone, *Criminal Investigations of Child Abuse: The Research Behind "Best Practices"*, 6 TRAUMA, VIOLENCE, & ABUSE 254, 256 (2005) ("One goal of [multidisciplinary team (MDT)] investigations is to eliminate the need for multiple, duplicative interviews and thereby reduce children's distress related to repeatedly 'telling their story' of abuse.").



investigation did law enforcement manage to interview Sandusky.<sup>225</sup> While Sandusky's admissions played an important role at his trial, the focus of the CYS employees was not on a later criminal prosecution. Professional criminal investigators almost certainly would have gathered more information useful for the criminal investigation and prosecution, perhaps including not only more damaging admissions but also leads to other victims or additional information in support of a search warrant. It bears noting that under the current investigative team protocol in Clinton County, formally adopted in 2013, CYS staff members take the lead in interviews of children while law enforcement personnel take the lead in interviews of alleged offenders. This approach is consistent with the generally accepted practice of having law enforcement handle the interrogation of suspects.

Another advantage of convening an investigative team is the institutional knowledge possessed by team members. Had such a team been convened in late 2008, or had the county multidisciplinary team<sup>226</sup> been consulted, investigators might have learned about the 1998 allegations against Sandusky far earlier than they did. As noted in Part One, Section A of this report, any reference to the 1998 investigation in the statewide central registry had been expunged by operation of the CPSL long before 2008. Nevertheless, if just one member of a

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<sup>225</sup> Of course, had law enforcement been present for the January 2009 interview, Sandusky might have refused to be interviewed.

<sup>226</sup> The CPSL, in addition to requiring the development of a protocol for the convening of investigative teams in particular cases, also mandates the creation of a standing multidisciplinary team. Section 6365(b) of the CPSL provides:

**(b) Multidisciplinary review team.**—The county agency shall make available among its services a multidisciplinary review team for the prevention, investigation and treatment of child abuse and shall convene the multidisciplinary review team at any time, but not less than annually:

- (1) To review substantiated cases of child abuse, including responses by the county agency and other agencies providing services to the child.
- (2) Where appropriate to assist in the development of a family service plan for the child.

23 PA. CONS. STAT. § 6365(b), *as amended by* Act of Dec. 18, 2013, P.L. 1235, No. 123 (amending “multidisciplinary team” to “multidisciplinary review team”).

broad-based investigative or multidisciplinary team had been aware of the earlier investigation, or made contact with someone within the system who had such knowledge, investigators would have had early insight into Sandusky's history that they did not actually gain until two years later.<sup>227</sup>

One other related missed opportunity bears mention here. The Penn State Police Department referred the 1998 allegations against Sandusky to the Centre County District Attorney's Office, the same office that, almost 11 years later, referred A.F.'s allegations to OAG in March 2009. Despite the fact that the District Attorney's Office had institutional knowledge of the 1998 allegations at the time the District Attorney received the matter from Clinton County and sent it to OAG, that knowledge was not passed on to either PSP or OAG.<sup>228</sup> Nor did investigators at this stage contact Penn State, the State College Police Department, or The Second Mile to ask about other allegations against Sandusky. Here again, had OAG and PSP known about the 1998 allegations in early 2009, rather than learning about them around the beginning of 2011, the course of the investigation might have been much different.

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<sup>227</sup> Largely as a result of the Sandusky case, Clinton County has worked to improve collaboration among relevant county components. As noted above, the County has adopted a protocol for the convening of investigative teams. Moreover, according to Clinton County CYS, the County is in the process of implementing a system of regular meetings that include both county law enforcement components and the more broadly-based multidisciplinary review team to review and monitor all allegations of child abuse in the County. Currently, CYS personnel meet monthly with the local law enforcement agencies. The multidisciplinary review team includes representatives from the Clinton County District Attorney's Office, the Clinton County Infant Development Program, the Pennsylvania Department of Health, the Clinton-Lycoming Mental Health / Intellectual Disabilities Joinder, the Keystone Central School District, the West Branch Drug and Alcohol Abuse Commission, and the Geisinger Health System. While this group meets less frequently, CYS hopes to include them in the monthly meetings in the future.

<sup>228</sup> There is no evidence to suggest that anyone at the Centre County District Attorney's Office was motivated by a desire to withhold relevant information. Instead, what happened appears to have been a profoundly unfortunate failure of communication. According to office officials, in 2009 the office possessed no paper or electronic records relating to the 1998 investigation.

As discussed in greater detail below,<sup>229</sup> charging a prominent community member with child sexual abuse based on the testimony of a single victim raises the question whether that witness alone will satisfy the burden of proof necessary to secure a criminal conviction. Had the 1998 allegations (and with them one or two additional witnesses) come to light by March 2009, that concern about A.F.'s testimony would have been greatly alleviated. Moreover, when the 1998 investigation finally did come to light in 2011, it led not only to Z.K. but also to at least three other victims.<sup>230</sup> It is reasonable to believe that had they known at the outset about prior victims and their connection to The Second Mile, investigators would have begun an intensive search for additional victims and evidence of the sort that occurred in 2011 after they finally did learn about the 1998 allegations.

### **C. The Use of the Grand Jury**

Questions have been raised about the use of the grand jury to investigate Sandusky, in part because grand jury investigations are often more time-consuming than standard police investigations, and in part because the vast majority of child-sex-abuse investigations in Pennsylvania do not involve the use of the grand jury. This section addresses those questions, including whether the decision to use the grand jury was well founded and whether the use of the grand jury materially slowed the investigation.

Once the Sandusky investigation was transferred to OAG, what began as a police investigation quickly transformed into a grand jury investigation.<sup>231</sup> Both Eshbach, the line prosecutor, and Fina, her supervisor, believed that the investigation should be handled through a

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<sup>229</sup> See *infra* Part Two, Section F.

<sup>230</sup> See *supra* Part One, Section D; *infra* Part Two, Section G.

<sup>231</sup> OAG formally assumed jurisdiction over the case on March 18, 2009. See *supra* Part One, Section A. It submitted the matter to the Grand Jury on May 1, 2009. See *supra* Part One, Section B. Grand jury investigations and ordinary police work, of course, are not mutually exclusive.

statewide investigating grand jury. Their reasons included the most-often cited advantages of the grand jury: the power to compel testimony under oath, the ability to subpoena documents that might not otherwise be obtainable, and the ability to keep a sensitive investigation secret.<sup>232</sup> The need for secrecy was especially acute, they believed, because of Sandusky's status in the community. Fina in particular said he was concerned that Sandusky victims would be less likely to come forward if the fact of the investigation were publicly known. As prosecutors and investigators familiar with the grand jury process know, however, its use is not without cost. Compared to ordinary police investigations, grand jury investigations can be time-consuming, expensive, and logistically cumbersome.<sup>233</sup> Particularly when the grand jury meets only periodically – as it did here, one week each month – the need to fit witnesses into particular time slots can slow the pace of an investigation.

Was the decision to use the grand jury to investigate Sandusky well founded, and did it delay the filing of charges against Sandusky? In hindsight, the powers of the Grand Jury certainly proved valuable, most notably in compelling the testimony of certain witnesses and the production of documents, both in aid of identifying additional Sandusky victims and in investigating the role of Penn State and its administrators. Assessing the decision at the time it was made, however, requires considering the alternative, which was relying on ordinary police work alone – conducting interviews, requesting documents, executing search warrants, etc. – without subpoena power or grand-jury-secrecy orders. If the goal had been to charge Sandusky swiftly, based on A.F.'s allegations, then there would have been little need for the grand jury.

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<sup>232</sup> See WAYNE R. LAFAVE ET AL., CRIMINAL PROCEDURE § 8.3 (5th ed., Thomson Reuters 2009) (discussing the investigative advantages of grand juries); see also 26A STANDARD PENNSYLVANIA PRACTICE 2D § 133.28 (2013) (discussing the specific powers of investigating grand juries); *id.* § 133:38 (discussing the general rule of secrecy in grand jury proceedings).

<sup>233</sup> See LAFAVE ET AL., *supra* note 232, § 8.3.

But that was not the goal. As will be discussed later in this report, there was little consideration given at OAG to bringing charges right away.<sup>234</sup> According to Eshbach, at the time the case was submitted to the Grand Jury, she believed that A.F.'s account needed corroboration and that Sandusky likely had victimized others. So the effort to corroborate A.F. began, and the Grand Jury, along with non-grand jury police work, was employed in that effort. That decision, once the choice was made not to charge right away, appears to have been a reasonable exercise of prosecutorial discretion, albeit one that not all prosecutors would necessarily have made.

Given the decision not to charge right away, the use of a grand jury did not itself appear to slow the investigation. Prosecutors were able to obtain subpoenas and schedule time for witnesses without significant difficulty. Critical investigative decisions did not seem to be materially delayed because of the Grand Jury. Similarly, the deferral of significant investigative steps until relatively late in the investigation was not the product of the decision to use a grand jury. Indeed, for long stretches of time before the investigation ramped up in 2011, the resources of the Grand Jury were barely used at all. From the beginning of January through the end of October 2010, for example, the Grand Jury issued no subpoenas for testimony and only one subpoena for records. In contrast, for the same period in 2011, the Grand Jury issued over 50 subpoenas for testimony and over 50 subpoenas for records. In short, among the host of reasons that Sandusky was not charged earlier than he was, the often time-consuming aspects of employing an investigating grand jury contributed relatively little.

Once a grand jury is employed, it should be used as effectively as possible. OAG has a great deal of experience with statewide investigating grand juries and has put them to effective

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<sup>234</sup> See *infra* Part Two, Section F.

use in a wide range of cases over many years.<sup>235</sup> In this case, at least one aspect of the Grand Jury's use warrants further discussion – the decision to have the victims testify before the Grand Jury.

Beginning with A.F. in June 2009, prosecutors arranged for all of the victims that Sandusky was ultimately charged with abusing to testify in the Grand Jury. Doing so was a matter of choice. The general ban on hearsay testimony at trial does not apply to Pennsylvania investigating grand juries.<sup>236</sup> As a result, prosecutors may, and often do, choose to present information from victims through the testimony of others, usually law enforcement agents. That approach spares victims from having to relive difficult experiences more often than necessary; and, from a strategic perspective, fewer sworn statements means fewer potentially inconsistent statements to be exploited by defense attorneys at trial. Of course, victims often do testify before grand juries, and for good reasons, including giving grand jurors a first-hand account of the crime and giving prosecutors a sense of how well victims are able to tell their stories to groups of strangers.

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<sup>235</sup> The current grand jury system in Pennsylvania was created by the Investigating Grand Jury Act of 1978, *see* *Robert Hawthorne, Inc. v. Cnty. Investigating Grand Jury*, 488 Pa. 373, 376 n.1, 412 A.2d 556, 557 n.1 (1980), currently codified as amended at 42 PA. CONS. STAT. §§ 4541 to 4553. *See* *Commonwealth v. Taraschi*, 475 A.2d 744, 751-52 (Pa. Super. 1984). “The Investigating Grand Jury Act provides a comprehensive statutory scheme governing the use of investigating grand juries in Pennsylvania. The statute, and the Rules of Criminal Procedure promulgated pursuant thereto, supplant the previously applicable rigorous common-law requirements for the convening of an investigating grand jury.” 26A STANDARD PENNSYLVANIA PRACTICE 2D § 133:4 (2013) (footnotes omitted); *see also* *Robert Hawthorne, Inc.*, 488 Pa. at 378-79, 412 A.2d at 558-59 (stating that the Investigating Grand Jury Act superseded the prior common law standards pertaining to grand jury investigations in Pennsylvania).

<sup>236</sup> *Cf.* 42 PA. CONS. STAT. § 4548(c) (“Except for the power to indict, the investigating grand jury shall have every power available to any other grand jury in the Commonwealth.”); *Commonwealth v. Dessus*, 423 Pa. 177, 181, 224 A.2d 188, 191 (1966) (“The law is well settled in Pennsylvania that an indictment can be found by a Grand Jury based upon hearsay testimony or upon evidence which was incompetent or inadequate to make out a prima facie case.”); *Commonwealth v. McCloskey*, 443 Pa. 117, 138, 277 A.2d 764, 775 (1971) (same); PA. R. EVID. 101 cmt. (“Traditionally, our courts have not applied the law of evidence in its full rigor in proceedings such as preliminary hearings, bail hearings, grand jury proceedings, sentencing hearings, parole and probation hearings, extradition or rendition hearings, and others.”).

The Sandusky prosecutors believed that presenting victim testimony to the Grand Jury served the goals of the investigation. According to both Eshbach and Fina, victim testimony gave grand jurors important first-hand details about the nature of Sandusky's crimes, gave prosecutors valuable information about victims' ability to tell their stories, and helped prosecutors screen out people who claimed to be victims but were not. Other experienced child-abuse prosecutors might have taken a different approach, concluding that the creation of additional victim statements, as well as any additional pain caused to victims by having to tell their story again to strangers,<sup>237</sup> outweighed the benefits described above. On this issue, as with the decision to use a grand jury at all, there may be no clear-cut "best" approach, with case- and victim-specific factors driving the exercise of prosecutorial discretion. When prosecutors do decide to have child-sex-abuse victims testify, their decision should not be made reflexively, but be based on the needs of the particular case and the interests of the particular victim.<sup>238</sup>

#### **D. The Role of Electoral Politics**

Attorney General Corbett was a candidate for governor for most of the first 19 months that OAG was investigating Sandusky.<sup>239</sup> According to the American Bar Association Standards

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<sup>237</sup> See Nancy Chandler, *Children's Advocacy Centers: Making A Difference One Child at A Time*, 28 HAMLINE J. PUB. L. & POL'Y 315, 323-24 (2006); Catherine Dixon, *Best Practices in the Response to Child Abuse*, 25 MISS. C. L. REV. 73, 82-83 (2005). It bears noting that at the time of their testimony, all but two of the Sandusky victims were over 18 years old.

<sup>238</sup> In addition, victims should be carefully prepared for their testimony, to insure that they are both ready for the emotional stress of testifying and able to tell their story as completely and effectively as possible. A.F.'s testimony in June 2009, according to those who witnessed it, did not go well on either score. As a result, he was called to testify again in November 2009, causing him additional stress and creating an additional statement under oath.

<sup>239</sup> The Sandusky investigation arrived at OAG on March 4, 2009. Later that month, Attorney General Corbett formed a committee to explore a run for governor. See, e.g., Amy Worden, *Corbett's 1st Step in Governor Race The State Attorney General Filed Papers to Allow Him to Create An Exploratory Panel*, PHILLY.COM, Mar. 17, 2009, [http://articles.philly.com/2009-03-17/news/25277945\\_1\\_bob-asher-exploratory-committee-attorney-general-tom-corbett](http://articles.philly.com/2009-03-17/news/25277945_1_bob-asher-exploratory-committee-attorney-general-tom-corbett). He formally announced his candidacy in September 2009. See, e.g., Laura Vecsey, *Tom Corbett and Pat Meehan Will Make Announcements Monday For Gubernatorial, Congressional Bids*, PENNLIVE, Sept. 11, 2009, [http://blog.pennlive.com/politics/2009/09/tom\\_corbett\\_and\\_pat\\_meehan\\_wil.html](http://blog.pennlive.com/politics/2009/09/tom_corbett_and_pat_meehan_wil.html); Jo Gubbins, *Commentary: Tom Corbett Makes It Official; He's Running For Governor*, PENNLIVE, Sept. 14, 2009, [http://www.pennlive.com/midstate/index.ssf/2009/09/commentary\\_1.html](http://www.pennlive.com/midstate/index.ssf/2009/09/commentary_1.html).

for Criminal Justice, “[i]n making the decision to prosecute, the prosecutor should give no weight to the personal or political advantages or disadvantages which might be involved.”<sup>240</sup> At the same time, most state and local prosecutors are elected, and many of them are interested in being re-elected, or in being elected to higher office.<sup>241</sup> It is hardly surprising, therefore, that their decisions are often scrutinized through the lens of electoral politics.

Did electoral politics play a role in the length of the Sandusky investigation? This question was raised on the heels of Sandusky being charged in late 2011,<sup>242</sup> and has persisted ever since.<sup>243</sup> In particular, people have asked whether Governor Corbett, while Attorney General, intentionally slowed the pace of the investigation so that it would not adversely affect his gubernatorial campaign. An extensive review of the available documentary record, including contemporaneous OAG emails, together with interviews of OAG personnel involved in the investigation while Corbett was Attorney General, has revealed no direct evidence that electoral

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<sup>240</sup> AM. BAR ASS’N, STANDARDS FOR CRIMINAL JUSTICE: PROSECUTION FUNCTION AND DEFENSE FUNCTION § 3-3.9(d) (3d ed. 1993); *see also* NATIONAL PROSECUTION STANDARDS § 4-1.4(c) at 51 (Nat’l Dist. Attorneys Ass’n, 3d ed. updated 2009) (in deciding whether to bring a charge, prosecutors should not consider “[p]olitical advantages or disadvantages that a prosecution might bring to the prosecutor”), *available at* <http://www.ndaa.org/pdf/NDAA%20NPS%203rd%20Ed.%20w%20Revised%20Commentary.pdf>.

<sup>241</sup> Pundits have suggested that “A.G.” stands for “Aspiring Governor.” *See, e.g.,* Tom Barnes, *Political Pundits Already Pondering the Next Governor Race*, PITTSBURGH POST-GAZETTE, Nov. 12, 2006, <http://www.post-gazette.com/news/politics-state/2006/11/12/Political-pundits-already-pondering-the-next-governor-race/stories/2006111203350000000>; Catherine Brown, *Lynne Abraham Not Running for Pa. Top Cop: Sources*, NBC10.COM, Oct. 13, 2011, <http://www.nbcphiladelphia.com/news/politics/Lynne-Abraham-Not-Running-for-Pa-Top-Cop-131343028.html>.

<sup>242</sup> *See, e.g.,* Patrick Kerkstra, *Tom Corbett’s Jerry Sandusky Problem: Did the Governor Slow-Walk the Prosecution?*, PHILADELPHIA, Dec. 20, 2011, <http://www.phillymag.com/news/2011/12/20/tom-corbetts-jerry-sandusky-problem/>; Sara Ganim & Jan Murphy, *Corbett’s Team Defends Handling of Case*, THE PATRIOT-NEWS, Dec. 10, 2011, at A1, A14 (“Just as they did during the legislative corruption investigation, people are accusing Corbett of dragging his feet on the Sandusky case for political purposes.”), *updated version available at* [http://www.pennlive.com/midstate/index.ssf/2011/12/gov\\_tom\\_corbetts\\_team\\_defends.html](http://www.pennlive.com/midstate/index.ssf/2011/12/gov_tom_corbetts_team_defends.html).

<sup>243</sup> *See, e.g.,* Jan Murphy & Charles Thompson, *Handling of the Jerry Sandusky Investigation Has Turned Into A Political Football*, PENNLIVE, Oct. 4, 2012, [http://www.pennlive.com/midstate/index.ssf/2012/10/jerry\\_sandusky\\_scandal\\_1.html](http://www.pennlive.com/midstate/index.ssf/2012/10/jerry_sandusky_scandal_1.html); Charles Thompson, *Gov. Tom Corbett: Prosecutions, Politics and the Criticism He Can’t Shake*, PENNLIVE, Feb. 27, 2013, [http://www.pennlive.com/midstate/index.ssf/2013/02/tom\\_corbett\\_prosecutions\\_polit.html](http://www.pennlive.com/midstate/index.ssf/2013/02/tom_corbett_prosecutions_polit.html); John M. Morganelli, *As I See It: Corbett was Pennsylvania’s Most Political Attorney General*, PENNLIVE, Mar. 14, 2013, [http://www.pennlive.com/opinion/index.ssf/2013/03/as\\_i\\_see\\_it\\_corbett\\_was\\_pennsylvanias\\_most\\_political\\_attorney\\_general.html](http://www.pennlive.com/opinion/index.ssf/2013/03/as_i_see_it_corbett_was_pennsylvanias_most_political_attorney_general.html).



politics influenced any important decision made in the Sandusky investigation.<sup>244</sup> In fact, according to Fina, who both supervised and directly participated in the investigation, Attorney General Corbett never made any substantive decisions related to the conduct of the investigation. Similarly, Eshbach said that no one above her in the chain of command ever told her not to pursue particular leads or, until the decision in 2010 not to go forward with charges based on A.F. alone, to slow down in any way. Finally, everyone involved in the investigation at OAG was adamant that they never would have tolerated instructions to slow any investigation for politically-motivated purposes.

Three issues related to the potential impact of electoral politics warrant further discussion. First, as discussed in Part One, Section C, above, Eshbach submitted a draft presentment to her superiors at OAG in March 2010 and then spent months trying to get an answer as to whether she could go forward. That delay, coupled with the ultimate decision not to go forward, led some people involved with the investigation to speculate that politics had intruded into the decision-making process, either because the Attorney General was unavailable to make a decision or because someone had made the judgment that not charging would be the wiser political course. Nevertheless, this review uncovered no evidence to support that speculation, other than the fact of an unusually extended delay in reaching a decision. According to Fina, the decision not to proceed with A.F. as the sole victim was his, a decision that Sheetz, Ryan, and Attorney General Corbett all eventually endorsed. Sassano, Feathers, Noonan, Sheetz, and Ryan, like Fina, all strongly insist that their recommendation not to charge at the time was based solely on their view of the merits and was not influenced in any way by electoral politics. According to Governor Corbett, all of his decisions related to Sandusky were based on the best

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<sup>244</sup> This review did not seek or examine email or other documents from Corbett's campaign for Governor.

interests of the case and the prosecution, and electoral politics did not enter his thinking in any way.

The second issue concerns the relationship between the Bonusgate and Sandusky investigations. Not surprisingly, Corbett the candidate touted his successes as Attorney General in making his case to be governor. His campaign highlighted the Bonusgate investigations and prosecutions,<sup>245</sup> which senior management in the office described as the Criminal Law Division's top priority. Did Bonusgate, and its consumption of OAG resources, slow the progress of the Sandusky investigation? As discussed in Part One, Bonusgate appeared to affect investigative assignments, arguably exacerbated an existing shortage of investigative resources, and certainly consumed a considerable portion of the time and attention of Fina and other office supervisors.<sup>246</sup> Even in hindsight, however, it is impossible to determine how the course of the Sandusky investigation would have been different had it, in its early stages, received the same intense focus as Bonusgate. Conversely, as discussed in the succeeding sections of this report, the facts suggest that the early pace of the Sandusky investigation was less affected by a lack of resources than by the failure to take investigative steps that did not necessarily require additional resources. Accordingly, it is difficult to ascribe to Bonusgate a material portion of the responsibility for the time it took to charge Sandusky.

Finally, commentators have suggested that the contributions of Second Mile board members to then-Attorney General Corbett's campaign for governor may have affected the

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<sup>245</sup> See, e.g., Peter Jackson, *Pennsylvania Picks Corbett*, ALTOONAMIRROR.COM, Nov. 3, 2010, <https://www.altoonamirror.com/page/content.detail/id/543929/Pennsylvania-picks-Corbett.html?nav=742>; The Associated Press, *Corbett Expands No-Tax Pledge In Pa. Gov Debate*, PENNLIVE, Oct. 17, 2010, [http://www.pennlive.com/midstate/index.ssf/2010/10/corbett\\_expands\\_no-tax\\_pledge.html](http://www.pennlive.com/midstate/index.ssf/2010/10/corbett_expands_no-tax_pledge.html).

<sup>246</sup> According to Fina, other matters in the Criminal Prosecutions Section at the time also demanded more time and attention from both prosecutors and investigators than were necessarily available; he often needed to move resources from matter to matter as requirements and developments dictated.

conduct of the Sandusky investigation.<sup>247</sup> While the precise alleged impact of those contributions is not clear, there are at least two possibilities: first, that investigators were directed to steer clear of The Second Mile, either as a source of information about Sandusky victims or as a potential subject of criminal charges; second, that Attorney General Corbett strung the investigation along in order to realize additional campaign contributions before offending Second Mile board members by exposing the existence of the investigation or by bringing charges against Sandusky. This review found no evidence to support either proposition. As to the former, there is nothing in the available documentary record or witness interviews to suggest that Attorney General Corbett or anyone else in his OAG executive office at the time gave any instructions about how to conduct the investigation of Sandusky, including what witnesses to interview or entities to contact or investigate. While the failure of investigators to contact The Second Mile before January 2011 is indeed puzzling, a subject discussed in Part Two, Section G of this report, that failure does not appear to have been the product of directions from Corbett or his senior executive staff.<sup>248</sup> As to the latter proposition (that the investigation was slowed in order not to interfere with a stream of campaign contributions), it does not appear that Attorney General Corbett took affirmative steps to slow the pace of the investigation, whether to protect campaign contributions or for any other reason.<sup>249</sup> In short, the fact that candidate Corbett received campaign contributions from individuals associated with The Second Mile does not appear to have had a material effect on the investigation of Sandusky.

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<sup>247</sup> See, e.g., Sara Ganim & Jan Murphy, *Gov. Tom Corbett's Team Defends Handling of Jerry Sandusky Case, Campaign Contributions from Second Mile Board Members*, PENNLIVE, Dec. 10, 2011, [http://www.pennlive.com/midstate/index.ssf/2011/12/gov\\_tom\\_corbetts\\_team\\_defends.html](http://www.pennlive.com/midstate/index.ssf/2011/12/gov_tom_corbetts_team_defends.html).

<sup>248</sup> The question whether The Second Mile, which no longer operates any programs, or any individual associated with The Second Mile, may have violated the law is beyond the scope of this report.

<sup>249</sup> According to Corbett, campaign contributions from Second Mile board members had no impact on his thinking about or the conduct of the investigation of Sandusky.

## **E. Resources**

Press accounts shortly after Sandusky's arrest suggested that one reason the investigation took as long as it did was a lack of investigative resources in 2009 and 2010.<sup>250</sup> The proposition implicit in that suggestion is that had more investigators been put to work earlier, they would have found additional victims more quickly, leading to the earlier filing of charges. Related to that view is the fact that the multi-faceted Bonusgate investigations and prosecutions consumed considerable OAG resources from 2007 through much of the Sandusky investigation and appeared to affect case assignments within OAG.<sup>251</sup> While it is true that the pace and scope of the investigation increased considerably in 2011, the discovery of most victims and incidents identified in 2011 cannot easily be linked to the infusion of additional resources. Indeed, the best leads in late 2010 and early 2011, which led to the identification of four victims and two incidents without identified victims, were entirely unrelated to new investigative resources.<sup>252</sup> As will be discussed in succeeding sections of this report, factors other than a lack of resources appear to have played a larger role in the time it took to identify victims beyond A.F.

From May 2009 through early 2011, the Sandusky investigation was conducted largely by three individuals, SDAG Jonelle Eshbach, Agent Anthony Sassano, and Tpr. Scott Rossman. Each of the three also had a supervisor – CDAG Fina, Regional Director Feathers, and Cpl.

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<sup>250</sup> See, e.g., Sara Ganim, *Exclusive: Jerry Sandusky Case Sees 2 New Child Sex Abuse Investigations Where Alleged Victims Are Under 18*, PENNLIVE, Nov. 22, 2011, [http://www.pennlive.com/midstate/index.ssf/2011/11/two\\_more\\_child\\_abuse\\_investiga.html](http://www.pennlive.com/midstate/index.ssf/2011/11/two_more_child_abuse_investiga.html); Ben Kercheval, *Allegations of Two More Victims Under 18 Abused By Sandusky Surface*, NBCSPORTS, Nov. 22, 2011, <http://collegefootballtalk.nbcsports.com/2011/11/22/allegations-of-two-more-victims-under-18-abused-by-sandusky-surface/>.

<sup>251</sup> See *supra* Part One; cf. Greg Bock, *Relief Follows Sandusky Verdict*, ALTOONAMIRROR.COM, June 24, 2012, <http://www.altoonamirror.com/page/content.detail/id/561937/Relief-follows-Sandusky-verdict.html?nav=756> (“During the Bonusgate investigation, we had a shortage of investigators in Harrisburg.”) (quoting former OAG Regional Director Randy Feathers).

<sup>252</sup> Michael McQueary was identified as a potential witness in November 2010 based on an email sent to the Centre County District Attorney. Investigators learned about the 1998 allegations by asking relevant law enforcement authorities. Neither event was related to the staffing level of the Sandusky investigation.

Leiter – who during that time period participated to varying degrees. In 2011, after Michael McQueary was identified as a witness and after investigators learned about the 1998 allegations, the investigative resources devoted to the investigation increased significantly. At PSP, several troopers were added to the team and Cpl. Leiter became an active daily participant. At OAG, two agents were added full time and Fina began to take a greater role in the investigation. Without the additional investigative resources, the systematic canvas of Second Mile participants that led to the discovery of J.S. (Victim 3) in the summer of 2011 might not have been possible.<sup>253</sup> Moreover, the resources added in 2011 were essential to the painstaking work done to corroborate other victims and witnesses, once discovered.<sup>254</sup>

Nevertheless, most of the victims and incidents discovered in 2011 were unrelated to the addition of resources.<sup>255</sup> The first victim identified in 2011 was Z.K., whose interaction with Sandusky was the subject of the 1998 report written by Ronald Schreffler. Cpl. Leiter and Tpr. Rossman obtained the 1998 report on January 3, 2011, before the investigation received additional resources, simply by asking the Deputy Director of the Penn State Police Department for any police reports related to Sandusky. As discussed in Part Two, Section G, below, nothing (including a lack of resources) appears to have prevented them from making that inquiry far earlier. When Cpl. Leiter contacted Z.K. and his mother after reviewing the report, they provided him with information that led to both D.S. and M.K. When Cpl. Leiter and Tpr. Rossman interviewed D.S., he identified both M.K. and B.S.H. from photographs in Sandusky's autobiography, *Touched*. Finally, the story about the grand jury investigation published in the *Centre Daily Times* and *The Patriot-News* on March 31, 2011, led both Ronald Petrosky and

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<sup>253</sup> See discussion of victim identification *supra* Part One, Section D.

<sup>254</sup> *Id.*

<sup>255</sup> *Id.*

B.S.H. (through an attorney) to contact investigators, again independent of any additional resources devoted to the investigation.<sup>256</sup> In short, the additional resources added in 2011 appear to have had little impact on the discovery of Z.K. (Victim 6), M.K. (Victim 5), D.S. (Victim 7), B.S.H. (Victim 4), or the janitor incident (Victim 8).

Also relevant to the resources issue is the fact that this review uncovered no evidence that anyone at OAG was denied a request for additional resources to work on the Sandusky investigation.<sup>257</sup> Nor, as far as the review determined, was any important investigative step contemplated in 2009 or 2010 and then not taken for lack of resources. For example, while it is true that investigators did not ask the Penn State or State College police or Centre County CYS about prior allegations against Sandusky until January and February 2011, their failure to do so was apparently based on either a conscious strategic choice or the belief that doing so would not be worthwhile.<sup>258</sup> It cannot fairly be attributed to being short-staffed.

The question remains whether the assignment of additional resources earlier in the Sandusky investigation would have resulted in the earlier discovery of additional victims, and therefore the earlier filing of charges. New investigators might well have had new or different ideas about what investigative steps to take, and those new ideas might (or might not) have borne fruit. While this question cannot be resolved with certainty, even in hindsight, what the facts do reveal is that most of the victims identified in 2011 were found not as a result of additional resources but rather as a result of good fortune combined with good police work that might have been undertaken just as easily without those additional resources.

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<sup>256</sup> *Id.*

<sup>257</sup> That is not to say that OAG had unlimited investigative resources. According to prosecutors and agents working at OAG at the time, Bonusgate, other resource-intensive matters, attrition, and budget cuts all contributed to extremely heavy workloads and a relative scarcity of investigative resources.

<sup>258</sup> See discussion *infra* Part Two, Section G.

**F. Should Sandusky Have Been Charged Earlier, Either Based on a Single Victim in 2009 or 2010, or Based on a Growing Number of Victims in 2011?**

This section of the report examines the question whether Sandusky should have been charged earlier in the investigation, given the state of the evidence at the time.<sup>259</sup> In theory, charges might have been brought any time after A.F. first described Sandusky's conduct to PSP in December 2008. While A.F. later gave a much more complete account of Sandusky's abuse, his description of Sandusky repeatedly kissing him on the cheek and lips, blowing on his stomach, and rubbing his back and bare bottom could have formed the basis for charges of indecent assault,<sup>260</sup> corruption of minors,<sup>261</sup> endangering welfare of children,<sup>262</sup> and unlawful contact with a minor.<sup>263</sup> That A.F. described conduct that met the statutory definitions of certain criminal offenses, however, does not mean that a prosecutor would necessarily have found the evidence sufficient to bring charges. In any event, before the investigation came to OAG in March 2009, no prosecutorial authority had given serious consideration to filing charges, in part because neither the Clinton County District Attorney nor the Centre County District Attorney considered the case on the merits before sending it on to its next stop.<sup>264</sup> This report focuses on the one point in the investigation when prosecutors did seriously consider, but ultimately decided against, bringing charges: March to August 2010, when Eshbach submitted and her supervisors considered a draft presentment with A.F. as the sole victim. In addition, this section briefly addresses two other potential decision points: March 2009, when the case first came to OAG;

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<sup>259</sup> The assessment of this question is based on the evidence known to the relevant decision makers at the time, not on later-discovered evidence that might have been found earlier. The question whether important evidence could or should have been discovered earlier is discussed elsewhere in this report.

<sup>260</sup> 18 PA. CONS. STAT. § 3126(a)(7), (8).

<sup>261</sup> *Id.* § 6301(a)(1)(ii).

<sup>262</sup> *Id.* § 4304.

<sup>263</sup> *Id.* § 6318(a).

<sup>264</sup> *See supra* Part One, Section A.

and June 2011, by which time the investigation had secured the testimony of three additional victims. At all three points, cogent arguments existed both for and against bringing charges. And at all three points the decision not to bring charges appears to have fit within acceptable bounds of prosecutorial discretion, though other prosecutors might reasonably have decided differently.

Addressing this question of timing is important, notwithstanding the fact that Sandusky was ultimately tried, convicted, and sentenced to prison for what is likely to be the rest of his life. Timeliness is significant in all criminal investigations, particularly when the target of the investigation has the opportunity to continue to commit crimes while the investigation is proceeding. With respect to many crimes, however, if the target is aware of an ongoing investigation and the accompanying scrutiny, he or she may be much less likely to continue to offend, giving investigators conducting a lengthy investigation some comfort. That comfort is not necessarily available to child-sex-abuse investigators, however, not only because the harm caused by ongoing violations is especially severe but also because research suggests that child molesters are particularly likely to continue their behavior despite obstacles such as the existence of a criminal investigation.<sup>265</sup>

Decisions about whether to charge, when to charge, and what charges to bring in a criminal investigation are matters committed to the sound discretion of the relevant prosecutorial

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<sup>265</sup> See, e.g., KENNETH V. LANNING, CHILD MOLESTERS: A BEHAVIORAL ANALYSIS – FOR PROFESSIONALS INVESTIGATING THE SEXUAL EXPLOITATION OF CHILDREN 165 (National Center for Missing & Exploited Children, 5th ed. 2010) (“Men sexually attracted to young adolescent boys are the most persistent and prolific child molesters known to the criminal-justice system.”), available at [http://www.missingkids.com/en\\_US/publications/NC70.pdf](http://www.missingkids.com/en_US/publications/NC70.pdf); Keith F. Durkin & Allison L. Digianantonio, *Recidivism Among Child Molesters: A Brief Overview*, JOURNAL OF OFFENDER REHABILITATION, 45:1-2, 249-256 (2007) (noting that recidivism rates are particularly high for offenders who target boys who are not family members); A. Nicholas Groth, Robert E. Longo & J. Bradley McFadin, *Undetected Recidivism among Rapists and Child Molesters*, 28 CRIME AND DELINQUENCY 450 (July 1982).



authority.<sup>266</sup> The exercise of that discretion is not merely a technical assessment of when evidence is legally sufficient to support the charges<sup>267</sup> but also involves consideration of a complex set of factors that are often highly fact-specific and generally not reducible to a neat formula against which particular decisions can be measured.<sup>268</sup> In the case of the Sandusky investigation, investigators and prosecutors concluded fairly swiftly that A.F.’s allegations about Sandusky were true, if perhaps incomplete. From that point forward, the questions of whether and when to charge were effectively on the table. Between March 2009 and the McQueary tip in November 2010, the issue was not so much whether the evidence was legally sufficient to support criminal charges but whether A.F.’s testimony would withstand the crucible of a criminal trial in which the defendant was a highly respected “pillar of the community.”<sup>269</sup>

### **1. Whether to charge at the outset.**

As described earlier in this report, almost as soon as the Sandusky investigation arrived at OAG, it was submitted to the statewide investigating grand jury.<sup>270</sup> No extended consideration was given to charging Sandusky right away. According to Eshbach, she believed further investigation was warranted before charging both because A.F.’s account needed corroboration, particularly in light of Sandusky’s reputation and A.F.’s apparent fragility as a witness, and

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<sup>266</sup> See, e.g., *Bordenkircher v. Hayes*, 434 U.S. 357, 364 (1978) (“[S]o long as the prosecutor has probable cause to believe that the accused committed an offense defined by statute, the decision whether or not to prosecute, and what charge to file or bring before a grand jury, generally rests entirely in his discretion.”); *Wayte v. United States*, 470 U.S. 598, 607 (1985); *United States v. Goodwin*, 457 U.S. 368, 380 n.11 (1982); AM. BAR ASS’N, STANDARDS FOR CRIMINAL JUSTICE: PROSECUTION FUNCTION AND DEFENSE FUNCTION § 3-3.4 (3d ed. 1993); Bennett L. Gershman, *Prosecutorial Decisionmaking and Discretion in the Charging Function*, 62 HASTINGS L.J. 1258 (2011).

<sup>267</sup> See Richman, *supra* note 4, at 958.

<sup>268</sup> See Gershman, *supra* note 266; see also AM. BAR ASS’N, STANDARDS FOR CRIMINAL JUSTICE: PROSECUTION FUNCTION AND DEFENSE FUNCTION § 3-3.9 commentary, at 74 (3d ed. 1993) (“The public interest is best served and evenhanded justice best dispensed, not by the unseeing or mechanical application of the ‘letter of the law,’ but by a flexible and individualized application of its norms through the exercise of a prosecutor’s thoughtful discretion.”).

<sup>269</sup> See, e.g., LANNING, *supra* note 265, at 137 (noting difficulty of convicting “a prominent, well-respected member of the community based only on the testimony of one troubled [child]”).

<sup>270</sup> See *supra* Part One, Section B.

because investigators stood a reasonable chance of finding additional victims in the relatively near term. Some prosecutors might have chosen differently, believing that the immediate filing of charges was the better course both as a warning about Sandusky to potential victims and as an opportunity to persuade additional victims to come forward.<sup>271</sup> That decision necessarily would have turned to a large extent on an assessment of how A.F. was likely to fare as a trial witness, an assessment very difficult to judge in hindsight. In any event, a more systematic consideration of the immediate-charge option would have been beneficial, particularly because it might have led to a decision to take short-term investigative steps, such as searching Sandusky's residence, that would have helped to corroborate A.F.

## **2. Whether to charge in 2010.**

As the investigation proceeded through 2009, the effort to find support for A.F.'s testimony met with mixed success. On the one hand, investigators did not succeed in identifying any additional Sandusky victims.<sup>272</sup> On the other hand, they did assemble some useful corroborating evidence, including: the testimony of wrestling coach Joseph Miller about finding Sandusky and A.F. in a school weight room after hours; the testimony of F.A. about witnessing

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<sup>271</sup> One common method of identifying additional victims of a serial child molester is through publicity about the case. See, e.g., LANNING, *supra* note 265, at 156; Peter T. Wendel, *The Case Against Plea Bargaining Child Sexual Abuse Charges: "Deja Vu All over Again,"* 64 MO. L. REV. 317, 381 n.7 (1999) ("Publicizing the arrest of an alleged child molester in hopes of identifying additional victims is a common practice."); *Crimes against Children Cardozo Journal of Law & Gender Symposium*, 17 CARDOZO J.L. & GENDER 551, 558 (2011) (symposium transcript); see also The Patriot-News, *Reports: More Alleged Victims of Jerry Sandusky Come Forward*, PENNLIVE, Nov. 15, 2011, [http://www.pennlive.com/midstate/index.ssf/2011/11/reports\\_more\\_alleged\\_victims\\_o.html](http://www.pennlive.com/midstate/index.ssf/2011/11/reports_more_alleged_victims_o.html) (quoting Governor Corbett, who, following the November 2011 charges against Sandusky, expressed his expectation that more alleged Sandusky victims would come forward, stating: "When the word gets out, when people understand that authorities are actually doing something about this, that they may be believed, then more people come forward."); Kevin Armstrong, *Penn State's Mike McQueary Failed to Meet 'Moral Obligation' in Alleged Jerry Sandusky Sex Abuse Case: PA Gov Corbett*, NEW YORK DAILY NEWS, Nov. 13, 2011, <http://www.nydailynews.com/sports/college/penn-state-mike-mcqueary-failed-meet-moral-obligation-alleged-jerry-sandusky-sex-abuse-case-pa-gov-corbett-article-1.976966> (same).

<sup>272</sup> Tpr. Rossman did identify M.S. in the fall of 2009. While M.S. later described himself as a Sandusky victim, he denied during an October 29, 2009, interview with Tpr. Rossman that Sandusky had ever touched him inappropriately. See *supra* Part One, Section B.

Sandusky engaging A.F. in conduct fairly described as “grooming”; a recorded telephone call between A.F. and Sandusky in which Sandusky behaved oddly and only weakly denied A.F.’s allegations; and telephone records that showed an extraordinary number of calls from Sandusky’s home phone and cell phone to A.F.’s home phone, and very few from A.F.’s home phone to Sandusky.<sup>273</sup>

According to Eshbach, by the end of the 2009 she viewed this evidence, along with other evidence such as the January 2009 interview of Sandusky by Clinton County CYS,<sup>274</sup> as sufficient grounds to file charges.<sup>275</sup> Eshbach understood that the case faced serious challenges, chiefly the risks associated with a single-victim case against a community icon. She nevertheless believed that the time had come to file charges, particularly in light of the failure to find additional victims after many months of looking. She also hoped that the public filing of charges would cause other victims to come forward. As a result, she drafted a grand jury presentment and submitted it to her supervisor in early March 2010.<sup>276</sup>

The response Eshbach received, reflected in Fina’s August 12, 2010, email, was that more investigation was needed before charges would be authorized. According to the participants, the reasons for that decision at the time were several-fold, but centered on the belief that A.F.’s testimony would be insufficient to convict a community icon like Sandusky, and that a Sandusky acquittal would make filing charges later, based on later-discovered victims, difficult

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<sup>273</sup> See *supra* Part One, Section B.

<sup>274</sup> See *supra* Part One, Section A.

<sup>275</sup> According to Eshbach and to Agent Sassano, Tpr. Rossman and others at PSP supported the filing of charges at this point as well.

<sup>276</sup> See *supra* Part One, Section C.

if not impossible. According to Fina, other cases involving high-profile defendants and single victims supported this concern.<sup>277</sup>

The choice faced by OAG in 2010 about whether to charge or to continue the investigation before charging was both challenging and representative of choices often faced by prosecutors.<sup>278</sup> As the relevant decision-makers recognized, either course of action posed serious risks. Not charging risked Sandusky victimizing others while the investigation continued. Conversely, they were concerned that charging Sandusky with a relatively weak case risked an acquittal that might have created a serious obstacle to charging him again later. Measuring those risks, both on their own terms and one against the other, was necessarily speculative at the time and remains so today. The decision-makers believed that the risk of Sandusky victimizing others was reduced by the fact that he knew he was under investigation, and by the effect A.F.'s allegations had on Sandusky's clearances.<sup>279</sup> Yet child molesters are notorious recidivists and may lack the impulse control to stop offending even in the face of significant obstacles.<sup>280</sup> On the other side of the equation, the risk of an acquittal and its attendant consequences would have been significantly reduced had more victims come forward

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<sup>277</sup> See, e.g., John M. Broder & Nick Madigan, *Michael Jackson Cleared After 14-Week Child Molesting Trial*, THE NEW YORK TIMES, June 14, 2005, <http://www.nytimes.com/2005/06/14/national/14jackson.html?pagewanted=all&r=0>; Risa Vetri Ferman, *Lessons from Tragedy: Bridging the Gap Between Public Expectations and Legal Standards Through an Evaluation of Criminal Investigations and Subsequent Charging Decisions*, 19 WIDENER L. REV. 193, 208-21 (2013). This view has been expressed with various forms of the aphorism, generally attributed to Ralph Waldo Emerson, that "When you strike at a king, you must kill him," see *Ralph Waldo Emerson—Quotation Details*, THE QUOTATIONS PAGE, <http://www.quotationspage.com/quote/3023.html> (last visited Feb. 27, 2014). See, e.g., Dennis Owens, *AG Investigative Supervisor Defends Pace of Sandusky Investigation*, ABC27 WHTM, Nov. 1, 2012, <http://www.abc27.com/story/19979418/ag-supervisor-defends-pace-of-sandusky-investigation>.

<sup>278</sup> Cf. Wendel, *supra* note 271, at 374 ("The potential problem is only magnified when one remembers that although child molesters typically molest multiple victims, the norm is for a single victim to come forward. The lone victim who comes forward typically is a reluctant complainant – scared and humiliated. . . . [T]ypically there is no corroborating physical evidence.").

<sup>279</sup> See *supra* note 222 and accompanying text. While Sandusky may have needed active clearances to participate in Second Mile programs or to serve as a volunteer football coach, he did not need them to contact potential victims directly.

<sup>280</sup> See sources cited *supra* note 265.

as a result of the public filing of charges, something that happened both in November 2011<sup>281</sup> and after the March 31, 2011, news story about the grand jury investigation.<sup>282</sup>

In short, there is no clearly “right” answer to the question whether Sandusky should have been charged in 2010, particularly since the question turned to a great degree on the necessarily speculative forecast of how A.F. would fare as a trial witness. Reasonable minds differed at the time and continue to do so today.<sup>283</sup> It bears repeating that this assessment is based on the evidence available to decision-makers at the time. As discussed in the next section of this report, however, different investigative choices early in the investigation might well have generated a far stronger case against Sandusky by the summer of 2010, which in turn would have significantly altered the decision-making calculus.

### **3. Whether to charge earlier in 2011.**

Supervisory-level consideration at OAG was again given to charging Sandusky in June 2011, when Agent Sassano wrote a memorandum that suggested doing so “asap.”<sup>284</sup> The arguments in support of charging were similar to those advanced earlier – the longer the investigation continued the greater the chance that Sandusky would abuse others, and once charges were publicly filed, additional victims were likely to come forward – but were now

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<sup>281</sup> See *supra* Part One, Section E.

<sup>282</sup> See *supra* Part One, Section D. Of course, the decision-makers in 2010 had no way of knowing then, just as we cannot know with certainty now, whether more victims would come forward had charges been filed at that time. The filing of charges, whether or not accompanied by a public request for victims to contact the authorities, is no guarantee that additional victims, even assuming they exist, will come forward. See, e.g., Wendel, *supra* note 271, at 319-21.

<sup>283</sup> In hindsight, of course, we know about the November 2010 McQueary tip and the late 2010 or early 2011 discovery of the 1998 allegations, which led to the identification of additional victims and the building of an extremely strong case against Sandusky. But the choice in 2010 was not between a weak case then and a strong case in 2011. Decision-makers had no way to anticipate the fortuity of the McQueary tip. And had they known that the simple step of asking local police departments for information about Sandusky would have led to additional victims, they presumably would have taken that step far earlier.

<sup>284</sup> See *supra* Part One, Section D.

augmented by the fact that the case had been strengthened considerably. In addition to A.F., three more victims were available to testify (D.S., B.S.H., and Z.K.), as were third-party witnesses Michael McQueary and Ronald Petrosky. The arguments against charging, which apparently prevailed at the time, were somewhat different. While the case was certainly stronger, investigators now had many active leads to run down, related both to finding additional victims and to corroborating those that had been identified.<sup>285</sup> In addition, some participants believed that the publicity about the investigation of Sandusky, which was the subject of widespread discussion in Centre County and elsewhere, arguably put potential Sandusky victims and their families on notice in a way that reduced Sandusky's ability to continue to offend. Here again, while other prosecutors might well have decided to bring charges at the time and conduct the additional investigation after charging, the decision not to do so appears to have fit within acceptable bounds of prosecutorial discretion.<sup>286</sup>

#### **G. Why Did the Sandusky Investigation Take as Long as it Did?**

Sandusky was charged on November 4, 2011, based on a criminal investigation that had begun over 35 months earlier, when Clinton County CYS referred the matter to PSP on November 21, 2008. This report's review of the course of the investigation has revealed several significant factors that contributed to its length, including failures of communication at the outset, the CPSL's requirement that child abuse allegations deemed unfounded be expunged, and the failure to take certain steps earlier in the investigation that proved fruitful later. In addition, while in 2011 the investigation covered a tremendous amount of ground that significantly strengthened the case against Sandusky, there were long stretches of time, particularly in 2010,

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<sup>285</sup> According to Fina, at the time of the Sassano email he was not opposed to charging in July but believed that important investigative work remained to be done before the case would be ready.

<sup>286</sup> The decision-making process in early June 2011 was arguably complicated by the fact that a new Attorney General had been sworn in just days earlier. See discussion *infra* Part Three.

during which little if any investigative activity apparently took place. This concluding section of Part Two summarizes the factors that contributed, to greater and lesser degrees, to the length of the investigation.

One aspect of the investigation that consumed considerable time and energy was the effort to obtain records that had been subpoenaed but not turned over. In particular, prosecutors had significant difficulty getting certain records from both The Second Mile and Penn State. With respect to The Second Mile, the first grand jury subpoena was issued on January 28, 2011, and OAG filed a motion for contempt in July 2011. That motion was not resolved until September 2011. With respect to Penn State, not only did prosecutors encounter resistance to some subpoena language, including a motion to quash filed by Penn State, but some records that were called for by a subpoena issued on December 29, 2010, were not turned over until 2012, well after charges had been filed.<sup>287</sup> Difficulties over subpoena compliance, along with what Attorney General Kelly described as an “‘uncooperative atmosphere’ encompassing some Penn State University and Second Mile officials,”<sup>288\*</sup> undoubtedly slowed the investigation. Nevertheless, those difficulties could have had no impact on the pace of the investigation before the first relevant subpoena was issued at end of December 2010, more than two years after A.F.’s allegations were referred to law enforcement authorities.

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<sup>287</sup> See *Former Penn State President Graham Spanier Charged in "Conspiracy of Silence;" Gary Schultz & Tim Curley Face Additional Charges*, PENNSYLVANIA OFFICE OF ATTORNEY GENERAL, Nov. 1, 2012, <http://www.attorneygeneral.gov/press.aspx?id=6699> (“‘The grand jury issued a subpoena in December 2010,[]’ said Kelly, ‘but pertinent emails and other key evidence were never turned over until April 2012, after these men [Spanier, Curley, and Schultz] had left their jobs.’”).

<sup>288</sup> *Child Sex Charges Filed against Jerry Sandusky; Two Top Penn State University Officials Charged with Perjury & Failure to Report Suspected Child Abuse*, PENNSYLVANIA OFFICE OF ATTORNEY GENERAL, Nov. 5, 2011, <http://www.attorneygeneral.gov/press.aspx?id=6270>. \* In their response to this report, former Second Mile officials Genovese and Raykovitz contend that The Second Mile was not uncooperative. See Responses, Dr. John R. Raykovitz and Katherine Genovese, at 1-2.

Given the decision not to charge Sandusky based on A.F. as the sole victim, questions about the investigation's length reduce in large part to why it took as long as it did to find additional victims or to take certain investigative steps – such as searching Sandusky's residence and contacting The Second Mile, Centre County CYA, or relevant police departments – that later proved valuable. In hindsight, we know how the remaining victims and incidents were discovered:

- Victim 2. An email tip sent on November 3, 2010, led investigators to McQueary and the Victim 2 incident.
- Victims 4 (B.S.H.), 5 (M.K.), 6 (Z.K.), and 7 (D.S.). Tpr. Rossman and Cpl. Leiter obtained copies of police reports concerning the 1998 investigation by visiting the Penn State and State College police departments on January 3, 2011, and asking for any police reports related to Sandusky. The 1998 allegations, once discovered, led investigators to additional victims: Z.K. (the subject of the 1998 investigation), D.S. (identified by Z.K. and his mother), M.K. (identified by Z.K.'s mother and by D.S.), and B.S.H. (identified by D.S.).
- Victim 8 and B.S.H. The March 31, 2011, newspaper story about the grand jury investigation of Sandusky led to the discovery of the janitor incident (Victim 8) and provided an independent path to B.S.H.<sup>289</sup>
- Victim 3 (J.S.). The systematic canvas of Second Mile participants in July 2011 led to J.S.
- Victims 9 (S.P.) and 10 (R.R.). The publicity surrounding the filing of charges in November 2011 led to S.P. and R.R.

Of the investigative leads listed above, the most significant was arguably the 1998 investigation of Sandusky, which, once discovered, led to the identification of four victims. Had investigators discovered the 1998 allegations in late 2008, in 2009, or even in the first half of 2010, Sandusky almost certainly would have been charged much earlier than he was.

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<sup>289</sup> As discussed in Part One, Section D, *supra*, B.S.H.'s lawyer contacted OAG on April 1, 2011, about his client being a Sandusky victim, but did not identify his client until later that month. In the meantime, and independent of the approach to OAG by B.S.H.'s lawyer, Cpl. Leiter took the information provided by D.S. in February, located B.S.H., and attempted to interview him on April 7, 2011. B.S.H. said he would be willing to talk, but only after consulting his attorney.



There are several reasons why the 1998 investigation was not discovered earlier. First, as discussed in Part One, Section A, any reference to the 1998 investigation in the ChildLine statewide central registry had been expunged by operation of the CPSL long before 2008. Had the legislature made a different judgment, for example by allowing for the retention of records in cases where professionals perceive a risk of future abuse, both Clinton County CYS and PSP might have learned of the 1998 allegations in November 2008. Second, the institutional knowledge within the Centre County District Attorney's Office of the 1998 investigation was not passed on to OAG when District Attorney Madeira transferred the investigation in March 2009.<sup>290</sup> Third, as far as the available documents and interviews reveal, no one involved in the investigation asked either the Penn State police or the State College police about prior allegations against Sandusky until more than two years after A.F. first reported to Clinton County CYS.\* While the first two reasons can be ascribed, respectively, to a legislative judgment and to an

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<sup>290</sup> While Madeira had taken office in 2006 and had no first-hand knowledge of the 1998 investigation, First Assistant Mark Smith had been in the office in 1998 and was generally aware of the earlier investigation. According to Smith, he remembers telling Madeira about the earlier investigation of Sandusky at the time of the referral from Clinton County District Attorney Salisbury. According to Madeira, he does not remember such a discussion. See *supra* Part One, Section A. In any event, no one disputes that neither Madeira nor anyone else from the Centre County District Attorney's Office passed on information about the 1998 investigation to OAG when the case was transferred in March 2009.

\* In his response to this report, Col. Frank Noonan, Commissioner of the Pennsylvania State Police, states: "Mr. Moulton completely ignored the statements I provided in my interview when he asserted that investigators did not search for prior criminal investigations regarding Mr. Sandusky until January 3, 2011. I specifically informed him that efforts were made prior to January of 2011 to locate any criminal investigations regarding Mr. Sandusky and, because of those efforts, the investigators were extremely surprised to eventually learn of their existence." See Responses, Colonel Frank Noonan, at 2. Col. Noonan's response goes on to state: "After reviewing Mr. Moulton's report, investigators reviewed their personal notes and determined they did, in fact, contact both the SCPD and PSU PD on November 26, 2010 and were informed there were no criminal investigations related to Mr. Sandusky in the previous ten years." *Id.* Two aspects of this response warrant brief reply. First and foremost, assuming (as I do) that the November 26, 2010, requests described by Col. Noonan took place, they occurred just 38 days before January 3, 2011, and, as this report accurately states above, that was "more than two years after A.F. first reported to Clinton County CYS." Second, when I asked Colonel Noonan during his interview whether he knew when the first inquiry of the Penn State or State College police took place he said he did not know, and when I asked him whether he would expect such an inquiry to be reflected in either OAG or PSP reports he said yes. Unfortunately, there was no such reference in the relevant reports, and because I was unable to interview the relevant investigators, I did not learn of the November 26 inquiry until receiving Col. Noonan's response to this report.

unfortunate failure of communication, the third reason – the failure to ask – is more difficult to fathom.

Why did investigators wait so long to ask the police at Penn State or in State College whether there had been any prior allegations against Sandusky? One reason, expressed by Eshbach, was the belief that had Penn State been aware of any prior allegations, those allegations would have been reported and already available to Clinton County CYS and PSP. This explanation, based in part on a misunderstanding at the time of the CPSL's expungement provisions, seems naïve in light of the subsequent charges against Penn State administrators. Another reason, offered by Fina, was the concern that alerting Penn State to the existence of the investigation risked making the investigation public and thus reducing the chance that reluctant victims would tell investigators the truth. This explanation, which seemed to assume that victims would be easy to identify without inquiring at Penn State or State College, runs counter to at least some conventional wisdom about how best to identify victims of multi-victim child molesters.<sup>291</sup> A third explanation was that before interviewing McQueary, investigators had no reason to believe Sandusky had committed offenses on the Penn State campus. This does not explain the failure to go to the State College Police Department, which has jurisdiction over College Township where Sandusky lived and victimized A.F. Whatever the merits of these explanations, the fact remains that the single most productive investigative step taken did not happen until the investigation was over two years old. While the ultimate value of that step is only fully evident in hindsight, its potential value should have been clear from the outset.

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<sup>291</sup> See sources cited *supra* note 271. Concerns about whether the police departments at Penn State or State College would have made public the existence of the investigation could have been addressed, if not fully eliminated, by issuing subpoenas and seeking secrecy orders from the supervising grand jury judge. See generally 42 PA. CONS. STAT. §§ 4544(b)(2), 4549 (giving supervising grand jury judge authority to maintain grand jury secrecy).

Other productive investigative steps were also undertaken relatively late in the game, including contacting The Second Mile for lists of participants; contacting Centre County CYS to ask about prior allegations; using Sandusky's autobiography to identify potential victims; and searching Sandusky's home. Here again, had these steps been taken in 2009 or 2010, rather than in 2011, Sandusky might well have been charged earlier. The Centre County CYS interviews led to information about the 1998 investigation;<sup>292</sup> the Second Mile lists led to the discovery of J.S.;<sup>293\*</sup> reviewing Sandusky's autobiography revealed photographs of at least three victims; the search of Sandusky's residence yielded important corroboration of identified victims and, had it been conducted earlier, would have been a source of valuable leads.

The failure to search Sandusky's residence before June 2011 warrants further discussion. As one expert in the investigation of child molesters put it: "The major law-enforcement problem with the use of search warrants in child-sexual-victimization cases is that they are not obtained soon enough."<sup>294</sup> That was certainly the case in the Sandusky investigation. The search uncovered, among other things, many photographs of already-identified Sandusky victims, as well as lists of Second Mile campers with hand-written asterisks next to their names.<sup>295</sup> Had the search been conducted in 2009 or 2010, investigators could have used the photographs and names with asterisks to find victims much earlier than they did.

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<sup>292</sup> By the time these interviews began in April 2011, investigators already knew about the 1998 investigation.

<sup>293</sup> In addition, according to Timothy Curley's grand jury testimony, he had told the president and CEO of The Second Mile, John Raykovitz, about the incident observed by Michael McQueary soon after he had met with McQueary (which turned out to be in 2001). Whatever the precise content of Curley's description of that incident to Raykovitz, had investigators interviewed Raykovitz early on in the investigation they might well have obtained an important lead in their search for victims. \* In their response to this report, Genovese and Raykovitz describe Raykovitz's recollection of his conversation with Curley and the status of Sandusky's child abuse history clearance and criminal record check as of 2008. *See Responses*, Dr. John R. Raykovitz and Katherine Genovese, at 2.

<sup>294</sup> LANNING, *supra* note 265, at 157.

<sup>295</sup> *See discussion supra* Part One, Section D.

Two reasons have been offered for not searching earlier, neither of which appears compelling, particularly in retrospect. First, according to Fina, he was concerned that a search of Sandusky's residence would receive public attention, revealing the existence of the investigation and deterring victims from revealing their status to investigators. Even accepting the importance of keeping the investigation secret,<sup>296</sup> many law enforcement searches, even in high-profile cases, are conducted without drawing public attention.<sup>297</sup> Indeed, when Sandusky's residence was finally searched in June 2011, the search apparently drew no media attention even though the existence of the investigation had been public for close to three months.<sup>298</sup> As for a strategy of secrecy above all else, at some point the continuing failure to find other victims should have suggested a change in course.

The second reason for not searching at the outset, offered by both Fina and Eshbach, was the concern that because Sandusky was aware of the investigation, and because he was not a computer user, a search would be unlikely to turn up any useful evidence. This argument appears to be based both on an apprehension about a lack of probable cause, or "staleness,"<sup>299</sup> and on the idea that a search, even if authorized, would not have been worth the effort or risk.

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<sup>296</sup> But see sources cited *supra* note 271.

<sup>297</sup> The search warrant for Sandusky's residence and the supporting affidavit were filed under seal. See Appendix O.

<sup>298</sup> See *supra* note 133 and accompanying text.

<sup>299</sup> The Pennsylvania Superior Court, in *Commonwealth v. Janda*, 14 A.3d 147 (Pa. Super. 2011), explained staleness as follows:

Settled Pennsylvania law establishes that stale information cannot provide probable cause in support of a warrant. *Commonwealth v. Gomolekoff*, 910 A.2d 710, 713 (Pa.Super.2006). In particular:

[A]ge of the information supporting a warrant application is a factor in determining probable cause. If too old, the information is stale, and probable cause may no longer exist. Age alone, however, does not determine staleness. The determination of probable cause is not merely an exercise in counting the days or even months between the facts relied on and the issuance of the warrant. Rather, we must also examine the nature of the crime and the type of evidence.

*Id.* (quoting *United States v. Harvey*, 2 F.3d 1318, 1322 (3d Cir.1993)).  
*Janda*, 14 A.3d at 158-59.

As to the likelihood of finding useful evidence, serial child molesters frequently maintain a range of evidence relating to their crimes, including items as simple as ordinary photographs of their victims.<sup>300</sup> Moreover, A.F. described being victimized at Sandusky's residence and provided investigators with significant details about the layout and contents of the house. A search could have provided useful corroboration for A.F.'s account.<sup>301</sup> As to probable cause, the affidavit that supported the warrant in June 2011 was not appreciably stronger than it would have been had it been submitted two years earlier. Indeed, the evidence gathered in 2011 about other victims all related to conduct that predated Sandusky's victimization of A.F.<sup>302</sup> Moreover, the desire of multi-victim child molesters to retain evidence related to their crimes often overwhelms the logic of destroying it once they are aware of a criminal investigation, undermining later claims that a warrant was "stale."<sup>303</sup> In short, the failure to search Sandusky's residence earlier in the investigation is difficult to defend.

Finally, an account of the investigation's length must include the observation that between late 2009, when Eshbach told the Grand Jury that she was drafting a presentment, and August 2010, when Eshbach reported to Tpr. Rossman and Agent Sassano that her "bosses have

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<sup>300</sup> See LANNING, *supra* note 265, at 79-115; see generally Robert R. Hazelwood & Kenneth V. Lanning, *Collateral Materials in Sexual Crimes*, in PRACTICAL ASPECTS OF RAPE INVESTIGATION: A MULTIDISCIPLINARY APPROACH 201-10 (Robert R. Hazelwood & Ann Wolbert Burgess eds., 4th ed. 2009) (discussing various forms of "collateral evidence" maintained by different categories of sex offenders).

<sup>301</sup> Cf. U.S. DEPARTMENT OF JUSTICE, OFFICE OF JUSTICE PROGRAMS, OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, CRIMINAL INVESTIGATION OF CHILD SEXUAL ABUSE 11 (2006) (noting that "the crime scene search can be extremely helpful in uncovering evidence of the crime and in supporting aspects of the child's statement," and that "it is to your advantage to document the scene the child describes as soon after the interview as possible").

<sup>302</sup> The only reference in the affidavit to events later than 2009 is to phone calls made by Sandusky and his wife in May 2011 to "several young men who were part of his inner circle."

<sup>303</sup> See, e.g., LANNING, *supra* note 265, at 136 ("It has been my experience that true preferential sex offenders will rarely destroy their collections, even if they believe they are under investigation."); see also *id.* at 157 ("In many cases investigators have probable cause for a search warrant but don't know it.").

directed that we try harder to find any other corroboration for [A.F.],”<sup>304</sup> little investigative activity apparently occurred. Indeed, once Eshbach submitted the draft presentment in March 2010, the only reported investigative activity before the end of August was the offer to Sandusky, through his attorney, to testify in the Grand Jury. The primary occupation of the investigation during those five months appears to have been waiting to find out if and when charges would be authorized. Not only does there appear to have been no concerted effort to identify additional victims, but no witnesses were interviewed and no subpoenas were served. Nor was there apparently any renewed discussion of searching Sandusky’s residence or checking for earlier allegations of misconduct.

When the Sandusky investigation came to OAG in March 2009, investigators and prosecutors faced a problem familiar to experts in the investigation of acquaintance child molesters: a vulnerable and troubled victim making accusations against a pillar of the community.<sup>305</sup> They recognized the importance of finding corroboration for those accusations, and believed that Sandusky had likely victimized others. Unfortunately, no considered, comprehensive plan to identify additional victims emerged before late 2010. Instead, the early search for victims was largely limited to interviewing people identified either by A.F. or by officials at CMHS. Had investigators and prosecutors taken a “big-picture” approach at the outset,<sup>306</sup> brainstorming for ideas about how best to proceed, they might well have identified and pursued avenues that proved successful later, such as searching Sandusky’s residence, reviewing

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<sup>304</sup> Email from Jonelle H. Eshbach, Senior Deputy Attorney Gen., Pa. Office of Attorney Gen., to Anthony Sassano, Agent, Pa. Office of Attorney Gen., and Scott Rossman, Trooper, Pa. State Police (Aug. 18, 2010, 8:50 PM) (contained in Appendix G).

<sup>305</sup> See, e.g., LANNING, *supra* note 265, at 137; Wendel, *supra* note 271.

<sup>306</sup> See LANNING, *supra* note 265, at 140.

his autobiography, *Touched*,<sup>307</sup> and aggressively exploring the possibility that Sandusky had been investigated previously.<sup>308</sup>

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<sup>307</sup> See, e.g., *id.* at 51-52, 155, 164-65 (emphasizing the importance of learning everything possible about the alleged offender).

<sup>308</sup> See, e.g., *id.* at 51, 54. These brainstorming sessions eventually did occur and produced results, though they apparently did not begin until well over a year after the investigation had come to OAG.

## **PART THREE: RECOMMENDATIONS**

Jerry Sandusky is likely to spend the rest of his life in prison, and the public attention generated by his prosecution has led to important changes in both the law and practice of reporting and investigating child sexual abuse in Pennsylvania. Nevertheless, a review of the investigation that led to Sandusky's arrest and conviction has revealed several important areas that warrant further attention. This part of the report makes recommendations in five areas: the conduct of multi-victim, child-sexual-abuse investigations by both child protective services and law enforcement; the handling of high-priority cases within OAG; transition planning at OAG; education and outreach by OAG; and consideration of further legislative change.

### **RECOMMENDATIONS CONCERNING THE INVESTIGATION OF MULTI-VICTIM, CHILD-SEXUAL-ABUSE CASES**

- **When confronted with an alleged “preferential” child molester who may have multiple victims, investigators should develop at the outset a “big picture,” comprehensive investigative plan to corroborate already-identified victims and find additional victims.**

For members of the public and many trained professionals, adults who sexually abuse children typically fall into one of two categories. The first is captured by the phrase “stranger danger” and the image of a “dirty old man” lurking near playgrounds and schools. The second falls under the heading of “intrafamilial” child sexual abuse and is typified by a father, step-father, or other family member or friend molesting children within the same household. Sandusky represents a third, less-well-recognized category, that of “acquaintance” child molester.<sup>309</sup> Investigating alleged offenders in the third category presents unique challenges and can be time-consuming and difficult, particularly where the offender is a “preferential” child

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<sup>309</sup> See generally LANNING, *supra* note 265, at 5-9; VAN DAM, *supra* note 79, at 7; Basyle J. Tchividjian, *Predators and Propensity: The Proper Approach for Determining the Admissibility of Prior Bad Acts Evidence in Child Sexual Abuse Prosecutions*, 39 AM. J. CRIM. L. 327, 365-72 (2012).



molester and therefore may well have had a string of victims over many years.<sup>310</sup> That difficulty is often compounded by the fact that many investigators, both in child protective services and in law enforcement, have far more experience with intrafamilial-incest cases than with acquaintance-molestation cases, especially those with multiple victims.<sup>311</sup> When the alleged perpetrator is a prominent, well-respected member of the community who uses grooming rather than force to achieve his ends, the challenges to investigators are particularly acute. The best way to respond to these challenges is with a carefully considered, broad-based investigative plan designed to corroborate already-identified victims and find additional victims. Without such a plan, the risk is great that investigators will be left with a largely uncorroborated, single victim to make their case.

- **When OAG accepts a child-sexual-abuse investigation from a district attorney, it should use, where appropriate, the multidisciplinary investigative team already in place in the county where the case originated.**

In Pennsylvania, the vast majority of child-sexual-abuse cases are prosecuted by county district attorney's offices. By operation of the CPSL, every county in Pennsylvania is obligated to "develop a protocol for the convening of multidisciplinary investigative teams" in order to

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<sup>310</sup> See LANNING, *supra* note 265, at 67. "Preferential" child molesters have been described as follows:

Preferential-type child molesters have definite sexual inclinations. . . . Those with a definite preference for children (*i.e.*, **pedophiles**) have sexual fantasies and erotic imagery focusing on children. They have sex with children not because of some situational stress or insecurity but because they are sexually attracted to and prefer children. They have the potential to molest large numbers of child victims. . . . They usually have age and gender preferences for their victims. . . . Many preferential-type child molesters seem to prefer more boy than girl victims.

*Id.* at 37 (emphasis in original). "Preferential sex offenders may be 'pillars of the community' and are often described as 'nice guys.' They almost always have a means of access to children (*e.g.*, marriage, neighborhood, occupation)." *Id.* at 164. See also *id.* at 52-53 (delineating the characteristics and behaviors commonly associated with preferential sex offenders); Laura Davis, Marilyn D. McShane, & Frank P. Williams III, *Controlling Computer Access to Pornography: Special Conditions for Sex Offenders*, FED. PROBATION, June 1995, at 43-44 (discussing preferential child molesters).

<sup>311</sup> See, *e.g.*, LANNING, *supra* note 265, at 64 ("Many experts on the 'sexual abuse of children' have little or no experience with acquaintance-exploitation cases especially those involving multiple victims."), 66 ("many investigators and prosecutors have more training and experience with intrafamilial, child-sexual-abuse cases").

assist in the prevention, investigation, and treatment of child abuse.<sup>312</sup> Because OAG handles these cases relatively infrequently, gaining jurisdiction only when referred by a district attorney based on a conflict of interest or inadequate resources,<sup>313</sup> it ordinarily should use the multidisciplinary investigative team already in place in the county where the alleged acts of abuse occurred. The advantages of such teams are both well-known and significant.<sup>314</sup> The varied experience and expertise of team members, coupled with their knowledge of the local community, not only fosters the development of an effective investigative plan but also may lead to important information about the alleged offender. These teams are not a panacea, of course, and in particular cases there may be good reason not to use them. Nevertheless, in every case OAG should at least consider their use.<sup>315</sup>

- **Absent exceptional circumstances, any interview of an alleged offender should include a representative of law enforcement, even where the interview is part of the child-protective-services process.**

The interview of alleged offenders during the child-protective-services process provides an important opportunity not only to promote child safety but also to gain information valuable to a criminal investigation. Skilled criminal investigators are more likely to gain such information – including admissions useful at trial, leads to other victims, and information that would support the issuance of a search warrant – than are CYS workers focused on determining whether a report should be “indicated.” One important missed opportunity in the Sandusky

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<sup>312</sup> See *supra* note 223 and accompanying text.

<sup>313</sup> See 71 PA. STAT. ANN. § 732-205(a)(3).

<sup>314</sup> See, e.g., MARK ELLS, U.S. DEPARTMENT OF JUSTICE—OFFICE OF JUSTICE PROGRAMS—OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, FORMING A MULTIDISCIPLINARY TEAM TO INVESTIGATE CHILD ABUSE 2-4, 16-17 (2000), available at <https://www.ncjrs.gov/pdffiles1/ojdp/170020.pdf>. See generally Nancy Chandler, *Children's Advocacy Centers: Making A Difference One Child at A Time*, 28 HAMLINE J. PUB. L. & POL'Y 315 (2006); Catherine Dixon, *Best Practices in the Response to Child Abuse*, 25 MISS. C.L. REV. 73 (2005).

<sup>315</sup> If OAG is going to rely on county-based teams, it should consider canvassing the counties to determine the extent to which they have complied with the CPSL mandate.

investigation was the failure of law enforcement to participate in the interview of Sandusky by Clinton County CYS on January 15, 2009.<sup>316</sup> Written protocols for multidisciplinary investigative teams should ensure that law enforcement is involved in any such interview. Ideally, as in the newly-established Clinton County protocol, those protocols will provide that law enforcement take the lead in alleged-offender interviews.<sup>317</sup>

- **Investigators should consider searching the residence of an alleged offender as soon as possible.**

“Because their molestation of children is part of a long-term persistent pattern of behavior, preferential sex offenders are like human evidence machines.”<sup>318</sup> In addition to leaving behind a string of victims, they often collect and maintain a range of evidence relating to their crimes.<sup>319</sup> That evidence may take the form of trophies, such as a piece of the victim’s clothing, child pornography stored on a computer, or even ordinary photographs of victims. As discussed in Part Two, Section G, had Sandusky’s residence been searched earlier, investigators might have identified additional victims far earlier than they did, along with finding useful corroboration for A.F.’s account. While countervailing considerations, such as keeping the existence of the investigation secret from its target, may occasionally counsel against searching early in an investigation, investigators should ordinarily work quickly to develop probable cause for a search and make sure that any decision not to search is a considered one.

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<sup>316</sup> See discussion *supra* Part Two, Section B.

<sup>317</sup> See *id.*

<sup>318</sup> LANNING, *supra* note 265, at 155.

<sup>319</sup> See sources cited *supra* note 300.

## RECOMMENDATIONS CONCERNING THE HANDLING OF PRIORITY CASES BY OAG

- **OAG should identify, as early as possible, priority investigations that warrant regular attention from the Executive Office to insure that they have appropriate focus and resources.**
- **In priority cases, the Executive Office should monitor the decision-making process concerning whether and when to charge. When asked to make or ratify a decision made by assigned prosecutors or their supervisors, the Executive Office should respond promptly.**

The vast majority of cases at any large prosecutor's office are relatively routine and therefore do not need much if any attention from senior executives. Some cases, however, because of their subject matter, complexity, or putative defendants, warrant greater involvement of the chief prosecutor and his or her senior management team. In those cases, senior managers can insure that the investigation and prosecution have the appropriate focus and adequate resources, while still generally deferring to the professional judgment of assigned prosecutors and their immediate supervisors. In retrospect, Sandusky was a case that could have benefited from greater attention from senior management at the outset, perhaps resulting in a more aggressive investigative plan in 2009 that might have led to the earlier discovery of additional victims. In addition, when senior executives are asked to make a decision, such as the approval or disapproval of a request to charge, they should do so promptly, or explain why the decision has been delayed. In 2010, when consideration was given to charging Sandusky based on a single victim, several months passed without a decision being made, or at least being effectively communicated. During that time, the investigation was at a standstill, so when the decision was finally communicated, months of potential investigative time had been wasted. In priority cases, senior executives should be sufficiently aware of the status and progress of the investigation that such a lack of activity would be noted and addressed.

## RECOMMENDATION CONCERNING TRANSITION PLANNING

- **OAG should establish protocols designed to ensure that the transition from one Attorney General's term to the next is as efficient and seamless as possible.**

The work of an Attorney General's office does not abate simply because one Attorney General leaves and another takes his or her place. Criminal investigations must continue; cases must be tried; the business of the people must be done. In the words of the National District Attorneys Association, "it is important for the efficient representation of the people that the transition from one prosecutor's term to another's be as seamless as possible."<sup>320\*</sup> When Attorney General Kelly started in office at the end of May 2011, the Sandusky investigation was in high gear and important decisions about how to proceed were being made. According to Kelly, she was not briefed in detail about the investigation until more than three months after taking office.<sup>\*\*</sup> A more effective transition would have resulted in her being aware of the nature and importance of the investigation far earlier. More broadly, the people deserve to have their chief law enforcement officer, whether elected or appointed, in firm control of the office's most important work as soon as possible upon taking office. While in recent years considerable attention has been paid to the importance of presidential and gubernatorial transitions,<sup>321</sup> there

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<sup>320</sup> NATIONAL PROSECUTION STANDARDS, *supra* note 240, § 1-5 cmt. at 13.

\* As former Attorney General Kelly pointed out in responding to this report, there is no guarantee that a nominee for the position of Attorney General, unlike the winner of an election for Attorney General, will ever assume office, since the nominee must be confirmed by a Senate that may not approve of the nomination. As a result, the transition process for a nominee does not ordinarily begin until after the nominee has been sworn in as Attorney General. As Kelly said, she took office as Pennsylvania Attorney General without the benefit of a transition period, a transition team or advance briefing on any of the hundreds of criminal, civil and administrative matters that were ongoing in the office.

\*\* In responding to this report, Kelly stated that she was aware of the ongoing investigation and, like Governor Corbett, relied on the case being managed by experienced career prosecutors who had reputations for successful criminal prosecutions. She also noted that under her tenure "a decision to prosecute Sandusky and top administrators at Penn State was made approximately four months after she took office, and the case moved forward swiftly."

<sup>321</sup> See, e.g., Partnership for Public Service, Ready to Govern, [http://www.ourpublicservice.org/OPS/programs/ready\\_to\\_govern.shtml](http://www.ourpublicservice.org/OPS/programs/ready_to_govern.shtml) (last visited Mar. 26, 2014); Pre-Election Presidential Transition Act of 2010, Pub. L. No. 111-283, 124 Stat. 3045; NATIONAL GOVERNORS' ASSOCIATION,

has been less focus on transition planning for attorneys general. One suggestion made in the National Prosecution Standards published by the National District Attorneys Association is “designating the incoming prosecutor a special assistant prior to the time the incoming prosecutor assumes office, so that the incoming prosecutor may be briefed on significant ongoing proceedings and deliberations within the office, including grand jury or other investigations.”<sup>322</sup>

## RECOMMENDATIONS CONCERNING EDUCATION AND OUTREACH

- **OAG should consider developing and offering training for mandated reporters. Training should include encouraging mandated reporters to contact law enforcement as well as ChildLine in appropriate cases.**

Thanks in part to the Sandusky case, Pennsylvania’s Public School Code was amended in July 2012 to require that school entities and their independent contractors provide to their employees who have direct contact with children three hours of mandatory training on child abuse recognition and reporting every five years.<sup>323</sup> OAG, which already offers a wide range of education and outreach programs, should consider developing and offering training for mandated reporters of child abuse. While several non-profit entities have been certified to offer such training,<sup>324</sup> OAG would bring a valuable perspective to the training, emphasizing aspects of the reporting process of particular importance to law enforcement. Child abuse cases often lack significant corroborative evidence, and the sooner law enforcement is involved the greater the chance that evidence useful to a later prosecution will be found and preserved.

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TRANSITION AND THE NEW GOVERNOR: A PLANNING GUIDE (1998), *available at* <http://www.nga.org/files/live/sites/NGA/files/pdf/98OMCTTRANSITIONGUIDE.PDF>.

<sup>322</sup> NATIONAL PROSECUTION STANDARDS, *supra* note 240, § 1-5.1 at 11.

<sup>323</sup> See 24 PA. STAT. ANN § 12-1205.6 (codifying Act of July 5, 2012, P.L. 1084, No. 126, § 1).

<sup>324</sup> See, e.g., Pennsylvania Department of Education, ACT 126 – Child Abuse Recognition and Reporting Act, [http://www.portal.state.pa.us/portal/server.pt/community/office\\_of\\_elementary\\_secondary\\_education/7209/office\\_of\\_r\\_safe\\_schools/1423046](http://www.portal.state.pa.us/portal/server.pt/community/office_of_elementary_secondary_education/7209/office_of_r_safe_schools/1423046) (last visited Mar. 11, 2014).

- **OAG should consider ways to raise public awareness about acquaintance child molesters like Sandusky, as distinct from intrafamilial molesters and stranger molesters.**

Stereotypical ideas of child predators who “physically overpower children and violently force them into sexual activity” can undermine effective education, prevention, and investigation of the full range of child sexual abuse.<sup>325</sup> As the Sandusky case demonstrated, many child molesters are neither violent strangers nor close family members, but instead are “nice-guys” and “pillars of the community” who appear committed to helping rather than harming children.<sup>326</sup> OAG should consider ways, through outreach and formal training, to insure that investigators, mandatory reporters, parents, and children better understand that reality. As one expert put it when discussing child molesters who “groom” not only children but also the adults in those children’s lives:

Unfortunately, ignorance is not bliss, but an invitation for children to be preyed upon. Just as adults who learn basic first-aid strategies despite discomfort with blood and gore are able to help save lives, people who face the sleazy repugnant facts about how child molesters operate, and are willing to consider the possibility that these offenders exist in every community, are positioned to render whole neighborhoods safer from child sexual abuse.<sup>327</sup>

#### RECOMMENDATION CONCERNING POSSIBLE LEGISLATIVE CHANGES

- **OAG should review the legislative changes made in the wake of the Sandusky case, along with the recommendations of the Task Force on Child Protection, and consider whether further legislative changes are warranted.**

In December 2011, the Pennsylvania General Assembly established a Task Force on Child Protection “to conduct a comprehensive review of the laws and procedures relating to the

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<sup>325</sup> LANNING, *supra* note 265, at 7.

<sup>326</sup> See, e.g., *id.* at 23-24; see generally VAN DAM, *supra* note 79, at 7, 23-24, 85.

<sup>327</sup> VAN DAM, *supra* note 79, at 7.

reporting of child abuse and the protection of the health and safety of children.”<sup>328</sup> The Task Force was convened in the wake of the child sexual abuse allegations against Sandusky.<sup>329</sup> Following its review, the Task Force proposed extensive changes to the CPSL and related statutes<sup>330</sup> based on the “driving principle” of “afford[ing] children greater protection from abuse.”<sup>331</sup> Many of those proposed changes were included in bills signed into law by Governor Corbett in December 2013, January 2014, April 2014, and May 2014.<sup>332</sup>

One area for change proposed by the Task Force, but not yet adopted, concerns the expungement of reports of child abuse.<sup>333</sup> The Task Force proposed that “the expungement process [be] eliminated. Reports will be kept indefinitely, with their access limited to authorized county children and youth agency personnel and law enforcement personnel for purposes of

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<sup>328</sup> JOINT STATE GOVERNMENT COMMISSION – GENERAL ASSEMBLY OF THE COMMONWEALTH OF PENNSYLVANIA, CHILD PROTECTION IN PENNSYLVANIA: PROPOSED RECOMMENDATIONS, REPORT OF THE TASK FORCE ON CHILD PROTECTION, at 1 (2012), available at <http://jsg.legis.state.pa.us/resources/documents/ftp/publications/2012-285-Child%20Protection%20Report%20FINAL%20PDF%2011.27.12.pdf>.

<sup>329</sup> See *id.* at 10; see also Jan Murphy, *Beef Up Reporting of Abuse, Pennsylvania's Task Force on Child Protection is Told*, PENNLIVE, May 14, 2012, [http://www.pennlive.com/midstate/index.ssf/2012/05/beef\\_up\\_reporting\\_of\\_abuse\\_pen.html](http://www.pennlive.com/midstate/index.ssf/2012/05/beef_up_reporting_of_abuse_pen.html).

<sup>330</sup> See JOINT STATE GOVERNMENT COMMISSION – GENERAL ASSEMBLY OF THE COMMONWEALTH OF PENNSYLVANIA, *supra* note 328, at 29.

<sup>331</sup> *Id.*

<sup>332</sup> See Myles Snyder, *Corbett Signs Bills to Update Pa. Child Abuse Laws*, ABC27 WHTM, Dec. 18, 2013, <http://www.abc27.com/story/24251579/corbett-signs-bills-to-update-pa-child-abuse-laws>; Steve Esack, *Corbett Signs Three Child Protection Bills into Law*, THE MORNING CALL, Apr. 7, 2014, [http://articles.mcall.com/2014-04-07/news/mc-pa-child-abuse-laws-20140407\\_1\\_harhart-child-protection-jerry-sandusky](http://articles.mcall.com/2014-04-07/news/mc-pa-child-abuse-laws-20140407_1_harhart-child-protection-jerry-sandusky); *Corbett Signs Additional Child-Protection Bills*, ABC27 WHTM, Apr. 15, 2014, <http://www.abc27.com/story/25252227/corbett-signs-additional-child-protection-bills>. See also Act of Dec. 18, 2013, P.L. 1163, No. 105; Act of Dec. 18, 2013, P.L. 1167, No. 107; Act of Dec. 18, 2013, P.L. 1170, No. 108; Act of Dec. 18, 2013, P.L. 1181, No. 109; Act of Dec. 18, 2013, P.L. 1194, No. 116; Act of Dec. 18, 2013, P.L. 1195, No. 117; Act of Dec. 18, 2013, P.L. 1198, No. 118; Act of Dec. 18, 2013, P.L. 1201, No. 119; Act of Dec. 18, 2013, P.L. 1205, No. 120; Act of Dec. 18, 2013, P.L. 1235, No. 123; Act of Jan. 22, 2014, P.L. 6, No. 4; Act of Apr. 7, 2014, P.L. 381, No. 27; Act of Apr. 7, 2014, P.L. 383, No. 28; Act of Apr. 7, 2014, P.L. 388, No. 29; Act of Apr. 15, 2014, P.L. 411, No. 31; Act of Apr. 15, 2014, P.L. 414, No. 32; Act of Apr. 15, 2014, 417, No. 33; Act of Apr. 15, 2014, P.L. 425, No. 34; Act of May 14, 2014, P.L. 645, No. 44; Act of May 14, 2014, P.L. \_\_\_\_, No. 45.

<sup>333</sup> Act No. 29, signed by the Governor on April 7, 2014, makes several changes to the law concerning expungement of reports of child abuse. See Act of Apr. 7, 2014, P.L. 388, No. 29 (effective Dec. 31, 2014). None of those changes, however, would have prevented the expungement of a report of the 1998 allegations against Sandusky.



assessing and investigating allegations of child abuse and neglect.”<sup>334</sup> Under current law in Pennsylvania, all reports that are deemed “unfounded,” meaning that they were neither “indicated” nor “founded,” must be expunged no later than one year and 120 days after the filing of the report.<sup>335</sup> “Testimony at [Task Force] hearings indicated that the lack of access to prior reports and the expungement process serve to handicap investigators.”<sup>336</sup> That certainly appears to have been the case in the Sandusky investigation. Had investigators had access to the 1998 report of allegations against Sandusky through the statewide central registry in late 2008 or early 2009, they almost certainly would have discovered several additional victims far earlier than they did.<sup>337</sup>

Questions about the maintenance of and access to reports of child abuse undoubtedly involve considerations beyond the needs of law enforcement. In particular, important privacy interests of both alleged victims and alleged offenders are at stake. OAG should consider working with other law enforcement organizations, as well as the General Assembly, to find a way to meet important law enforcement needs while accommodating legitimate privacy concerns.

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<sup>334</sup> JOINT STATE GOVERNMENT COMMISSION – GENERAL ASSEMBLY OF THE COMMONWEALTH OF PENNSYLVANIA, *supra* note 328, at 37.

<sup>335</sup> See 23 PA. CONS. STAT. § 6337(a) (2008), *amended by* Act of Apr. 7, 2014, P.L. 388, No. 29 (effective Dec. 31, 2014). For a more detailed description of the relevant statutory language, as well as expungement practices in other states, see JOINT STATE GOVERNMENT COMMISSION – GENERAL ASSEMBLY OF THE COMMONWEALTH OF PENNSYLVANIA, *supra* note 328, at 331-35.

<sup>336</sup> See JOINT STATE GOVERNMENT COMMISSION – GENERAL ASSEMBLY OF THE COMMONWEALTH OF PENNSYLVANIA, *supra* note 328, at 37.

<sup>337</sup> *Cf. id.* at 3 of the “Comments of the Task Force Chairman” Section (introductory non-paginated section of the report).

## **PART FOUR: TIMELINE**

This Part consists of a timeline of investigative steps and other significant events in the Sandusky investigation, beginning with the initial report by A.F. to officials at Central Mountain High School and ending with the filing of charges against Sandusky in November and December 2011. The timeline includes investigative steps described in reports, documents, emails, and witness interviews. In any investigation, there may be important steps taken and work performed that are not reflected in the documentary record and that may not be recalled by witnesses with sufficient detail to include in a timeline of events. The timeline, using the structure employed in Part One, is divided into the four phases of the investigation from the initial complaint by A.F. through the charging of Sandusky in November 2011, followed by selected post-charging events.

### **Phase One: A.F. Complaint (November 2008) through Referral to OAG (March 2009)**

#### **November 2008**

- **November 18, 2008.** A.F.'s mother calls CMHS principal and guidance counselor to express concern about her son and Sandusky, and to ask that they speak to her son.
- **November 19, 2008.** A.F. meets with principal and guidance counselor and describes inappropriate but not explicitly sexual conduct by Sandusky. A.F.'s mother joins the meeting.
- **November 20, 2008.** Clinton County CYS employee Erin Rutt contacts CYS Director Gerald Rosamilia and reports inappropriate conduct by Sandusky that A.F.'s mother had reported to her.
- **November 20, 2008.** CMHS Principal Probst orally reports A.F.'s description of Sandusky's conduct to CYS.
- **November 20, 2008.** CYS caseworker Jessica Dershem, accompanied by a second caseworker, interviews A.F. at CYS offices. After confirming that Sandusky's access to A.F. has been cut off, CYS determines that it is safe to allow A.F. to return home with his mother.
- **November 20, 2008.** Dershem reports suspected child abuse to ChildLine.

- **November 21, 2008.** Dershem notifies Pennsylvania State Police at the Lamar Barracks of A.F.'s allegations (via Form CY-104). Shortly thereafter, Tpr. Joseph Cavanaugh is assigned to the investigation.

#### December 2008

- **December 12, 2008.** Tpr. Cavanaugh, along with a trooper from the Montoursville Barracks and CYS caseworker Dershem, interview A.F. at CYS offices. A.F. describes Sandusky's conduct in more detail.

#### January 2009

- **January 2, 2009.** Dershem sends "rights letter" to Sandusky, notifying him of the report of suspected child abuse, and speaks to him by phone, inviting him in for an interview.
- **January 7, 2009.** Tpr. Cavanaugh interviews CMHS assistant principal Steven Turchetta.
- **January 12 and 13, 2009.** Tpr. Cavanaugh interviews four CMHS students (two current and two former) identified by Turchetta as having had significant contact with Sandusky.
- **January 15, 2009.** Dershem and Clinton County CYS attorney Michael Angelelli interview Sandusky, who is accompanied by counsel.
- **January 16, 2009.** Dershem, Rosamilia, and Angelelli of CYS discuss the matter and conclude that it should be "indicated." Dershem files a report with ChildLine to that effect.
- **January 21, 2009.** Tpr. Cavanaugh interviews volunteer wrestling coach who corroborates A.F.'s description of an incident in the middle school weight room.
- **Late January 2009.** Tpr. Cavanaugh completes his report and meets with Clinton County District Attorney Michael Salisbury concerning the investigation. Salisbury decides to transfer the case to Centre County because the bulk of the alleged conduct occurred there, and therefore contacts Centre County District Attorney Michael Madeira.

#### February 2009

- **Early February 2009.** Salisbury delivers Cavanaugh's report to Madeira, effectively transferring the case to the Centre County District Attorney's Office.
- **February 27, 2009.** DPW denies Sandusky's request to expunge A.F.'s report of child abuse.

### March 2009

- **March 3, 2009.** Madeira sends a letter to OAG describing a conflict of interest and asking OAG to assume jurisdiction over the investigation.

### **Phase Two: Receipt of Case by OAG (March 2009) through Draft Presentment (March 2010)**

### March 2009

- **March 4, 2009.** OAG EDAG Sheetz receives the conflict letter from the Centre County District Attorney.
- **March 12, 2009.** A.F. is re-interviewed by Tpr. Timothy Lear, PSP's new lead investigator.
- **March 17, 2009.** OAG CDAG Frank Fina assigns the matter to SDAG Jonelle Eshbach. Eshbach receives an eight-page PSP report from the Centre County District Attorney.
- **March 18, 2009.** EDAG Sheetz formally notifies the Centre County District Attorney that OAG will assume jurisdiction of the case.
- **March 19, 2009.** A.F. is re-interviewed by Tpr. Lear, in the presence of psychologist, and now states that Sandusky performed oral sex on him and that he performed oral sex on Sandusky.

### April 2009

- **April 3, 2009.** A.F. and A.F.'s mother meet with Eshbach, Tpr. Lear, and A.F.'s psychologist.
- **April 10, 2009.** DPW acknowledges Sandusky's request for a hearing concerning the indicated report. The hearing eventually is scheduled for September 30, 2009.

### May 2009

- **May 1, 2009.** OAG submits the Sandusky investigation to the Thirtieth Statewide Investigating Grand Jury.
- **May 5, 2009.** The supervising grand jury judge accepts OAG's submission.
- **May 2009.** Tpr. Scott Rossman replaces Tpr. Lear as the lead investigator for PSP.
- **May 2009.** OAG agent Anthony Sassano is assigned to the investigation.

### June 2009

- **June 2, 2009.** Eshbach, Tpr. Rossman, Agent Sassano and OAG Regional Director Randy Feathers meet to discuss the investigation and the use of the grand jury.
- **June 8, 2009.** Tpr. Rossman interviews A.F., who again describes oral sex with Sandusky.
- **June 16, 2009.** *First 2009 grand jury session.* Eshbach introduces the investigation to the Grand Jury. Tpr. Rossman testifies concerning the investigation to date and explains the plan to use the Grand Jury to identify more victims. A.F. testifies about his interactions with Sandusky, including oral sex.
- **June 17, 2009.** Agent Sassano interviews F.P., who had been interviewed in January by Tpr. Cavanaugh. F.P. denies being a victim but describes Sandusky as occasionally putting his hand on F.P.'s knee while driving.
- **June 17, 2009.** Grand jury subpoena is issued for Sandusky-credit-report records.
- **June 22 and 25, 2009.** A.F. agrees to make recorded phone call to Sandusky. After several attempts, A.F. speaks to Sandusky on June 25.

### July 2009

- **July 10, 2009.** OAG reviews Sandusky income reports from the Pennsylvania Department of Labor and Industry.
- **July 14, 2009.** Tpr. Rossman interviews F.A., who describes seeing Sandusky put his hand on A.F.'s leg and tickling A.F. on multiple occasions while driving.
- **July 15, 2009.** *Second 2009 grand jury session.* CMHS football coach and assistant principal Steven Turchetta testifies about Sandusky's interaction with students at CMHS. Joseph Miller, volunteer wrestling coach, testifies about an incident involving A.F. and Sandusky in the school weight room.
- **July 27, 2009.** Grand jury subpoenas for records are issued to telephone service providers for records of calls made to and from phones of Sandusky, A.F., and A.F.'s mother.

#### August 2009

- **August 17, 2009.** *Third 2009 grand jury session.* F.A., a Second Mile participant acquainted with Sandusky and A.F., testifies about Sandusky placing his hand on F.A.'s knee and tickling him while driving and about witnessing Sandusky doing the same with A.F. Agent Sassano testifies about A.F.'s recorded call to Sandusky.

#### September 2009

- **September 3, 2009.** Agent Sassano suggests in an email to Eshbach and Tpr. Rossman several investigative steps, including obtaining a search warrant for Sandusky's home computer and serving a grand jury subpoena on Centre County CYS.
- **September 15, 2009.** Clinton County CYS sends an amended report to DPW providing additional details about A.F.'s description of Sandusky's abuse.
- **September 24, 2009.** Supervising grand jury judge enters an order staying Sandusky's DPW hearing.
- **September 25, 2009.** Sandusky withdraws his appeal of DPW's denial of his motion to expunge the A.F. report of child abuse. The hearing scheduled for September 30 is cancelled.

#### October 2009

- **October 29, 2009.** Tpr. Rossman interviews M.S., who denies being a victim of inappropriate sexual contact by Sandusky.

#### November 2009

- **November 16, 2009.** *Fourth 2009 grand jury session.* A.F. testifies for a second time about Sandusky's conduct.
- **November 18, 2009.** Sassano analyzes telephone records and identifies over 100 calls from Sandusky to A.F. and/or his mother in approximately 19 months.

#### December 2009

- **December 11, 2009.** Tpr. Rossman interviews A.F.'s mother about an offer of football tickets from the Philadelphia Eagles.
- **December 16, 2009.** *Fifth (and final) 2009 grand jury session.* Agent Sassano testifies about phone records. Eshbach tells the Grand Jury that the investigation has been

attempting to identify additional victims, thus far without success, and that she will draft a presentment while the investigation is continuing to pursue leads.

#### January 2010

- **January 7, 2010.** Grand jury subpoena for records is issued to Penn State for Sandusky employment and personnel records.
- **January 11, 2010.** Eshbach sends memo advising her supervisors that the subpoena to Penn State was issued.
- **January 26, 2010.** Agent Sassano interviews an Eagles employee who offered tickets to A.F.'s mother. Sassano concludes that the offer, which would have required payment by A.F. or his mother, was unrelated to the Sandusky investigation.

#### February 2010

- No reported investigative activity.

#### **Phase Three: Draft Presentment (March 2010) through McQueary Tip (November 2010)**

#### March 2010

- **Early March 2010.** Eshbach circulates a draft presentment to her supervisors for review.
- **March 10 and 11, 2010.** Agent Sassano receives and reviews the Sandusky personnel file from Penn State and finds no derogatory information about Sandusky.
- **March 15, 2010.** *First 2010 grand jury session.* Agent Sassano testifies about the offer of Eagles tickets. Eshbach tells the Grand Jury to expect a presentment as early as the next month.
- **March 17, 2010.** A.F.'s psychologist sends a letter to A.F.'s mother discussing plans to deal with press issues once charges are announced.

#### April 2010

- No reported investigative activity.

#### May 2010

- **May 17, 2010.** Eshbach reports by email to Sheetz and Fina that Sandusky, through counsel, has declined an invitation to testify before the Grand Jury.

### June 2010

- No reported investigative activity.

### July 2010

- No reported investigative activity.

### August 2010

- **Early August 2010.** Fina, Sheetz, and Ryan meet with Corbett to discuss the status of the Sandusky investigation. Corbett affirms their recommendation that the case should not then be charged and that the search for other victims should continue.
- **August 12, 2010.** Fina sends an email to Eshbach and Sheetz confirming the decision not to bring charges based on A.F.'s allegations alone and directing that the search for additional victims continue.
- **August 12, 2010.** Eshbach sends an email to A.F.'s mother explaining the decision to continue the search for "other victims or witnesses to corroborate" A.F. and asking "[i]f you know of anyone else, please let me know."
- **August 18, 2010.** Eshbach sends an email to Agent Sassano and Tpr. Rossman informing them of the decision not to charge and the instruction to find other corroboration for A.F.

### September 2010

- **September 10, 2010.** Tpr. Rossman contacts A.F.'s mother and asks if she or A.F. have any additional information that would help with the investigation.
- **September 15 and 17, 2010.** Sandusky's retirement from The Second Mile is reported in the press.
- **September 19, 2010.** A.F.'s mother tells Tpr. Rossman about an incident at CMHS.
- **September 20, 2010.** Tpr. Rossman speaks with A.F.'s psychologist, who says that he will pass along any additional information that might be helpful to the investigation.

### October 2010

- **October 19, 2010.** Tpr. Rossman interviews A.F. about the incident at CMHS and follows up with school officials.
- **October 21, 2010.** A.F. is in a serious, one-car accident.



- **October 26, 2010.** Tpr. Rossman speaks to A.F.'s mother, who alerts Rossman to web postings about Sandusky that suggest Sandusky is a child molester. Rossman passes the information to Agent Sassano.

**Phase Four: McQueary Tip (November 2010)  
through the Filing of Charges (November 2011)**

**November 2010**

- **November 2, 2010.** Attorney General Corbett is elected governor of Pennsylvania.
- **November 3, 2010.** Centre County District Attorney Stacy Parks Miller receives an unsigned email saying that those investigating Sandusky should speak to Penn State assistant football coach Michael McQueary, who "may have witnessed something involving Jerry Sandusky and a child that would be pertinent to the investigation."
- **November 4, 2010.** Parks Miller forwards the email to Tpr. Rossman.
- **November 10, 2010.** Tpr. Rossman and Agent Sassano meet with McQueary, who states that he is willing to cooperate but wants to schedule the interview after he has a chance to speak with counsel.
- **November 22, 2010.** Tpr. Rossman and Agent Sassano interview McQueary at the office of his attorney.
- **November 23, 2010.** Agent Sassano reports on internet and blog postings discussing rumors that Sandusky is a child molester.

**December 2010**

- **December 5, 2010.** Grand jury subpoenas are issued to internet service providers ("ISPs") for information related to postings about Sandusky.
- **December 7, 2010.** Additional grand jury subpoena is issued to an ISP.
- **December 14, 2010.** *Second (and final) 2010 grand jury session.* McQueary testifies.
- **December 16, 2010.** Additional grand jury subpoena is issued to an ISP.
- **December 21, 2010.** Agent Sassano and Tpr. Rossman interview a person who posted statements about Sandusky on the internet.
- **December 29, 2010.** Grand jury subpoena is issued to Penn State for records relating to Sandusky and "inappropriate contact with underage males."

January 2011

- **January 3, 2011.** Tpr. Rossman and Cpl. Leiter obtain from Penn State police a copy of a report concerning a 1998 incident involving Sandusky.
- **January 3, 2011.** Tpr. Rossman and Cpl. Leiter obtain from State College police a copy of a report describing that department's assistance in investigating the 1998 incident.
- **January 6, 2011.** Cpl. Leiter interviews retired Penn State Police Investigator Ronald Schreffler, who conducted the 1998 investigation of Sandusky.
- **January 11, 2011.** Cpl. Leiter conducts a telephone interview of Z.K. (Victim 6), the subject of the 1998 complaint against Sandusky.
- **January 12, 2011.** Cpl. Leiter interviews Z.K.'s mother, who describes two additional possible victims, later identified as M.K. (Victim 5) and D.S. (Victim 7).
- **January 12, 2011.** Agent Sassano and Tpr. Rossman interview Penn State head football coach Joe Paterno, athletic director Timothy Curley, and former vice president Gary Schultz.
- **January 12, 2011.** *First 2011 grand jury session.* Last session for Thirtieth Statewide Investigating Grand Jury. Paterno, Curley, and Schultz testify.
- **January 18, 2011.** Tom Corbett is sworn in as Governor. William H. Ryan, Jr. becomes Acting Attorney General.
- **January 24, 2011.** Agent Sassano and Tpr. Rossman interview Michael McQueary's father.
- **January 25, 2011.** Cpl. Leiter speaks with Z.K., who describes D.S. (Victim 7) as another possible Sandusky victim.
- **January 26, 2011.** Cpl. Leiter and Tpr. Rossman go to D.S.'s residence and leave a card with instructions to call.
- **January 27, 2011.** Agent Sassano and Tpr. Rossman interview two Penn State coaches, a former Centre County assistant district attorney, and Dr. Jonathan Dranov.
- **January 27, 2011.** OAG submits the Sandusky investigation to the Thirty-Third Statewide Investigating Grand Jury, following expiration of Thirtieth Statewide Investigating Grand Jury.

- **January 28, 2011.** Supervising grand jury judge accepts the submission.
- **January 28, 2011.** Grand jury subpoenas are issued to, among others, The Second Mile and Centre County Office of Children and Youth Services (“Centre County CYS”) for records related to Sandusky.

#### February 2011

- **February 2, 2011.** Cpl. Leiter speaks with D.S.’s mother and stresses the importance of speaking with D.S.
- **February 3, 2011.** Cpl. Leiter and Tpr. Rossman interview D.S., who makes a partial disclosure of Sandusky’s conduct. D.S. also identifies additional possible victims, some from photographs in Sandusky’s book *Touched*. D.S. identifies B.S.H. (Victim 4) and M.K. (Victim 5), among others.
- **February 8, 2011.** Tpr. Rossman and Agent Sassano interview another person who posted statements about Sandusky on the internet.
- **February 8, 2011.** Grand jury subpoena is issued to Pennsylvania DPW, Child Line and Abuse Registry.
- **February 10, 2011.** Cpl. Leiter speaks with Z.K. and Z.K.’s former psychologist about the release of the 1998 records.
- **February 15 and 17, 2011.** Agent Sassano and Tpr. Rossman interview additional Penn State football coaches and athletic department personnel.
- **February 17, 2011.** Cpl. Leiter and Tpr. Rossman re-interview D.S., who states that he is not yet ready to discuss additional details about his interactions with Sandusky.
- **February 17, 2011.** Grand jury subpoena is issued to Centre County Register of Wills and Clerk of Orphans Court for Sandusky adoption records.
- **February 18, 2011.** Grand jury subpoena is issued to Centre County CYS for Sandusky adoption records.
- **February 23, 2011.** Agent Sassano and Cpl. Leiter interview another person who posted statements about Sandusky on the internet.
- **February 24, 2011.** Grand jury subpoena is issued to Centre County CYS for Sandusky foster children records.

### March 2011

- **March 2, 2011.** Additional grand jury subpoenas are issued to Centre County Register of Wills and Centre County CYS.
- **March 7, 2011.** Cpl. Leiter and Tpr. Rossman interview Z.K.'s former psychologist about the 1998 incident.
- **March 9, 2011.** Additional grand jury subpoena is issued to Centre County CYS.
- **March 10, 2011.** *Second 2011 grand jury session (first before Thirty-Third Statewide Investigating Grand Jury).* Agent Sassano and Tpr. Rossman testify about the investigation; Katherine Genovese, executive vice president of The Second Mile, testifies about allegations against Sandusky and missing Second Mile records; the director of Centre County CYS testifies about the 1998 investigation, conflicts of interest, and records retention; Ronald Schreffler, retired Penn State Police Investigator, testifies about the 1998 investigation; and a former Centre County assistant district attorney testifies about the decision not to charge Sandusky in 1998.
- **March 11, 2011.** *Third 2011 grand jury session.* John McQueary and Jonathan Dranov testify about the McQueary incident.
- **March 16, 2011.** Grand jury subpoena is issued to an ISP for subscriber information.
- **March 21, 2011.** Tpr. Rossman interviews M.S.'s former wife.
- **March 21, 2011.** Tpr. Rossman interviews the person who sent the November 3, 2010, email to Centre County District Attorney Stacy Parks Miller about Michael McQueary.
- **March 22, 2011.** Fina and Eshbach, along with Tpr. Rossman and Agent Sassano, interview Penn State President Graham Spanier.
- **March 23, 2011.** Tpr. Rossman and Cpl. Leiter interview a Centre County probation officer about a possible victim.
- **March 24, 2011.** Grand jury subpoena is issued to The Second Mile for, among other things, the names of children participating in Second Mile programs and the names of employees.
- **March 24, 2011.** Two grand jury subpoenas are issued to Penn State, one for emails and the other for files and correspondence related to a particular incident.

- **March 24, 2011.** Grand jury subpoenas are issued to Centre County CYS and DPW for lists of employees and child abuse investigators.
- **March 24 and 28, 2011.** Cpl. Leiter receives phone calls from Z.K.'s mother about being contacted by Sara Ganim concerning a newspaper story on the investigation being written by Ganim.
- **March 29, 2011.** Agent Sassano and Tpr. Rossman interview a retired Penn State police investigator who assisted in the 1998 investigation.
- **March 31, 2011.** The *Centre Daily Times* and *The Patriot-News* publish stories, written by Sara Ganim, describing the grand jury investigation of Sandusky for child abuse.
- **March 31, 2011.** Tpr. James Ellis receives a telephone call from Ronald Petrosky, a Penn State employee, who provides information about an incident in the Penn State showers involving Sandusky and a boy, witnessed by another employee named "Jim." Petrosky says he called as a result of the newspaper article that appeared in the *Centre Daily Times* that day.

#### April 2011

- **April 1, 2011.** An attorney contacts OAG saying that he represents an adult male who had been sexually assaulted by Sandusky when he was younger but had never before reported the assault.
- **April 4, 2011.** Agent Sassano and Tpr. Rossman interview Thomas Harmon, head of Penn State police services, about the 1998 incident and other matters.
- **April 5, 2011.** Eshbach and OAG Agent Michael Cranga meet with the attorney who contacted OAG on April 1 and who proffers a statement of a client and possible victim, later revealed to be B.S.H.
- **April 7, 2011.** Cpl. Leiter interviews B.S.H. (Victim 4), identified by D.S. in a photograph in *Touched*. B.S.H. declines to discuss his interaction with Sandusky before speaking to his lawyer.
- **April 11, 2011.** *Fourth 2011 grand jury session.* A.F. testifies in the Grand Jury for the third time (for the first time before the Thirty-Third Statewide Investigating Grand Jury). Four other witnesses testify, including D.S. (Victim 7) and Second Mile President and CEO John Raykovitz. With his testimony, D.S. becomes the second victim later included in the charges against Sandusky who confirms being a victim of criminal conduct.
- **April 13, 2011.** *Fifth 2011 grand jury session.* Graham Spanier testifies.

- **April 14, 2011.** Tpr. Rossman interviews a former Centre County CYD Director and a former Centre County CYD employee about the 1998 allegations against Sandusky. Both recall the allegations and state that the matter was referred to DPW because of a potential conflict of interest.
- **April 14, 2011.** *Sixth 2011 grand jury session.* Fina seeks and secures an order from the supervising grand jury judge ordering witnesses not to disclose publicly their testimony before the Grand Jury. Tpr. Rossman and five other witnesses testify, chiefly about the 1998 allegations against Sandusky.
- **April 18, 2011.** Cpl. Leiter makes contact by telephone with a former Second Mile participant and possible victim identified by Z.K.
- **April 19, 2011.** Cpl. Leiter and Tpr. Rossman interview a former Second Mile participant who describes working out and showering with Sandusky.
- **April 21, 2011.** Cpl. Leiter and Tpr. Rossman interview B.S.H., the subject of the April 5 attorney proffer, who describes explicitly sexual conduct by Sandusky. B.S.H. is the third victim later included in the charges against Sandusky who confirms being a victim of criminal conduct.

#### May 2011

- **May 2, 2011.** Agent Sassano interviews a former Penn State police officer.
- **May 5, 2011.** Two grand jury subpoenas are issued to the Penn State police department.
- **May 5, 2011.** Agent Sassano interviews a Penn State employee about Sandusky, Penn State football-related facilities, including locker rooms and shower areas, and access to those facilities.
- **May 5 and 7, 2011.** Tprs. Robert Yakicic and Mark Yakicic interview a former Penn State employee about the shower incident described by Petrosky (the “janitor incident”).
- **May 6, 2011.** Agent Sassano interviews a former Penn State police officer about the 1998 incident and department procedure.
- **May 7, 2011.** Tprs. Robert Yakicic and Mark Yakicic interview two other Penn State employees about the janitor incident.
- **May 9, 2011.** Tprs. Robert Yakicic and Mark Yakicic interview a Second Mile board member about Sandusky’s resignation from The Second Mile.

- **May 10, 2011.** Agents Cranga and Shaffer interview a Second Mile volunteer about Sandusky.
- **May 11, 2011.** Grand jury subpoena is issued to Penn State for a list of physical plant employees from 1990 to the present.
- **May 11, 2011.** Cpl. Leiter and Tpr. Rossman interview the mother of a former Second Mile participant and possible Sandusky victim identified by B.S.H. The mother relates that her son died two years earlier.
- **May 11, 2011.** Tprs. Robert Yakicic and Mark Yakicic interview another Penn State employee in an effort to identify “Jim.”
- **May 12, 2011.** Tpr. Robert Yakicic, based on a lead provided by Agent Sassano to Cpl. Leiter, identifies James Calhoun as the person named “Jim” described by Petrosky as having witnessed an incident involving Sandusky and a young boy in the shower at Penn State.
- **May 12, 2011.** Tpr. Rossman and Cpl. Leiter interview Ronald Schreffler concerning reporting procedures within Penn State police services.
- **May 12, 2011.** OAG Agents Michael Cranga and Timothy Shaffer interview 10 current and former employees of Centre County CYS.
- **May 13, 2011.** Agent Sassano and Tpr. Rossman interview Penn State head football coach Joe Paterno about Sandusky and records related to Sandusky’s retirement.
- **May 14, 2011.** Tprs. Robert Yakicic and Mark Yakicic interview another Penn State employee concerning the janitor incident and another incident involving Sandusky.
- **May 15, 2011.** Tpr. Robert Yakicic interviews James Calhoun.
- **May 18, 2011.** Agents Cranga and Shaffer interview three additional current and former employees of Centre County CYS.
- **May 18, 2011.** Cpl. Leiter and Tpr. Rossman interview a friend of B.S.H.
- **May 19, 2011.** Agent Sassano interviews a former DPW caseworker involved in investigating the 1998 incident.
- **May 19, 2011.** Agent Sassano interviews two Penn State employees associated with the football program about Sandusky.

- **May 19, 2011.** *Seventh 2011 grand jury session.* B.S.H. (Victim 4) and Petrosky testify. Also testifying are two state troopers, two people associated with the 1998 investigation, and three Penn State employees.
- **May 20, 2011.** Agents Cranga and Shaffer interview 10 additional current and former employees of Centre County CYS.
- **May 21, 2011.** Tprs. Robert Yakicic and Mark Yakicic interview a Penn State employee about the janitor incident.
- **May 23, 2011.** Cpl. Leiter interviews a former Second Mile participant, tries unsuccessfully to reach D.S. by phone, speaks with the attorney for B.S.H., and speaks with a records custodian about missing Second Mile records.
- **May 25, 2011.** Tprs. Robert Yakicic and Mark Yakicic interview a former Second Mile participant about Sandusky and B.S.H.
- **May 25, 2011.** Tpr. Mark Yakicic interviews another possible former Second Mile participant by telephone.
- **May 25, 2011.** Agents Cranga and Shaffer interview 10 additional current and former employees of Centre County CYS.
- **May 27, 2011.** Linda Kelly is sworn in as Attorney General.
- **May 27, 2011.** Agent Sassano interviews another former Second Mile participant.
- **May 31, 2011.** Agent Sassano interviews another former Second Mile participant.
- **May 31, 2011.** Tprs. Robert Yakicic and Mark Yakicic interview another former Second Mile participant.
- **May 31, 2011.** Tpr. Rossman and Cpl. Leiter interview Centre County District Attorney Stacy Parks Miller and First Assistant Mark Smith about records relating to the 1998 investigation.

#### June 2011

- **June 1 and 2, 2011.** Agents Cranga and Shaffer interview 18 additional current and former employees of Centre County CYS.
- **June 2, 2011.** Tprs. Robert and Mark Yakicic interview a former Second Mile participant.



- **June 3, 2011.** Tprs. Robert and Mark Yakicic interview a former Second Mile participant.
- **June 3, 2011.** Tpr. Rossman and Cpl. Leiter interview B.S.H.'s grandmother.
- **June 3, 2011.** Cpl. Leiter and Tpr. Rossman interview Z.K. (Victim 6). Z.K. is the fourth victim who confirms conduct that was later included in the charges against Sandusky.
- **June 3, 2011.** Agent Sassano sends an email and memorandum to OAG Regional Director Feathers arguing for the prompt arrest of Sandusky.
- **June 6, 2011.** Grand jury subpoena is issued to Penn State for records related to two bowl trips.
- **June 6, 2011.** Agents Cranga and Shaffer interview nine additional current and former employees of Centre County CYS, as well as a former Clinton County District Attorney.
- **June 7, 2011.** Agent Sassano and Tpr. Rossman interview M.K. (Victim 5), who describes sexually explicit conduct by Sandusky in a Penn State shower. M.K. is the fifth victim later included in the charges against Sandusky who confirms being a victim of criminal conduct.
- **June 9, 2011.** Cpl. Leiter and Tpr. Rossman interview an individual acquainted with Sandusky and M.S.
- **June 9, 2011.** Tprs. Mark Yakicic and Robert Yakicic interview a Penn State employee about the janitor incident.
- **June 10, 2011.** B.S.H. turns over to Cpl. Leiter 52 items given by Sandusky to B.S.H.
- **June 14, 2011.** *Eighth 2011 grand jury session.* Agent Shaffer reads to the Thirty-Third Grand Jury testimony given before the Thirtieth Grand Jury.
- **June 16, 2011.** Agents Cranga and Shaffer interview three additional former employees of Centre County CYS.
- **June 16, 2011.** *Ninth 2011 grand jury session.* OAG agents read to the Thirty-Third Grand Jury testimony given before the Thirtieth Grand Jury.
- **June 17, 2011.** Tpr. Rossman interviews a records custodian about missing Second Mile records.

- **June 17, 2011.** *Tenth 2011 grand jury session.* Seven witnesses testify, including Z.K. (Victim 6), M.K. (Victim 5), a Penn State employee about the janitor incident, and a records custodian about missing Second Mile records.
- **June 20, 2011.** Agents Cranga and Shaffer report on the interview of five additional current and former employees of Centre County CYS.
- **June 21, 2011.** Four OAG agents and four PSP members serve and execute a search warrant at the Sandusky residence.
- **June 27, 2011.** Tpr. Rossman and Cpl. Leiter interview Clinton County CYS case worker Jessica Dershem, who provides a copy of her report.
- **June 28, 2011.** Tpr. Rossman and Cpl. Leiter meet with A.F., who reviews photographs seized during the search of the Sandusky residence and describes gifts he received from Sandusky.
- **June 28, 2011.** Tpr. Rossman and Cpl. Leiter meet with a CMHS security officer, who reviews photographs seized during the search of the Sandusky residence and identifies two former CMHS students.
- **June 29, 2011.** Grand jury subpoena is issued to The Second Mile for photographs and press clippings.

#### July 2011

- **July 1, 2011.** Cpl. Leiter and Tpr. Rossman retrieve from A.F. items Sandusky had given to A.F.
- **July 7, 2011.** Grand jury subpoenas are issued for telephone records.
- **July 7, 2011.** Grand jury subpoena is issued to facility storing records of The Second Mile.
- **July 7, 2011.** Grand jury subpoenas are issued for school records of identified victims and possible victims.
- **July 7, 2011.** Tpr. Rossman receives a thumb drive containing Penn State emails.
- **July 7, 2011.** Cpl. Leiter receives a video taken from Sandusky's computer.
- **July 12, 2011.** Grand jury subpoena is issued to bank for credit card records related to The Second Mile.

- **July 12, 2011.** Tpr. Rossman and Cpl. Leiter interview A.F. about the video taken from Sandusky's computer.
- **July 12, 2011.** Tpr. Rossman and Cpl. Leiter attempt to interview five possible former Second Mile participants.
- **July 12, 2011.** Agent Sassano interviews three former Second Mile participants.
- **July 13, 2011.** Agent Sassano interviews five former Second Mile participants and one person who does not recall participating in The Second Mile.
- **July 13, 2011.** Tpr. Rossman and Cpl. Leiter interview four former Second Mile participants and one person who does not recall participating in The Second Mile, and attempt to interview another possible Second Mile participant.
- **July 13 and 14, 2011.** Tprs. Mark Yakicic and Robert Yakicic interview 13 former Second Mile participants.
- **July 14, 2011.** Tpr. Rossman and Cpl. Leiter interview three former Second Mile participants.
- **July 14, 2011.** Agent Sassano interviews four former Second Mile participants.
- **July 14, 2011.** Grand jury subpoena is issued to Penn State for a list of physical plant employees.
- **July 14, 2011.** Grand jury subpoena is issued for charter flight records related to the 1999 Alamo Bowl.
- **July 14, 2011.** Agent Sassano obtains six boxes of photographs, newspaper clippings, brochures, CDs, and DVDs from The Second Mile.
- **July 15, 2011.** Grand jury subpoenas are issued for records relating to the Alamo Bowl (at the end of the 1999 season) and the Outback Bowl (at the end of the 1998 season).
- **July 15, 2011.** Agent Sassano interviews two former Second Mile participants.
- **July 17, 2011.** Agent Sassano interviews one former Second Mile participant.
- **July 19, 2011.** Agent Sassano interviews one former Second Mile participant and one person who denies having attended The Second Mile.

- **July 19, 2011.** Tpr. Rossman and Cpl. Leiter obtain school records for A.F. and four additional possible victims.
- **July 19, 2011.** Tpr. Rossman and Cpl. Leiter interview three former Second Mile participants and one person who denies having attended The Second Mile.
- **July 19, 2011.** Tprs. Mark Yakicic and Robert Yakicic interview five former Second Mile participants.
- **July 19, 2011.** Tprs. Mark Yakicic and Robert Yakicic interview J.S. (Victim 3), who denies inappropriate conduct by Sandusky.
- **July 19, 2011.** Agent Sassano reviews one box of photographs obtained from The Second Mile and finds a newspaper photograph of Sandusky with B.S.H.
- **July 20, 2011.** Tpr. Rossman and Cpl. Leiter interview one former Second Mile participant and attempt to interview four others.
- **July 20, 2011.** Agent Sassano interviews five former Second Mile participants and one person who does not remember participating in The Second Mile.
- **July 20, 2011.** Tprs. Mark Yakicic and Robert Yakicic interview two former Second Mile participants and 11 persons who do not remember participating in The Second Mile.
- **July 21, 2011.** Tpr. Rossman and Cpl. Leiter interview two former Second Mile participants and attempt to interview four others.
- **July 21, 2011.** *Eleventh 2011 grand jury session.* One witness testifies concerning Penn State football travel records.
- **July 22, 2011.** Tpr. Mark Yakicic interviews seven former Second Mile participants and three persons who do not recall participating in The Second Mile.
- **July 25, 2011.** Agent Sassano interviews four former Second Mile participants and one person who does not recall participating in The Second Mile.
- **July 26, 2011.** Agent Sassano interviews one former Second Mile participant.
- **July 26, 2011.** Tprs. Mark Yakicic and Robert Yakicic interview five former Second Mile participants and three persons who do not recall participating in The Second Mile.
- **July 26, 2011.** Tpr. Rossman and Cpl. Leiter interview three former Second Mile participants and the mother of a fourth former Second Mile participant.

- **July 27, 2011.** Agent Sassano interviews two former Second Mile participants.
- **July 28, 2011.** Cpl. Leiter and Agent Sassano review boxes of photographs received from The Second Mile and find three photographs of Sandusky with A.F., five photographs of Sandusky with B.S.H., and one photograph of Z.K.
- **July 29, 2011.** Cpl. Leiter and Cpl. Rossman interview a former Second Mile participant.

#### August 2011

- **August 1, 2011.** Agent Sassano and Tprs. Mark Yakicic and Robert Yakicic begin review of computer records seized during the search of the Sandusky residence.
- **August 2, 2011.** Agent Sassano and Cpl. Leiter interview a former CMHS student previously interviewed by Tpr. Cavanaugh.
- **August 2, 2011.** Cpl. Leiter interviews another former CMHS student previously interviewed by Tpr. Cavanaugh.
- **August 4, 2011.** Agent Sassano reports on unsuccessful efforts to contact 14 former Second Mile participants.
- **August 5, 2011.** Eshbach, Fina, and Sassano meet with A.F., A.F.'s mother, and A.F.'s psychologist to discuss the status of the investigation.
- **August 9, 2011.** Cpl. Rossman and Cpl. Leiter interview the sister of Z.K. (Victim 6) about Sandusky and Sandusky's interaction with M.K. (Victim 5).
- **August 10, 2011.** Cpl. Leiter reports on the identification of a possible victim through a review of records seized during the search of Sandusky's residence.
- **August 12, 2011.** Agents Cranga and Shaffer report on interviews of five former Second Mile participants and one person who did not recall participating in The Second Mile.
- **August 15, 2011.** Cpl. Rossman and Agent Sassano interview former Clinton County CYS employee Erin Rutt and A.F.'s grandfather.
- **August 17, 2011.** Cpl. Rossman and Cpl. Leiter interview a former CMHS student previously interviewed by Tpr. Cavanaugh.
- **August 18, 2011.** Agents Cranga and Shaffer interview a former Second Mile participant who had extensive contact with Sandusky but denies inappropriate conduct.

- **August 18, 2011.** Cpl. Rossman re-interviews J.S. (Victim 3), who describes explicitly sexual conduct by Sandusky. J.S. is the sixth victim later included in the charges against Sandusky who confirms being a victim of criminal conduct.
- **August 18, 2011.** *Twelfth 2011 grand jury session.* Z.K.'s sister and J.S. testify. Cpl. Rossman explains how J.S. was identified from Second Mile lists.
- **August 19, 2011.** Cpl. Rossman and Cpl. Leiter interview Clinton County CYS director Gerald Rosamilia.
- **August 19, 2011.** Cpl. Rossman and Cpl. Leiter interview J.S.'s mother.
- **August 24, 2011.** Cpl. Rossman and Cpl. Leiter interview the mother and father of M.K.
- **August 24, 2011.** J.S. turns over to Cpl. Rossman items Sandusky gave to J.S.
- **August 29, 2011.** Cpl. Leiter reports on the review of records found on computers seized from the Sandusky residence.
- **August 30, 2011.** Grand jury subpoena is issued for telephone toll records.
- **August 31, 2011.** Tprs. Robert Yakicic and Mark Yakicic report on the interviews of nine current and former Penn State employees.

#### September 2011

- **September 6, 2011.** William Conley starts as First Deputy Attorney General.
- **September 7, 2011.** Eshbach and counsel for The Second Mile report to the supervising grand jury judge that the dispute with The Second Mile over records has been resolved.
- **September 9, 2011.** B.S.H. turns over to Cpl. Rossman items that Sandusky gave to B.S.H.
- **September 15, 2011.** Cpl. Rossman reports on unsuccessful efforts to contact a former Second Mile participant.
- **September 20, 2011.** Cpl. Leiter and Tpr. Ellis interview a former Second Mile participant who had extensive contact with Sandusky.
- **September 21, 2011.** Grand jury subpoena is issued to The Second Mile.

- **September 21, 2011.** Agent Sassano reports on the review of emails provided by The Second Mile.
- **September 22, 2011.** Agent Sassano interviews Detective Ralph Ralston of the State College Police Department about his role in investigating the 1998 incident.
- **September 22, 2011.** Agents Sassano and Shaffer re-interview a Second Mile participant who had extensive contact with Sandusky.
- **September 23, 2011.** Grand jury subpoena is issued for telephone toll records.
- **September 26, 2011.** Bruce Beemer starts as Attorney General Kelly's Chief of Staff.
- **September 26 and 29, 2011.** Agent Sassano reports on documents received in response to numerous grand jury subpoenas.
- **September 27, 2011.** Grand jury subpoenas are issued for telephone toll records and subscriber information.
- **September 27, 2011.** Grand jury subpoena is issued to Penn State.
- **September 27, 2011.** Tpr. Ellis and Cpl. Leiter re-interview a former Second Mile participant who had extensive contact with Sandusky.
- **September 28, 2011.** Tpr. Ellis and Cpl. Leiter interview a Sandusky friend and former resident in the Sandusky household.

#### October 2011

- **October 3, 2011.** *Thirteenth 2011 grand jury session.* Five witnesses testify: Gerald Rosamilia and Erin Rutt of Clinton County CYS, Detective Ralph Ralston of the State College Police Department, and the mothers of two victims.
- **October 4, 2011.** Tpr. Ellis reports on the review of thumbnail images found on a computer seized during the search of the Sandusky residence.
- **October 6, 2011.** Cpl. Leiter and Tpr. Ellis try unsuccessfully to interview three potential witnesses.
- **October 6, 2011.** Tpr. Robert Yakicic interviews the mother of a former Second Mile participant.

- **October 6, 2011.** Grand jury subpoena to Penn State police for reports related to Sandusky.
- **October 7, 2011.** Tpr. Robert Yakicic interviews a former Second Mile participant.
- **October 11, 2011.** Agent Sassano reports on documents provided, and not provided, in response to a grand jury subpoena for records.
- **October 12, 2011.** Cpl. Leiter and Tpr. Ellis interview a former Second Mile participant.
- **October 12 and 13, 2011.** Agent Sassano reports on documents received in response to numerous grand jury subpoenas.
- **October 13, 2011.** Tpr. Robert Yakicic interviews the father of a former Second Mile participant.
- **October 13, 2011.** Tpr. Ellis and Cpl. Leiter interview Michael McQueary.
- **October 13, 2011.** Tpr. Ellis and Cpl. Leiter meet with Sandusky's attorney to request an interview of Sandusky.
- **October 13, 2011.** Grand jury subpoena is issued to Penn State for police reports related to Sandusky.
- **October 14, 2011.** Agents Cranga and Shaffer report on the review of computer files seized during the search of the Sandusky residence.
- **October 17, 2011.** Agent Sassano reports on the response to a grand jury subpoena for records.
- **October 19, 2011.** Tpr. Ellis and Cpl. Leiter meet with A.F.
- **October 20, 2011.** Tpr. Ellis interviews the mother of a former Second Mile participant.
- **October 24, 2011.** Agent Sassano and OAG Regional Director Feathers interview Penn State head football coach Joe Paterno.
- **October 28, 2011.** Agent Sassano reports on responses to two grand jury subpoenas for records.



### November 1-5, 2011

- **November 1, 2011.** *Fourteenth 2011 grand jury session.* A Penn State maintenance worker testifies about the janitor incident.
- **November 2, 2011.** *Fifteenth 2011 grand jury session.* Agent Shaffer testifies about a 1998 interview of Sandusky, conducted by Penn State Police Investigator Schreffler and State College Police Detective Ralston.
- **November 3, 2011.** *Sixteenth 2011 grand jury session.* The Grand Jury votes to approve a presentment recommending charges against Sandusky, Curley, and Schultz.
- **November 4, 2011.** Criminal complaints are filed and arrest warrants are issued for Sandusky, Curley, and Schultz.
- **November 4, 2011.** News media report on the filing of charges, which had been posted on a court website by mistake.
- **November 5, 2011.** Sandusky surrenders to authorities, is arraigned, and is released on bail.

### **Selected Post-Charging Events November – December 2011**

- **November 7, 2011.** Attorney General Kelly and Police Commissioner Noonan issue statements concerning the Sandusky investigation, including a request that anyone with information about the case, including Sandusky victims, call either OAG or PSP.
- **November 7, 2011.** Curley and Schultz surrender to authorities and are arraigned and released on bail.
- **November 9, 2011.** Tpr. Michael Elder receives a telephone call from a Mifflin County School District official who identifies a former Second Mile participant, S.P., as a possible Sandusky victim, based on information provided by S.P.'s mother.
- **November 9, 2011.** Tprs. David Clemens and Elder meet with officials at S.P.'s school.
- **November 9, 2011.** Tpr. Elder interviews S.P. Tpr. Clemens interviews S.P.'s mother.
- **November 9, 2011.** Eshbach and Agent Sassano, along with Cpl. Leiter and Tprs. Ellis, Elder, and Clemens, interview S.P. (Victim 9), who describes sexually explicit conduct by Sandusky. S.P. is the seventh victim later included in the charges against Sandusky who confirms being a victim of criminal conduct.

- **November 16, 2011.** R.R. (Victim 10), contacts OAG through the Child Sexual Exploitation Tipline.
- **November 28, 2011.** Agent Cranga interviews R.R., who describes sexually explicit conduct by Sandusky. R.R. becomes the eighth victim later included in the charges against Sandusky who confirms being a victim of criminal conduct.
- **December 5, 2011.** *Seventeenth 2011 grand jury session.* S.P. and R.R. testify.
- **December 7, 2011.** *Eighteenth 2011 grand jury session.* The Grand Jury votes to approve a new presentment describing S.P. and R.R. as victims.
- **December 7, 2011.** Sandusky is arrested on new charges.
- **December 8, 2011.** Sandusky posts bail and is released.

# Appendix A



**PENNSYLVANIA STATE POLICE**  
**OFFICE OF CHIEF COUNSEL**  
1800 ELMERTON AVENUE  
HARRISBURG, PA 17110  
PHONE: 717-783-5568  
FAX: 717-772-2883



July 19, 2013

H. Geoffrey Moulton, Jr.  
Special Deputy Attorney General  
16<sup>th</sup> Floor, Strawberry Square  
Harrisburg, PA 17120

Mr. Moulton:

Based on our discussions Tuesday, I understand you would like to interview several members of the Pennsylvania State Police (PSP) who participated in investigations regarding Mr. Jerry Sandusky. PSP has always enjoyed a strong working relationship with the Office of Attorney General and wishes to continue that partnership. For that reason, PSP will make every effort to assist in your inquiry.

With the above being said, PSP has significant concerns regarding the manner in which any such interview is conducted. These interviews could jeopardize both open and closed investigations and prosecutions to include the prosecutions of Mr. Curley, Mr. Schultz, and Mr. Spanier. Additionally, they could compromise the secrecy of Grand Jury material thereby subjecting PSP personnel to potential criminal penalty. Furthermore, these interviews could place PSP members in a difficult and confusing position in which their standard role of cooperating with the Office of Attorney General potentially conflicts with their Constitutional rights and the protections of *Miranda*, *Weingarten*, and similar cases. Given the duties and obligations of PSP and the Office of Attorney General, these are concerns both of our agencies must recognize and accommodate.

I am providing a list of questions regarding these potential interviews that I would like you to answer in writing. Your responses will allow the interviewees to make an informed decision regarding their participation and allow PSP to insure proper safeguards are in place to protect joint investigations, prosecutions, and information subject to limited dissemination. In order to facilitate the former, I intend to share your responses with the potential interviewees and any individual counsel they may select for personal representation. The individuals may also share those responses with their union representatives.

My questions are:

1. What is the nature of your investigation?
  - a. Under what authority are you conducting your investigation?
  - b. Could information provided in these interviews later be used in criminal prosecutions of the interviewees?
2. What is the scope of your investigation?
  - a. What are the questions you intend to answer with your investigation?
  - b. What is the specific subject matter you intend to cover in these interviews?
  - c. Will the questions relate to any on-going investigations?
  - d. Will the questions relate to any on-going prosecutions?
  - e. Who, specifically, from PSP do you intend to interview?
  - f. Can you provide any document, formal or informal, outlining the specific parameters of your investigation such as orders, instructions, or your job description?
  - g. What will be the final form of your report?
  - h. Will your investigation be released to the public?
3. How do you intend to conduct the interviews?
  - a. Will the testimony be sworn?
  - b. Will the interviewees be Mirandized?
  - c. Who will conduct the questioning?
  - d. Who will be present during the questioning?
  - e. Will any of the individuals present from your agency be associated with any related on-going investigations or prosecutions?
  - f. Where do you intend to conduct the interviews?

- g. How will the interviews be recorded?
- 4. Will you ask the witnesses to disclose information which is subject to Grand Jury secrecy?
  - a. If so, under what authority?
  - b. What are the limits of that authority?
- 5. Will you ask for the disclosure of information which is subject to restricted dissemination by the Criminal History Records Information Act or any other statute or regulation?
  - a. If so, under what authority?
- 6. What safeguards will be put in place to prohibit cross-contamination of information between your investigation and any related on-going investigations and/or prosecutions?
  - a. What is your official association with the Attorney General's Office?
  - b. What are your duties regarding disclosure in related on-going investigations and prosecutions?
  - c. Do you intend to share information regarding your investigation with members of the Office of Attorney General participating in related on-going investigations and prosecutions?
  - d. Will members of the Office of Attorney General participating in related on-going investigations and prosecutions share information with you regarding their investigations and prosecutions?
- 7. When do you intend to complete these interviews?
  - a. Can the interviews be conducted after the completion of any related investigations or prosecutions?
- 8. Will the interviewees and PSP receive a complete copy of their interviews?
- 9. Will the interviewees and PSP receive a complete copy of your entire investigative record?

Prior to any potential interview, I will provide you a written list of conditions required for PSP's approval. However, I will inform you now that any approval will be conditioned upon the presence of a representative from my office at any interview to protect the interests of PSP. Additionally, each potential interviewee will be provided the opportunity to have an attorney

H. Geoffrey Moulton, Jr.  
July 19, 2013  
Page 4

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present to protect the individual's interests. If you have questions regarding these conditions, please feel free to contact me.

I would like to reiterate, it is PSP's intention to fully cooperate with your investigation, but not at the risk of ignoring its statutory and moral obligations to the Commonwealth as a law enforcement agency and to its members who are dedicated to upholding those obligations. Feel free to reply with any questions you may have and I look forward to your response.

Respectfully,



Scott R. Ford  
Chief Counsel



COMMONWEALTH OF PENNSYLVANIA  
OFFICE OF ATTORNEY GENERAL  
HARRISBURG, PA 17120

16TH FLOOR  
STRAWBERRY SQUARE  
HARRISBURG, PA 17120  
(717) 787-3391

KATHLEEN G. KANE  
ATTORNEY GENERAL

August 6, 2013

Scott R. Ford  
Chief Counsel  
Pennsylvania State Police  
1800 Elmerton Avenue  
Harrisburg, PA 17110

Dear Mr. Ford:

Thank you for your letter concerning the interviews of members of the Pennsylvania State Police (PSP). I greatly appreciate your offer of cooperation and assistance. I also understand that you and potential interviewees may have questions and concerns going forward. I have attempted to address those questions and concerns below, in narrative form. You should feel free to share my response with potential interviewees, as well as their counsel and union representatives, if any.

As we discussed at our meeting last month, I have been appointed by Attorney General Kathleen Kane as a Special Deputy Attorney General, assigned to lead an internal investigation ("the Review") of the investigation of Gerald A Sandusky for child abuse and related offenses ("the Sandusky Investigation" or "the Investigation") by the Office of the Attorney General ("OAG"). My assignment includes conducting a thorough review of the Sandusky Investigation and preparing a report to the Attorney General that describes the results of that review and makes recommendations about the conduct of future child abuse investigations by OAG. The central focus of the Review is on what occurred between the referral of the Sandusky Investigation to OAG in March 2009 and the filing of charges in November 2011, and whether charges could or should have been brought earlier. This is not a criminal investigation and I have no reason to believe that any member of PSP engaged in criminal conduct, or disciplinable conduct, in connection with the Sandusky Investigation. Of course, should the review uncover evidence of criminal activity, I would share that evidence with appropriate authorities.

The proposed interviews of PSP employees would cover the role those employees played in the Sandusky Investigation, beginning with the initial complaint by [A.F.] in November 2008. I plan to conduct the interviews personally, along with OAG SAC David C. Peifer. Neither I nor SAC Peifer is directly involved with related ongoing prosecutions; SAC Peifer has participated in a supervisory capacity in the ongoing investigation of Sandusky. I do not expect to have anyone else from OAG participate in the interviews. Should that situation change, I will let you know.



In terms of interview mechanics, I would hope to schedule them at times and places convenient to the witnesses and PSP. I do not plan to swear the witnesses or give Miranda warnings (they would not be in custody and would be appearing voluntarily). The interviews will be memorialized in summary form in memoranda prepared by SAC Peifer. Because these memoranda will be summaries only, and not statements of the witnesses, I do not plan to share them with either the witnesses or PSP.

Several of the PSP witnesses were involved in the grand jury component of the Sandusky Investigation. As a result, the interviews of those witnesses would almost certainly involve the discussion of grand jury information. As Acting Supervisory Grand Jury Judge Norman A. Krumenacker III found in an order dated June 27, 2013, such discussions would not violate any law or rules governing grand jury secrecy. Both the witnesses and the interviewers (SAC Peifer and I) have sworn secrecy oaths and already have access to the relevant grand jury information.

As we discussed, some PSP witnesses may wish to have counsel present for their interview. Judge Krumenacker's June 27, 2013 order addressed that possibility by providing that discussing grand jury matters in the presence of counsel representing witnesses would be permissible provided that counsel have been sworn to secrecy. In the event a PSP witness chooses to appear with counsel, I will supply a form of oath for counsel to execute.

I do not anticipate seeking any criminal records history information beyond information already contained in the PSP reports related to the Sandusky Investigation. In any event, the Criminal History Records Information Act permits the sharing of such information with criminal justice agencies such as OAG. See 18 Pa. C.S.A. § 9106(c).

You have asked several questions concerning my disclosure obligations and the sharing of information obtained during the Review with OAG personnel participating in related ongoing investigations and prosecutions. In short, I am an employee of OAG and will share with relevant OAG personnel information relevant to their ongoing work, particularly information that they may have an obligation to disclose to defendants in the course of a criminal prosecution.

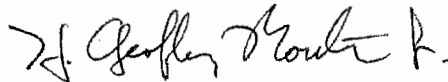
In terms of timing, I would like to conduct and complete these interviews as soon as practicable, preferably by the end of September. Waiting until all related investigations and prosecutions have been completed is not practical, given the uncertainty of the timing of such completion. I have attached an initial list of PSP witnesses to this letter. As the interviews proceed, I expect that we will identify at least a few additional interviewees.

At our meeting, and in your letter, you have stated as a condition of PSP's cooperation that a representative from the Office of Chief Counsel be present for all interviews. I have no objection to such presence, as long as the witness in question agrees and the supervising grand jury judge approves the discussion of grand matters under those circumstances. I am optimistic that, working with you, I will be able to secure such approval.

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Again, OAG appreciates your cooperation and assistance in this matter. I look forward to working together to complete these interviews in a timely manner.

Sincerely,

A handwritten signature in dark ink, appearing to read "H. Geoffrey Moulton, Jr.", written in a cursive style.

H. Geoffrey Moulton, Jr.  
Special Deputy Attorney General

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**PSP Initial Witness List**

Scott Rossman  
Joseph Cavanaugh  
Joseph Akers  
Timothy Lear  
James Ellis  
Jeff Dombrosky  
Robert Reeves  
Robert Yakicic  
Mark Yakicic  
Shawn Kofluk  
Frank Noonan  
Joseph Leiter (retired)  
Jeff Watson (retired)



PENNSYLVANIA STATE POLICE  
OFFICE OF CHIEF COUNSEL  
1800 ELMERTON AVENUE  
HARRISBURG, PA 17110  
PHONE: 717-783-5568  
FAX: 717-772-2883



August 9, 2013

H. Geoffrey Moulton, Jr.  
Special Deputy Attorney General  
16<sup>th</sup> Floor, Strawberry Square  
Harrisburg, PA 17120

Mr. Moulton:

I have received your letter dated August 6, 2013. Thank you for your prompt and thorough response. While the PSP continues to have reservations regarding the impact of your investigation on the prosecutions of Mr. Curley, Mr. Schultz, and Mr. Spanier, your response provided relevant information regarding the handling of Grand Jury and other information subject to limited dissemination. Based on the information you provided, I am confident we can establish parameters for these interviews that will insure no information is improperly disseminated.

Additionally, your response provided information necessary for our members to make an informed decision regarding their participation in your investigation. We intend to meet with the requested interviewees within the next week and I will provide them with both your response dated August 6<sup>th</sup>, 2013 and my initial letter dated July 19<sup>th</sup>, 2013. I will also provide those letters to Trooper David Burns and Mr. William Conley who are also PSP employees who participated in the investigation but were not listed in your letter. Please advise if they were intentionally excluded from your request. I will ask the potential interviewees to send me correspondence no later than August 23<sup>rd</sup>, 2013 indicating their decision regarding participation in your investigation. I then intend to forward you correspondence no later than August 30<sup>th</sup>, 2013 listing the members who agreed to participate and notifying you of the conditions necessary for their participation. While I cannot promise I will have received a response from every interviewee or that I will not have additional questions by that date, I should be able, at a minimum, to provide you with an update.

Also, as we discussed telephonically, Colonel Noonan remains available to be interviewed next week. I understand that you are unavailable during that timeframe, but if your schedule changes, please let us know. As I stated, due to his pending surgery, after next week he will be unavailable for 4-6 weeks.

Thank you again for your response.

Respectfully,

A handwritten signature in black ink, appearing to read "Scott R. Ford".

Scott R. Ford  
Chief Counsel



**PENNSYLVANIA STATE POLICE**  
**OFFICE OF CHIEF COUNSEL**  
1800 ELMERTON AVENUE  
HARRISBURG, PA 17110  
PHONE: 717-783-5568  
FAX: 717-772-2883



August 27, 2013

H. Geoffrey Moulton, Jr.  
Special Deputy Attorney General  
16<sup>th</sup> Floor, Strawberry Square  
Harrisburg, PA 17120

Mr. Moulton,

On August 15<sup>th</sup>, 2013, LTC Bivens and I met with the PSP members you requested to interview with the exceptions of Colonel Noonan, William Conley, and a retiree who was not available on that date. After receiving initial notification of the meeting and its purpose, several of the members took the initiative to contact LTC Bivens and voice concern regarding the potential impact of your review on the on-going prosecutions of Mr. Curley, Mr. Schultz, and Mr. Spanier as well as potential appeals by Mr. Sandusky. During the meeting, nearly all members openly expressed apprehension at participating in a "review" of an extremely successful investigation and prosecution that is the basis for the current prosecutions. At the conclusion of the meeting, every member indicated they had no interest in participating in your review. After the meeting, LTC Bivens spoke with the retiree who was unable to attend and he expressed the same reservations.

After reviewing your August 6<sup>th</sup> 2013 letter, hearing the concerns of our members, and discussing the potential impact of your interviews on the on-going prosecutions, the Pennsylvania State Police will not make its members available to you until the completion of all investigations and prosecutions involving Mr. Sandusky. At that time, PSP is willing to host a traditional after action review, in coordination with the OAG, to discuss the lessons learned in these investigations and develop recommendations to be used in future child abuses cases. PSP wants to support your review out of a respect to the OAG and the long history of coordination between the two agencies. However, it will not do so at risk of jeopardizing on-going prosecutions, which should be the top priority of both of our agencies.

PSP asks that neither you, nor anyone associated with your review, be present at meetings between PSP and OAG members working on the upcoming prosecutions of Mr. Curley, Mr. Schultz, or Mr. Spanier. We also request that our members not be asked questions related to your inquiry during those meetings. Our troopers have worked diligently on all four of these cases and it would be unfair to place them in such a difficult and confusing position. We fully recognize that we cannot stop you from speaking with retired members. Nonetheless, we hope

H. Geoffrey Moulton, Jr.  
August 27, 2013  
Page 2

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out of respect for the relationship between PSP and the OAG and a desire to not interfere with on-going criminal trials, you will decide to postpone those interviews as well.

While PSP will not make the majority of members available to you as stated above, you may interview both Colonel Noonan and Mr. Conley regarding their involvement in the investigation during the time they were employed by the OAG. Both have expressed a willingness to participate in your review and given their former positions at the OAG and the timeframes in which they were employed, they are confident their participation will not impact the current prosecutions.

It is the duty of the Pennsylvania State Police and the Office of Attorney General to enforce the laws of the Commonwealth of Pennsylvania and that duty must be the first priority for both agencies. In fact, LTC Bivens personally reminded the members of that duty during the meeting on August 15<sup>th</sup> and unequivocally stated if any member present was aware of any criminal activity related to this investigation that had not yet been investigated, they were ordered to report it immediately to their supervisor, himself, or you. However, at this point, PSP will not allow its investigators to be interviewed by the OAG regarding their involvement in an investigation that is the foundation for the upcoming trials being prosecuted by the OAG.

If you have any questions or concerns, feel free to contact me.

Respectfully,



Scott R. Ford  
Chief Counsel



COMMONWEALTH OF PENNSYLVANIA  
OFFICE OF ATTORNEY GENERAL  
HARRISBURG, PA 17120

16TH FLOOR  
STRAWBERRY SQUARE  
HARRISBURG, PA 17120  
(717) 767-3391

KATHLEEN G. KANE  
ATTORNEY GENERAL

August 28, 2013

Scott R. Ford  
Chief Counsel  
Pennsylvania State Police  
1800 Elmerton Avenue  
Harrisburg, PA 17110

Dear Mr. Ford:

This is in response to your letter and our meeting of August 27, 2013, in which you informed me that the Pennsylvania State Police will not make its members available for interview until the completion of all investigations and prosecutions relating to Gerald Sandusky, Timothy Curley, Gary Schultz, and Graham Spanier. As I told you at our meeting, PSP's decision not to cooperate at this point will seriously undermine my ability to give a complete account of the Sandusky investigation. The documentary records, as well as interviews with other participants, have raised important questions that only PSP members can effectively answer. As a result, I will have no choice but to describe PSP's decision and its impact in my report.

Your letter explains that "PSP wants to support your review out of a respect to the OAG and the long history of coordination between the two agencies," but goes on to say that "it will not do so at risk of jeopardizing on-going prosecutions." As you and I have discussed, OAG – the institution directly responsible for those ongoing prosecutions – disagrees with PSP's assessment that interviews of PSP members would "jeopardize" those prosecutions. The issues that I have been tasked to address, and the questions I would like to ask PSP members, are quite distinct from the guilt or innocence of Messrs. Curley, Schultz, and Spanier.

Your letter also asks that PSP members participating in the trial of the Penn State administrators "not be asked questions related to your inquiry" when meeting with OAG members in preparation for trial. I do not intend either to participate in those meetings or to achieve covertly what PSP's decision has prevented me from doing overtly – asking questions of PSP members about their participation in the Sandusky investigation – by getting others to ask my questions for me. I have no interest in putting the troopers in a difficult position, or in undermining the cooperative and professional relationship between OAG and PSP. That said, since trial preparation will inevitably include discussions of the investigation, I cannot assure you that none of those discussions will be "related to [my] inquiry." Moreover, decisions about who at OAG will participate in trial preparation, as well as other prosecutorial matters, will be made by the Attorney General and her staff.

Finally, I appreciate that PSP will make Colonel Noonan and Mr. Conley available to be interviewed. I will work with you to find a convenient time for both interviews.

Sincerely,

A handwritten signature in dark ink, appearing to read "H. Geoffrey Moulton, Jr.", with a stylized flourish at the end.

H. Geoffrey Moulton, Jr.  
Special Deputy Attorney General





COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA STATE POLICE  
1800 ELMERTON AVENUE  
HARRISBURG, PA. 17110

OFFICE OF DEPUTY COMMISSIONER

May 20, 2014

Mr. H. Geoffrey Moulton, Jr.  
Special Deputy Attorney General  
16th Floor, Strawberry Square  
Harrisburg, Pennsylvania 17120

Dear Mr. Moulton:

I understand that on April 21, 2014, you contacted Mr. Scott R. Ford, Chief Counsel for the Pennsylvania State Police (PSP), and requested confirmation that all retired PSP members, whom you endeavored to interview regarding your investigation, were notified of your desire to speak with them and declined your request to answer questions about the Sandusky investigation. I write to assure you that I personally notified those individuals of your request, and to confirm that these individuals continue to decline your request to be interviewed. Indeed I have provided those individuals an opportunity to read your letter dated August 6, 2013, and I have most recently notified each of them of your indication that several of our members may have rights pursuant to *Simon v. Commonwealth*, 659 A.2d 631 (Pa. Commw. Ct. 1995). Notwithstanding my most recent communication to the individuals, I have received no indication to date that any of them have changed their original decision to decline your invitation to be interviewed. This is consistent with the previous correspondence you received dated August 27, 2013.

You will recall that on August 15, 2013, I met with the active and retired PSP members you requested to interview at PSP Department Headquarters. All potential interviewees listed in your August 6, 2013 letter except for Mr. William Conley and Colonel Frank Noonan participated in the meeting or were subsequently contacted by telephone. Each individual was provided a copy of Mr. Ford's letter dated July 19, 2013, and your letter dated August 6, 2013, which outlined the parameters of your request. I can attest that every active and retired PSP member who participated in that meeting, or phone call, indicated they were not interested in being interviewed. Near the conclusion of the meeting, I asked them to contact me if they changed their mind or were uncomfortable discussing this issue in front of the group. I also reminded them of their duty as Troopers to uphold the law, and informed them if they were aware of any misconduct in this investigation and did not feel comfortable notifying me or their superior, they should contact you directly.

Letter to Mr. H. Geoffrey Moulton, Jr.  
May 20, 2014  
Page 2

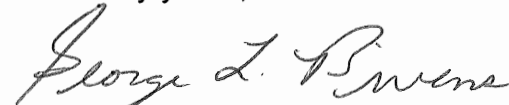
Over the weekend prior to the August 15, 2013 meeting, I received phone calls from two separate PSP members in response to my meeting invitation. They informed me they were extremely uncomfortable with the prospect of being interviewed about an investigation that led to a successful prosecution, particularly with related prosecutions still ongoing. This sentiment was again raised repeatedly throughout the meeting on August 15, 2013. Several of the affected personnel also stated they felt the Attorney General was placing them in a precarious position by asking them to individually decline your offer, given the media interest in this case. Similarly, one individual voiced frustration at the fact the PSP was considering granting access to its members, when PSP has never allowed an outside entity to conduct an independent review of one of its own investigations.

After careful consideration of all these concerns, I made the decision to deny you access to our members. I also requested, through counsel, that you not contact our retired members. As PSP indicated in multiple pieces of correspondence, participating in these interviews had the potential to jeopardize both closed and open investigations and prosecutions, compromise protected information, and place our members and retirees in a difficult and confusing position. These men are devoted law enforcement officers who have dedicated substantial portions of their lives to the service of the Commonwealth. They should not be placed in a position where they have to decide between their duty to investigate criminal actions and having their names besmirched because they refused to participate in your investigation.

Pursuant to discussions you have had with Mr. Ford in recent weeks, I understand that you now believe several of our members may have rights pursuant to *Simon v. Commonwealth*, 659 A.2d 631 (Pa. Commw. Ct. 1995). As a result, on May 14, 2014, I notified the relevant individuals of this development. Despite this most recent notification, the understandable position of the individual members has not changed. Accordingly, PSP's decision to deny you access to our members has also not changed.

I hope this letter provides you the confirmation sought after your April 2014 communications with Mr. Ford. Please feel free to contact me or Mr. Ford directly should you have any further questions or need any other clarification on this matter.

Sincerely yours,

A handwritten signature in cursive script, reading "George L. Bivens".

Lieutenant Colonel George L. Bivens  
Deputy Commissioner of Operations

# Appendix B

Mar. 4. 2009 2:13PM

No. 7107 P. 2

County of Centre



DISTRICT ATTORNEY

MICHAEL T. MADEIRA  
District Attorney

Courthouse, Room 404  
Bellefonte, Pennsylvania 16823

March 3, 2009

Richard A. Sheetz, Jr., Esquire  
Executive Deputy Attorney General  
Office of Attorney General  
16<sup>th</sup> Floor, Strawberry Square  
Harrisburg, PA 17120

Dear Mr. Sheetz:

I am writing to you pursuant to the Commonwealth Attorney's Act, 71 P.S. § 732-205(a)(3). That subsection provides that the Office of Attorney General shall have the power to prosecute in any county criminal court any case in which the district attorney represents that there is a potential for an actual or apparent conflict of interest on the part of the district attorney or his office.

In early February, District Attorney Michael Salisbury of Clinton County approached me with an investigation initiated by the Pennsylvania State Police regarding complaints of indecent assault by an individual by the name of Gerald Sandusky, a resident of Centre County. This was brought to the attention of PSP by Clinton County C&YS who interviewed a 15 year old Clinton County resident who had the alleged inappropriate contact with Sandusky when he was between the ages of 10 and 14. Trooper Joseph Cavanaugh interviewed the alleged victim and several others who corroborated some of the allegations. Additionally, Mr. Sandusky met with Clinton County C&YS but refused to answer questions about the contact. Clinton County C&YS listed the allegation as founded. The investigation is now complete and requires a decision on prosecutorial action.

Mr. Sandusky is well known to me and is the adoptive father of my wife's brother. My wife, who was adopted by another family, remains close to her brother and to his adoptive family. Given the close family relationship, an apparent and actual conflict of interest exists for me and my office. Accordingly, I respectfully request that the Office of Attorney General assume responsibility for the prosecution of this case, effective immediately. Thank you in advance for your consideration in this sensitive matter. Please advise so that I may forward the investigative information from the PSP investigator to the appropriate attorney in your office.

Sincerely,

  
Michael T. Madeira  
District Attorney

MTM/bjc

RECEIVED  
SR-13126-FD88  
MAR 4 2009

Office of Attorney General  
Criminal Law Division  
Director Office

Telephone (814) 355-8735  
Victim/Witness Office (814) 548-1107  
FAX (814) 355-8756



COMMONWEALTH OF PENNSYLVANIA  
OFFICE OF ATTORNEY GENERAL  
HARRISBURG, PA 17120

TOM CORBETT  
ATTORNEY GENERAL

16TH FLOOR  
STRAWBERRY SQUARE  
HARRISBURG, PA 17120  
(717) 787-3391

March 18, 2009

The Honorable Michael T. Madeira  
Centre County District Attorney  
Centre County Courthouse  
Bellefonte, Pennsylvania 16823

**RE: Gerald Sandusky  
(Our File No.:63-275)**

Dear District Attorney Madeira:

I am in receipt of your recent letter in regard to the above-captioned matter. Pursuant to 71 P.S. § 732-205(a) (3), the Office of the Attorney General will assume jurisdiction of this case. Please be aware that should the case go to trial, Centre County would be required to pay all costs incurred in the trial, including but not limited to, witness expenses, expert witness fees, jury costs, stenographic costs, security costs and court personnel overtime. The costs of our attorney, agents and staff would be borne by the Commonwealth.

This case has been assigned to Senior Deputy Attorney General Jonelle H. Eshbach of the Central Regional Office of the Criminal Prosecution Section. Should you have any questions concerning the prosecution, please feel free to contact SDAG Eshbach directly at (717) [REDACTED]

Please accept my best regards.

Sincerely,

Richard A. Sheetz, Jr.  
Executive Deputy Attorney General  
Director, Criminal Law Division

RASr/klw  
SR-13126-FD88

# **Appendix C**

**IN THE COURT OF COMMON PLEAS  
DAUPHIN COUNTY, PENNSYLVANIA**

**IN RE:** : **SUPREME COURT OF PENNSYLVANIA**  
: **190 M.D. MISC. DKT. 2008**  
**THE THIRTIETH STATEWIDE** :  
: **DAUPHIN COUNTY COMMON PLEAS**  
**INVESTIGATING GRAND JURY** : **NO. 1430 M.D. 2008**  
:  
: **NOTICE NO. 29**

**TO THE HONORABLE BARRY F. FEUDALE, SUPERVISING JUDGE**

**NOTICE OF SUBMISSION OF INVESTIGATION NO. 29**

1. Pursuant to the Investigating Grand Jury Act, 42 Pa.C.S. § 4550, Notice is hereby given to this Honorable Court that the matter listed below should be brought to the attention of the Statewide Investigating Grand Jury because the investigative resources of the Grand Jury are necessary for proper investigation. One or more of the investigative resources of the Grand Jury are required in order to adequately investigate this matter.

2. The investigative resources of the Grand Jury are the power to compel the attendance of investigating witnesses; the power to compel the testimony of investigating witnesses under oath; the power to take investigating testimony from witnesses who have been granted immunity; the power to require the production of documents, records and other evidence; the power to obtain the initiation of civil and criminal contempt proceedings; and every investigative power of any grand jury of the Commonwealth.

3. The Pennsylvania State Police are pursuing an investigation based upon a founded Clinton County Children and Youth Services complaint alleging sexual assault by a Centre county adult male upon a juvenile male with whom he became acquainted through his sponsorship of a charity for disadvantaged youth. It is believed that other minor males have been similarly assaulted through this connection. The investigation concerns allegations of involuntary deviate sexual intercourse, indecent assault, and corruption of minors in Clinton and Centre counties. The powers of the grand jury are needed in order for the investigation of this matter to advance to a satisfactory conclusion. In particular, the power of the grand jury to compel the attendance of witnesses is needed. Witnesses with knowledge may be too embarrassed or intimidated to admit their knowledge of the violations because the actor is well-regarded and influential and is also known as the founder of a charity that raises funds for and serves disadvantaged children. Young men who are potentially involved are in fear of revealing what they know due to the suspect's power and influence.

The power of the grand jury to compel testimony under oath is needed. It is critical in a sexual assault case where no physical evidence exists to test the reliability of information provided by the witness and to obtain testimonial evidence which could be used at a criminal trial as substantive evidence if the witness testifies differently at trial. See *Commonwealth v. Lively*, 530 Pa. 464, 610 A.2d 7 (1992).

The power of the grand jury to subpoena documents is needed in order to obtain information that would not otherwise be available. Specifically, telephone records and business records may be needed to corroborate the testimony of the witnesses.

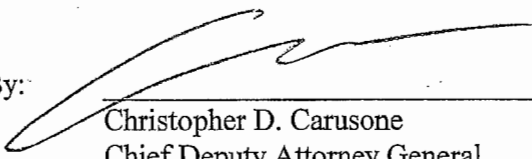


4. For the preceding reasons, it is respectfully requested that this investigation be submitted to the Thirtieth Statewide Investigating Grand Jury for the use of any or all of its investigative resources.

Respectfully submitted,

THOMAS W. CORBETT, JR.  
Attorney General


By:



Christopher D. Carusone  
Chief Deputy Attorney General

DATED: 5/1/09

Accepted by the Court this 5<sup>th</sup> day of May, 2009.



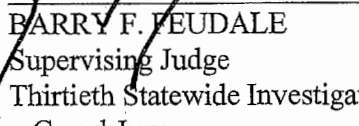
BARRY H. FEUDALE  
Supervising Judge

IN THE COURT OF COMMON PLEAS  
DAUPHIN COUNTY, PENNSYLVANIA

IN RE: : SUPREME COURT OF PENNSYLVANIA  
: 190 M.D. MISC. DKT. 2008  
THE THIRTIETH STATEWIDE :  
: DAUPHIN COUNTY COMMON PLEAS  
INVESTIGATING GRAND JURY : NO. 1430 M.D. 2008  
:  
: NOTICE NO. 29

ORDER

AND NOW, this 5<sup>th</sup> day of MAY, 2009, it is hereby ORDERED  
that Notice of Submission of Investigation Number 29, which was accepted by the Court on the 5<sup>th</sup>  
day of MAY, 2009, be and is hereby sealed.

  
BARRY F. FEUDALE  
Supervising Judge  
Thirtieth Statewide Investigating  
Grand Jury

# Appendix D

**OAG**

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**From:** Sassano, Anthony  
**Sent:** Thursday, September 03, 2009 1:08 PM  
**To:** Eshbach, Jonelle H.  
**Cc:** Rossman, Scott  
**Subject:** RE: Got AT&T's response

Something to think about.

1. Getting SW for Sandusky home computer.
2. Why did the Eagles offer game tickets to [A.F.]. How do we found out how that happened?
3. How do we access Sandusky employment records at PSU. GJ sub?
4. Should be serve a GJ sub on Centre County Children and Youth to see if they received complaints from others regarding this type of Sandusky behavior.

Scott dug up some info on another potential victim who legally changed his name to [REDACTED]. We will be pursuing this matter.

Learned that to legally change your name, a person must file a petition with the court and that the court order should be filed/maintained in the county prothonotary's office. This should be public record and we should not need legal process unless the records are sealed. Thus maybe a GJ sub may be appropriate. we will advise when the time in right.

I need the last kid who testified home phone number or cell if he had one.

Agent Anthony L. Sassano  
Narcotics Agent  
Pennsylvania Office of Attorney General, Bureau of Narcotics Investigation  
[REDACTED]  
State College, Pa. 16803  
814-[REDACTED] Office  
814-[REDACTED] Fax

---

**From:** Eshbach, Jonelle H.  
**Sent:** Thursday, September 03, 2009 12:55 PM  
**To:** Sassano, Anthony  
**Subject:** RE: Got AT&T's response

It took your phone call to shake it loose. Thank YOU! It will be mailed.

---

**From:** Sassano, Anthony  
**Sent:** Thursday, September 03, 2009 12:53 PM  
**To:** Eshbach, Jonelle H.  
**Subject:** RE: Got AT&T's response

yes mail both/all to sc office and thanks

Agent Anthony L. Sassano  
Narcotics Agent  
Pennsylvania Office of Attorney General, Bureau of Narcotics Investigation  
[REDACTED]  
State College, Pa. 16803

814- [REDACTED] Office  
814- [REDACTED] Fax

---

**From:** Eshbach, Jonelle H.

**Sent:** Thursday, September 03, 2009 12:33 PM

**To:** Sassano, Anthony

**Subject:** Got AT&T's response

It's an envelope and disk. Shall I mail it to you?  
Jonelle

# Appendix E

COMMONWEALTH OF PENNSYLVANIA  
OFFICE OF ATTORNEY GENERAL  
January 11, 2010

**SIGNIFICANT EVENT MEMORANDUM**

**SUBJECT:** COMMONWEALTH vs. GERALD SANDUSKY  
30<sup>TH</sup> STATEWIDE GRAND JURY – NOTICE #29  
(Our File No. 63-275)

**TO:** RICHARD A. SHEETZ, JR.  
Executive Deputy Attorney General  
Director, Criminal Law Division

**THROUGH:** GLENN A. PARNO  
Chief Deputy Attorney General

**FROM:** JONELLE H. ESHBACH  
Senior Deputy Attorney General  
Criminal Prosecutions Section

This memo is to advise that on or about January 8, 2010, the 30<sup>th</sup> Statewide Investigating Grand Jury issued a subpoena Duces Tecum for Subpoena Number 671 for any and all employment and personnel records of Gerald A Sandusky which is directed to the Pennsylvania State University and specifically to Kerry Bollman, Employee Relations Officer at the Penn State University.

The reason for the issuance of the subpoena to Penn State is because we have some suspicion that the university may have become aware of Sandusky's inappropriate behavior towards the many young boys he was in contact with while he was employed at the university, through his creation and participation in the Second Mile Program. Sandusky was routinely surrounded by young men, although we have been unable to develop any victims other than the one minor victim who has testified before the Grand Jury. However, it is worthy of note that Sandusky left Penn State as the defensive coordinator of the very successful, Division One-A Penn State Nittany Lion Football team at a relatively young age and rather abruptly. Although is obvious that he was not going to be Joe Paterno's successor at any time in near future at the time of his

**COMMONWEALTH vs. GERALD SANDUSKY**  
**30<sup>TH</sup> STATEWIDE GRAND JURY – NOTICE #29**  
**(Our File No. 63-275)**

**01/11/2010**  
**page two**

retirement, it was at the time odd that he retired so abruptly. We therefore are seeking any records which might indicate that his reason for leaving the university's employ was other than by his own choice. I recognize that it is possible that the records might be sanitized concerning this but believe after consulting with the investigators and many of you, that is a lead we must pursue.

Please feel free to direct any questions regarding this subpoena to me.

c: William H. Ryan, Jr., First Deputy Attorney General  
Annamarie Kaiser, Acting Chief of Staff  
Frank G. Fina, Chief Deputy Attorney General, Criminal Prosecutions Section  
Kevin F. Harley, Director of Communications  
Nils Hagen-Frederiksen, Deputy Press Secretary  
T. Crystal Whitmer, Press Office



# Appendix F

## **INTRODUCTION**

We, the members of the Thirtieth Statewide Investigating Grand Jury, having received and reviewed evidence regarding violations of the Crimes Code occurring in Centre County, Pennsylvania, pursuant to Notice of Submission of Investigation No. 29, do hereby make the following findings of fact and recommendation of charges.

## **FINDINGS OF FACT**

The Grand Jury conducted an investigation into the reported sexual assault of a minor child, A.F., by Gerald A. Sandusky, ("Sandusky") when A.F. was a houseguest at Sandusky's residence in Centre County, Pennsylvania. During the course of the year long investigation, the Grand Jury heard evidence that Sandusky indecently fondled A.F. on a number of occasions, performed oral sex on A.F. on a number of occasions and had A.F. perform oral sex on him on at least one occasion.

A.F. testified that he was 11 or 12 years old when he met Sandusky through The Second Mile program in 2005 or 2006. A.F. learned that Sandusky had been a football coach at Penn State University. A.F. participated in activities sponsored by The Second Mile, the organization Sandusky founded. Sandusky took an interest in A.F., recommending that A.F. play football and placing him in football camps. A.F. did not enjoy football and stopped playing. A.F. participated in track and Sandusky would attend his track meets. During the 2007 track season, Sandusky began spending time with A.F. weekly, having A.F. stay overnight at his residence in State College, Pennsylvania. Sandusky would take A.F. to professional and college sporting events or pre-season practices. When A.F. slept over at the Sandusky residence, he would sleep in a finished bedroom in the basement. Occasionally, other boys would also stay overnight at Sandusky's but usually it was only A.F. A.F. also participated with Sandusky in Second Mile as

a volunteer. Sandusky gave A.F. a number of gifts, including golf clubs, a computer, clothes and cash. Sandusky took A.F. to restaurants and swimming at a hotel near Sandusky's home. Sandusky was with A.F. at least half of the weekends of the year.

A.F. testified that Sandusky had a practice of coming into A.F.'s basement room after he suggested to A.F. that it was time to go to bed. A.F. testified that Sandusky would "crack his back." He described this as Sandusky getting onto the bed on which A.F. was already lying and rolling under A.F. With A.F. lying on top of him, face to face, Sandusky would run his arms up and down A.F.'s back and "crack" it. The back-cracking became a ritual at bedtime when A.F. stayed over at Sandusky's residence. A.F. said that after Sandusky had cracked his back a number of times, he progressed to rubbing A.F.'s backside while they lay face-to-face on the bed. A.F. testified that this began to occur during the summer before he entered sixth or seventh grade. A.F. also said that Sandusky began to blow on A.F.'s bare stomach. Eventually, Sandusky began to kiss A.F. on the mouth. A.F. was uncomfortable with the contact and would sometimes try to hide in the basement to avoid Sandusky. Being young, A.F. did not know what else to do.

A.F. testified that Sandusky performed oral sex on him more than 20 times in 2008 and 2009. Sandusky also had A.F. perform oral sex on him one time also touched A.F.'s penis with his hands during the 2008-2009 period. A.F. did not want to engage in sexual conduct with Sandusky and knew it was wrong. So A.F. stopped taking Sandusky's phone calls and had his mother tell Sandusky he was not at home when Sandusky called. This termination of contact with Sandusky occurred in spring of 2009 when A.F. was a freshman at Central Mountain High School

Before A.F. ceased contact with Sandusky, Sandusky routinely had contact with A.F. at Central Mountain High School where the administration would call A.F. out of activity

period/study hall in the late afternoon to meet with Sandusky in a conference room. No one monitored these visits. Sandusky assisted the school with coaching varsity football and had unfettered access to the school.

A.F. testified about an incident which occurred one evening at Central Mountain High School when he and Sandusky were alone in the weight room where there was a rock climbing wall. After A.F. fell off the wall a few times, Sandusky lay down on top of A.F., face to face, and was rolling around the floor with A.F. No one was able to see A.F. and Sandusky because of the configuration of the room. Sandusky was lying under A.F. with his eyes closed. Suddenly a wrestling coach, Joe Miller, unexpectedly entered the room and Sandusky jumped up very quickly and explained they had just been wrestling.

Joseph Miller testified that he was head wrestling coach for the elementary wrestling program at Central Mountain School District. He knew A.F., who had wrestled for him. Miller corroborated that one evening in 2006 or 2007, he returned to the Central Mountain High School to retrieve something he had forgotten. He saw a light on in the weight room which should have been turned off and when he went in, he discovered A.F. and Sandusky, lying on their sides, in physical contact, face to face on a mat. He said both A.F. and Sandusky were surprised to see him enter the room. He recalls Sandusky jumped up and said "Hey Coach, we're just working on wrestling moves." Miller found the use of that secluded room odd for wrestling because the bigger wrestling room right outside the weight room had more room to wrestle and more mats. He had seen A.F. with Sandusky frequently before the weight room incident. He saw them together after school and before athletic practice time. Sandusky was not a wrestling coach.

Steven Turchetta testified that he was an assistant principal and the head football coach at Central Mountain High School. He testified that Sandusky was a volunteer assistant football

coach. Sandusky also worked with children in the Second Mile program at Central Mountain High School. Turchetta described the Second Mile as a very large charitable organization that helped children who are from economically underprivileged backgrounds and who may be living in single parent households. Turchetta first met Sandusky in 2002 when Sandusky attempted to assist some Second Mile members who were on Turchetta's football team. Sandusky's involvement grew from there. In the 2008 season, Sandusky was a full-time volunteer coach. Turchetta said it was not unusual for him, as assistant principal, to call a Second Mile student out of activity period at the end of the day, at Sandusky's request, to see Sandusky. He knew of several students who were left alone with Sandusky, including A.F. Turchetta characterized Sandusky as very controlling within the mentoring relationships he established with Second Mile students. Sandusky would often want a greater time commitment that the teenagers were willing to give and Sandusky would have "shouting matches" with various youths, in which Turchetta would sometimes be the mediator. Turchetta would also end up being Sandusky's point of contact for a youth whom he had been unable to reach by phone the previous evening. Turchetta testified that Sandusky would be "clingy" and even "needy" when a young man broke off the relationship he had established with him and called the behavior "suspicious." Turchetta became aware of A.F.'s allegations regarding sexual assault by Sandusky when A.F.'s mother called the school to report it. Sandusky was barred from Central Mountain School District from that day forward and the matter was reported to authorities as mandated by law.

Special Agent Anthony Sassano testified concerning phone records that establish 61 phone calls from Sandusky's home phone to A.F.'s home phone between January 2008 and July 2009. In that same time, there were 57 calls from Sandusky's cell phone to A.F.'s home phone. There were four calls made from A.F.'s home phone to Sandusky's cell phone and one call from

A.F.'s mother's cell phone to Sandusky's cell phone. There were no calls made to Sandusky's home phone by A.F. during that time period.

Another youth, F.A., testified that Sandusky had taken he and A.F. to a Philadelphia Eagles football game and that Sandusky had driven. He witnessed Sandusky place his right hand on A.F.'s knee; Sandusky had also done this to F.A. on more than one occasion when they were in Sandusky's car. F.A. was uncomfortable when Sandusky did this and moved his leg to try to avoid the contact. Sandusky would keep his hand on F.A.'s knee even after F.A. tried to move it. F.A. also testified that Sandusky would reach over, while driving, and lift his shirt and tickle his bare stomach. F.A. did not like this contact. F.A. also witnessed Sandusky tickling A.F. in similar fashion. Sandusky invited F.A. to stay over at his house but F.A. only stayed one time and that was when he knew A.F. was also staying over, on the night after the Philadelphia Eagles game. F.A. confirmed that A.F. slept in Sandusky's basement room when F.A. stayed there. F.A. testified that he stayed away from Sandusky because he felt he didn't want to be alone with him for a long period of time, based on the tickling, knee touching and other physical contact.

### **RECOMMENDATION OF CHARGES**

Based upon the evidence that we have obtained and considered, which establishes a *prima facie* case, we, the members of the Thirtieth Statewide Investigating Grand Jury recommend that the Attorney General or his designee institute criminal proceedings against the persons listed below and charge them with the following offenses:

Gerald A. Sandusky

Involuntary deviate sexual intercourse, 18 Pa.C.S §3123 (a)(7)

Indecent assault, 18 Pa.C.S. §3126 (a)(7)(8)

Unlawful contact with a minor, 18 Pa. C.S. §6318 (a)(1)(5)

Corruption of minors, 18 Pa.C.S. §6301

# Appendix G



## OAG

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**From:** Eshbach, Jonelle H.  
**Sent:** Monday, March 15, 2010 11:45 AM  
**To:** Sassano, Anthony; 'Rossman, Scott F'  
**Attachments:** PresentmentNotice29.doc

Guys,

Here's the draft currently under review by the EDAG and ultimately the AG and First Deputy. I will let you know but suspect the Grand Jury will approve it in April. Then we will talk about coordinating the arrest. I know our press office will have something to say about how it is handled.

Jonelle

## **INTRODUCTION**

We, the members of the Thirtieth Statewide Investigating Grand Jury, having received and reviewed evidence regarding violations of the Crimes Code occurring in Centre County, Pennsylvania, pursuant to Notice of Submission of Investigation No. 29, do hereby make the following findings of fact and recommendation of charges.

## **FINDINGS OF FACT**

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a volunteer. Sandusky gave A.F. a number of gifts, including golf clubs, a computer, clothes and cash. Sandusky took A.F. to restaurants and swimming at a hotel near Sandusky's home. Sandusky was with A.F. at least half of the weekends of the year.

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---

Unlawful contact with a minor, 18 Pa. C.S. §6318 (a)(1)(5)

Corruption of minors, 18 Pa.C.S. §6301

## OAG

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**From:** Sheetz, Richard A.  
**Sent:** Thursday, April 01, 2010 11:40 AM  
**To:** Fina, Frank G.  
**Subject:** FW: Sandusky

I've holding this to talk to you.

Richard A. Sheetz, Jr.  
Executive Deputy Attorney General  
Director, Criminal Law Division  
PA Office of Attorney General  
16th Floor, Strawberry Square  
Harrisburg, PA 17120  
(717) [REDACTED]

---

**From:** Eshbach, Jonelle H.  
**Sent:** Thursday, April 01, 2010 10:55 AM  
**To:** Parno, Glenn A.; Sheetz, Richard A.  
**Subject:** FW: Sandusky

Gentlemen? Where do we stand?  
Jonelle

---

**From:** Sassano, Anthony  
**Sent:** Thursday, April 01, 2010 10:32 AM  
**To:** Eshbach, Jonelle H.  
**Cc:** Rossman, Scott  
**Subject:** Sandusky

Jonelle: Any news on the presentment?

TS

Agent Anthony L. Sassano  
Narcotics Agent  
Pennsylvania Office of Attorney General, Bureau of Narcotics Investigation  
[REDACTED]

State College, Pa. 16803

814-[REDACTED] Office

814-[REDACTED] Fax



**OAG**

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**From:** Eshbach, Jonelle H.  
**Sent:** Monday, April 19, 2010 11:49 AM  
**To:** Sassano, Anthony  
**Subject:** RE: Sandusky

It is being held in the corner offices...I keep asking.... no word. Now that Rick is back from Italy so maybe I can get an actual answer.

---

**From:** Sassano, Anthony  
**Sent:** Monday, April 19, 2010 8:52 AM  
**To:** Eshbach, Jonelle H.  
**Cc:** Rossman, Scott  
**Subject:** Sandusky

Jonelle: Are we getting the presentment this week?

Thanks....TS

Agent Anthony L. Sassano  
Narcotics Agent  
Pennsylvania Office of Attorney General, Bureau of Narcotics Investigation

[REDACTED]  
State College, Pa. 16803

814-[REDACTED] Office

814-[REDACTED] Fax

**OAG**

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**From:** Eshbach, Jonelle H.  
**Sent:** Friday, May 28, 2010 4:36 PM  
**To:** Sassano, Anthony  
**Subject:** RE: Sandusky

Despite asking, begging, pleading, I have heard nothing. We did offer Sandusky an invitation to the Grand Jury. Through Joe Amendola, he declined.

---

**From:** Sassano, Anthony  
**Sent:** Friday, May 28, 2010 10:02 AM  
**To:** Eshbach, Jonelle H.  
**Cc:** Rossman, Scott  
**Subject:** Sandusky

Jonelle: Checking in to see if you have any update on the Sandusky case/presentment.

Thanks...TS

Agent Anthony L. Sassano  
Narcotics Agent  
Pennsylvania Office of Attorney General, Bureau of Narcotics Investigation  
[REDACTED]

State College, Pa. 16803  
814-[REDACTED] Office  
814-[REDACTED] Fax

## OAG

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**From:** Eshbach, Jonelle H.  
**Sent:** Friday, May 28, 2010 4:38 PM  
**To:** Fina, Frank G.  
**Subject:** Sandusky

Frank,

Can you tell me what it is you want changed in the Sandusky presentment? Since he refused to come in for the June Grand Jury session, I would like to get it approved and read to the GJ.

Jonelle

## OAG

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**From:** Fina, Frank G.  
**Sent:** Monday, June 07, 2010 3:32 PM  
**To:** Sheetz, Richard A.  
**Subject:** FW:  
**Attachments:** Grand Jury Presentment Notice 29.doc

Here is the revised presentment.

---

**From:** Eshbach, Jonelle H.  
**Sent:** Monday, June 07, 2010 12:55 PM  
**To:** Fina, Frank G.  
**Subject:**

Frank,

Here's Sandusky, edited as you suggested. Please let me know if you suggest any other changes or additions.

Jonelle

## **INTRODUCTION**

We, the members of the Thirtieth Statewide Investigating Grand Jury, having received and reviewed evidence regarding violations of the Crimes Code occurring in Centre County, Pennsylvania, pursuant to Notice of Submission of Investigation No. 29, do hereby make the following findings of fact and recommendation of charges.

## **FINDINGS OF FACT**

The Grand Jury conducted an investigation into the reported sexual assault of a minor child. A.F., by Gerald A. Sandusky, ("Sandusky") when A.F. was a houseguest at Sandusky's residence in Centre County, Pennsylvania. During the course of the year long investigation, the Grand Jury heard evidence that Sandusky indecently fondled A.F. on a number of occasions, performed oral sex on A.F. on a number of occasions and had A.F. perform oral sex on him on at least one occasion.

Sandusky was employed by the Pennsylvania State University as the defensive coordinator of its Division I collegiate football program for 23 years. Known as "the dean of Linebacker U", he played four years at Penn State and coached a total of 32 years. While coaching, Sandusky started "The Second Mile," in State College, Pennsylvania, in 1977. It began as a group foster home dedicated to helping troubled boys. It grew into a charity dedicated to helping children with absent or dysfunctional families. It now is a statewide, three region charity and Sandusky is its primary fundraiser. The organization has a celebrity-laden Honorary board of directors, including Joe Paterno and many professional football players. As a charity, it raises millions of dollars through fundraising appeals and special events. The mission of the program is to "help children who need additional support and would benefit from positive human

interaction." Through Second Mile, Sandusky had access to hundreds of young men, many of whom were vulnerable due to their social situations. A.F. was one such at-risk youth.

A.F. testified that he was 11 or 12 years old when he met Sandusky through The Second Mile program in 2005 or 2006. A.F. learned that Sandusky had been a football coach at Penn State University. A.F. participated in activities sponsored by The Second Mile, the organization Sandusky founded. Sandusky took an interest in A.F., recommending that A.F. play football and placing him in football camps. A.F. did not enjoy football and stopped playing. A.F. participated in track and Sandusky would attend his track meets. During the 2007 track season, Sandusky began spending time with A.F. weekly, having A. F. stay overnight at his residence in State College, Pennsylvania. Sandusky would take A.F. to professional and college sporting events or pre-season practices. When A.F. slept over at the Sandusky residence, he would sleep in a finished bedroom in the basement. Occasionally, other boys would also stay overnight at Sandusky's, but usually it was only A.F. A.F. also participated with Sandusky in Second Mile as a volunteer. Sandusky gave A.F. a number of gifts, including golf clubs, a computer, clothes and cash. Sandusky took A.F. to restaurants and swimming at a hotel near Sandusky's home. Sandusky was with A.F. at least half of the weekends of the year.

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similar fashion. Sandusky invited F.A. to stay over at his house but F.A. only stayed one time and that was when he knew A.F. was also staying over, on the night after the Philadelphia Eagles game. F.A. confirmed that A.F. slept in Sandusky's basement room when F. A. stayed there, F.A. testified that he stayed away from Sandusky because he felt he didn't want to be alone with him for a long period of time, based on the tickling, knee touching and other physical contact.

### **RECOMMENDATION OF CHARGES**

Based upon the evidence that we have obtained and considered, which establishes a *prima facie* case, we, the members of the Thirtieth Statewide Investigating Grand Jury recommend that the Attorney General or his designee institute criminal proceedings against the persons listed below and charge them with the following offenses:

#### **Gerald A. Sandusky**

Involuntary deviate sexual intercourse, 18 Pa.C.S. §3123(a)(7)

Indecent assault, 18 Pa.C.S. §3126(a)(7)(8)

Unlawful contact with a minor, 18 Pa.C.S. §6318(a)(1)(5)

Corruption of minors, 18 Pa.C.S. §6301

## OAG

---

**From:** Sheetz, Richard A.  
**Sent:** Monday, June 14, 2010 3:56 PM  
**To:** Eshbach, Jonelle H.  
**Subject:** RE: Sandusky

Bill Ryan was to give it to Tom. I will check.

Richard A. Sheetz, Jr.  
Executive Deputy Attorney General  
Director, Criminal Law Division  
PA Office of Attorney General  
16th Floor, Strawberry Square  
Harrisburg, PA 17120  
(717) [REDACTED]

---

**From:** Eshbach, Jonelle H.  
**Sent:** Monday, June 14, 2010 3:43 PM  
**To:** Sheetz, Richard A.  
**Subject:** Sandusky

I know I sound like a broken record. On Friday, you mentioned me jumping in front of a bullet. Is this approved for submission to the Grand Jury this week or not?

## OAG

---

**From:** Sheetz, Richard A.  
**Sent:** Wednesday, July 14, 2010 11:28 AM  
**To:** Ryan, Jr. William H.  
**Subject:** Fw: Presentment

FYI. Maybe we can talk to Tom about this on Friday, too? (And, we don't like Jonelle's tone on this.)

---

**From:** Eshbach, Jonelle H.  
**To:** Sheetz, Richard A.; Fina, Frank G.; Carusone, Christopher D.  
**Sent:** Wed Jul 14 10:57:52 2010  
**Subject:** Presentment

The grand jury asked me again, as they have for the last 4 months, why we don't have that particular presentment for them. They are very anxious to approve it. Likewise, I continue to get calls and mail from the victim's mother and therapist. Can someone please tell me what the hold up is?

Jonelle

## OAG

---

**From:** Eshbach, Jonelle H.  
**Sent:** Thursday, August 12, 2010 2:26 PM  
**To:** Sheetz, Richard A.; Fina, Frank G.  
**Subject:** FW: [A.F.]

This is my fourth message from the victim's mother on Sandusky. Does anyone want to answer my questions about why we are stalled since winter...the therapist is smart enough and has already given up calling.  
Jonelle

-----Original Message-----

**From:** [A.F.'s mother]  
**Sent:** Thursday, August 12, 2010 1:06 PM  
**To:** Eshbach, Jonelle H.  
**Subject:** [A.F.]

It's been a long time on this case and another school year is coming up. Why is this not been dealt with already? This is causing my family a lot of stress and anxiety. Please let me know what's going on.

Thanks

[A.F.'s mother]

Sent on the Sprint® Now Network from my BlackBerry®

## OAG

---

**From:** Fina, Frank G.  
**Sent:** Thursday, August 12, 2010 3:40 PM  
**To:** Eshbach, Jonelle H.; Sheetz, Richard A.  
**Subject:** RE: [A.F.]

We are still working on the case, looking for better corroboration of our single victim. We need to do everything possible to find other victims. FGF

-----Original Message-----

**From:** Eshbach, Jonelle H.  
**Sent:** Thursday, August 12, 2010 3:06 PM  
**To:** Fina, Frank G.; Sheetz, Richard A.  
**Subject:** FW: [A.F.]

Spoke too soon. The therapist called too.

-----Original Message-----

**From:** [A.F.'s mother]  
**Sent:** Thursday, August 12, 2010 1:06 PM  
**To:** Eshbach, Jonelle H.  
**Subject:** [A.F.]

It's been a long time on this case and another school year is coming up. Why is this not been dealt with already? This is causing my family a lot of stress and anxiety. Please let me know what's going on.

Thanks

[A.F.'s mother]

Sent on the Sprint® Now Network from my BlackBerry®

**OAG**

---

**From:** Eshbach, Jonelle H.  
**Sent:** Thursday, August 12, 2010 3:53 PM  
**To:** [A.F.'s mother]  
**Subject:** RE: [A.F.]

[A.F.'s mother.]

We are trying to find other victims or witnesses to corroborate [A.F.]. If you know of anyone else, please let me know. I am sincerely sorry that this has been hard on you and [A.F.]. That is not my intent nor the intent of this office. Agent Sassano is trying to find others who can lend support to [A.F.'s] testimony.

Jonelle

-----Original Message-----

**From:** [A.F.'s mother]  
**Sent:** Thursday, August 12, 2010 1:06 PM  
**To:** Eshbach, Jonelle H.  
**Subject:** [A.F.]

It's been a long time on this case and another school year is coming up. Why is this not been dealt with already? This is causing my family a lot of stress and anxiety. Please let me know what's going on.

Thanks

[A.F.'s mother]

Sent on the Sprint® Now Network from my BlackBerry®

**OAG**

---

**From:** Eshbach, Jonelle H.  
**Sent:** Wednesday, August 18, 2010 8:50 PM  
**To:** Sassano, Anthony; [Rossman, Scott]  
**Subject:** [A.F.]

Tony and Scott;

My bosses have directed that we try harder to find any other corroboration for [A.F.]. At this point, they are unwilling to allow the presentment to go to Grand Jury as it stands right now. I am in trial right now--should be in the office on Friday. Call me and we'll discuss how to pursue other leads.

thanks,  
Jonelle



# Appendix H

## **INTRODUCTION**

We, the members of the Thirtieth Statewide Investigating Grand Jury, having received and reviewed evidence regarding violations of the Crimes Code occurring in Centre County, Pennsylvania, pursuant to Notice of Submission of Investigation No. 29, do hereby make the following findings of fact and recommendation of charges.

## **FINDINGS OF FACT**

The Grand Jury conducted an investigation into the reported sexual assault of a minor child, A.F., by Gerald A. Sandusky, ("Sandusky") when A.F. was a houseguest at Sandusky's residence in Centre County, Pennsylvania. During the course of the year long investigation, the Grand Jury heard evidence that Sandusky indecently fondled A.F. on a number of occasions, performed oral sex on A.F. on a number of occasions and had A.F. perform oral sex on him on at least one occasion.

Sandusky was employed by the Pennsylvania State University as the defensive coordinator of its Division I collegiate football program for 23 years. Known as "the dean of Linebacker U", he played four years at Penn State and coached a total of 32 years. While coaching, Sandusky started "The Second Mile," in State College, Pennsylvania, in 1977. It began as a group foster home dedicated to helping troubled boys. It grew into a charity dedicated to helping children with absent or dysfunctional families. It now is a statewide, three region charity and Sandusky is its primary fundraiser. The organization has a celebrity-laden Honorary board of directors, including Joe Paterno and many professional football players. As a charity, it raises millions of dollars through fundraising appeals and special events. The mission of the program is to "help children who need additional support and would benefit from positive human

interaction.” Through Second Mile, Sandusky had access to hundreds of young men, many of whom were vulnerable due to their social situations. A.F. was one such at-risk youth.

A.F. testified that he was 11 or 12 years old when he met Sandusky through The Second Mile program in 2005 or 2006. A.F. learned that Sandusky had been a football coach at Penn State University. A.F. participated in activities sponsored by The Second Mile, the organization Sandusky founded. Sandusky took an interest in A.F., recommending that A.F. play football and placing him in football camps. A.F. did not enjoy football and stopped playing. A.F. participated in track and Sandusky would attend his track meets. During the 2007 track season, Sandusky began spending time with A.F. weekly, having A. F. stay overnight at his residence in State College, Pennsylvania. Sandusky would take A.F. to professional and college sporting events or pre-season practices. When A.F. slept over at the Sandusky residence, he would sleep in a finished bedroom in the basement. Occasionally, other boys would also stay overnight at Sandusky’s, but usually it was only A.F. A.F. also participated with Sandusky in Second Mile as a volunteer. Sandusky gave A.F. a number of gifts, including golf clubs, a computer, clothes and cash. Sandusky took A.F. to restaurants and swimming at a hotel near Sandusky’s home. Sandusky was with A.F. at least half of the weekends of the year.

A.F. testified that Sandusky had a practice of coming into A.F.’s basement room after he suggested to A.F. that it was time to go to bed. A.F. testified that Sandusky would “crack his back.” He described this as Sandusky getting onto the bed on which A.F. was already lying and rolling under A. F. With A. F. lying on top of him, face to face, Sandusky would run his arms up and down A.F.’s back and “crack” it. The back-cracking became a ritual at bedtime when A.F. stayed over at Sandusky’s residence. A. F. said that after Sandusky had cracked his back a number of times, he progressed to rubbing A. F.’s backside while they lay face-to-face on the

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Corruption of minors, 18 Pa.C.S. §6301

# Appendix I



## OAG

---

**From:** Sheetz, Richard A.  
**Sent:** Wednesday, November 03, 2010 3:50 PM  
**To:** Ryan, Jr. William H.  
**Subject:** FW: Grand Jury sentiment  
  
**Importance:** High

FYI

Richard A. Sheetz, Jr.  
Executive Deputy Attorney General  
Director, Criminal Law Division  
PA Office of Attorney General  
16th Floor, Strawberry Square  
Harrisburg, PA 17120  
(717) [REDACTED]

---

**From:** Eshbach, Jonelle H.  
**Sent:** Wednesday, November 03, 2010 10:51 AM  
**To:** Fina, Frank G.; Sheetz, Richard A.  
**Subject:** Grand Jury sentiment  
**Importance:** High

Guys,

This young man was released from Geissinger Danville Pediatric unit prematurely. They had to lock the unit down because there were so many security problems. [REDACTED]

[REDACTED] A Centre Daily Times reporter knocked on the family's front door last night asking pointed questions about Sandusky molesting him. The mother denied any knowledge but this keeps percolating and I am worried about this boy. Can we please meet Thursday about this? It's "critical timing" for this case and this kid.

Jonelle

# Appendix J

OAG

---

**From:** Rossman, Scott F [REDACTED]  
**Sent:** Thursday, November 04, 2010 2:20 PM  
**To:** Sassano, Anthony  
**Subject:** FW: a tip on the Sandusky investigation

Tony,  
This came from our County District Attorney. What do you think ?

*Trooper Scott F.C. ROSSMAN  
PA State Police/Rockview  
Criminal Investigation Unit*

-----Original Message-----

**From:** Stacy Parks Miller, D.A. [REDACTED]  
**Sent:** Thursday, November 04, 2010 2:14 PM  
**To:** Rossman, Scott F  
**Subject:** FW: a tip on the Sandusky investigation

I did not respond to this person.

Stacy Parks Miller, District Attorney  
Centre County District Attorney's Office  
Courthouse, Room 404  
Bellefonte PA 16823  
P 814-[REDACTED]  
F 814-[REDACTED]

---

**From:** [REDACTED]  
**Sent:** Wednesday, November 03, 2010 10:35 PM  
**To:** Stacy Parks Miller, D.A.  
**Subject:** a tip on the Sandusky investigation

Ms Miller,

I am contacting you regarding the Jerry Sandusky investigation. If you have not yet done so, you need to contact and interview Penn State football assistant coach Mike McQueary. He may have witnessed something involving Jerry Sandusky and a child that would be pertinent to the investigation.

Signed,

A Concerned Citizen

# Appendix K

## OAG

---

**From:** Sheetz, Richard A.  
**Sent:** Wednesday, December 22, 2010 12:37 PM  
**To:** Corbett, Tom; Ryan, Jr. William H.; Kaiser, Annmarie  
**Subject:** FW: Sandusky

Grand jury time has tentatively been scheduled for Wednesday, January 12. A conference call with Frank, Jonelle and University counsel has been set up for Monday, December 27 at which time we plan to make arrangements for counsel to accept service of the subpoenas and to set up any interviews prior to their grand jury appearance. Please let me know if you need anything else.

Richard A. Sheetz, Jr.  
Executive Deputy Attorney General  
Director, Criminal Law Division  
PA Office of Attorney General  
16th Floor, Strawberry Square  
Harrisburg, PA 17120  
(717) [REDACTED]

-----Original Message-----

**From:** Sheetz, Richard A.  
**Sent:** Monday, December 20, 2010 4:45 PM  
**To:** Corbett, Tom; Ryan, Jr. William H.; Kaiser, Annmarie  
**Subject:** Sandusky

Grand jury went well last week with the coach who witnessed the incident in the shower. Our plan is now to subpoena Paterno, Tim Curley (the athletic director) and Gary Schultz (former vice president of finance now retired) for grand jury in January (14 - 18). All three were present during meetings to discuss the incident. We plan to contact them through University counsel. OK to proceed?

Richard A. Sheetz, Jr.  
Executive Deputy Attorney General  
Director, Criminal Law Division  
PA Office of Attorney General  
16th Floor, Strawberry Square  
Harrisburg, PA 17120  
(717) [REDACTED]

# Appendix L



## Jerry Sandusky, former Penn State football staffer, subject of grand jury investigation

SARA GANIM, The Patriot-News By SARA GANIM, The Patriot-News

Follow on Twitter

on March 31, 2011 at 8:00 AM, updated March 31, 2011 at 8:20 AM

Penn State football legend **Jerry Sandusky** is the subject of a grand jury investigation into allegations that he indecently assaulted a teenage boy.

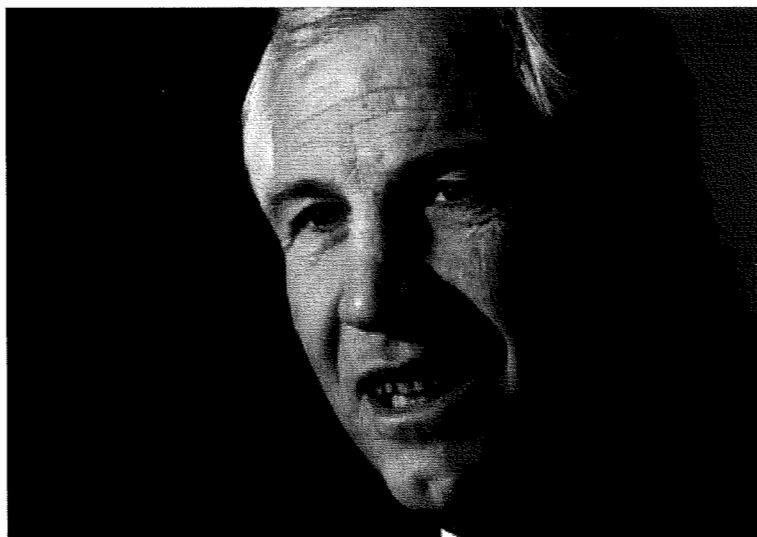
According to five people with knowledge of the case, a grand jury meeting in Harrisburg has been hearing testimony for at least 18 months about the allegation, which was made in 2009 by a 15-year-old from Clinton County.

The teen told authorities that Sandusky had inappropriate contact with him over a four-year period, starting when he was 10.

Penn State coach Joe Paterno, athletic director Tim Curley and retired university Vice President and Treasurer Gary Schultz were among those who appeared before the grand jury in January at the attorney general's Strawberry Square office complex, according to a person with knowledge of the investigation. Attempts to reach the three for comment were unsuccessful.

It is not clear whether university President Graham Spanier has testified and he declined comment on the matter when questioned earlier this week.

At one time, Sandusky was considered Paterno's likely successor. During his 32 years on the sidelines, the State College man was credited with turning Penn State into Linebacker U., producing such pro football greats as Jack Ham and LaVar Arrington.



[View full size](#)  
Jerry Sandusky

The Patriot-News/file

Sandusky, 67, retired from Penn State shortly after the Alamo Bowl in December 1999. In his 2000 autobiography, "Touched: The Jerry Sandusky Story," he says he decided to leave after he "came to the realization I was not destined to become the head football coach at Penn State."

He spent the next 11 years focused on running The Second Mile, a nonprofit he founded in 1977 that reaches 10,000 Pennsylvania youths a year through summer and year-round camp programs. The charity was honored by President George H.W. Bush in 1990 as a "Point of Light."

Last fall, Sandusky announced that he was retiring from day-to-day involvement in the charity to spend more time with family and handle personal matters.

Since then, rumors of misconduct by Sandusky have lit up Internet comment threads and message boards that are normally havens for Penn State football fan chatter.

Repeated efforts to reach Sandusky over several weeks to comment on the investigation have been unsuccessful. He has not responded to phone calls and other attempts to reach him at his home or through attorney Joseph Amendola in State College.

As is standard policy, the attorney general's office would neither confirm nor deny whether a grand jury was meeting about Sandusky.

### **The 2009 investigation**

The allegations against Sandusky surfaced in 2009, when he was volunteering as an assistant high school football coach at Central Mountain High School in Clinton County.

It was there the 15-year-old student told school officials that Sandusky had touched him inappropriately while they were alone in a gym.

John DiNunzio, Keystone Central School District's interim superintendent at the time, said the boy's mother reported the incident to the school principal and head football coach. At that point, DiNunzio said he was notified.

DiNunzio said he never spoke to the mother or the child. He said the principal and coach told him the boy alleged the "inappropriate" incident happened while the two were alone in a room on wrestling mats.

### **Related topics**

**Penn State football, PSU football forum, Jerry Sandusky**

### **Related stories**

- **Jerry Sandusky, former Penn State football staffer, subject of grand jury investigation**
- **Jerry Sandusky started The Second Mile to aid children; name was inspired by PSU players and sermon**
- **Jerry Sandusky was Penn State football's defensive coordinator for decades**
- **Jerry Sandusky report from Patriot-News deals in facts**
- **Grand jury is used to investigate potential crimes; no charges have been filed against Jerry Sandusky**



"It was strictly a touching type of situation," DiNunzio said of the allegations.

DiNunzio, who is now interim superintendent with the Bellefonte Area School District, called Clinton County Children and Youth Services. Once it left his desk, he says, he never heard a word from police.

"It's been a hush-hush situation," DiNunzio said. "I've actually called [the school] — they've said they heard nothing about it."

According to sources, the boy told Children and Youth Services that Sandusky had indecent contact with him several times over four years.

Children and Youth Services investigated the boy's story and sent the case to Clinton County District Attorney Michael Salisbury. His office forwarded it to Centre County, where the incidents were alleged to have taken place.

Then-Centre County District Attorney Michael Madeira transferred the case to then-state Attorney General Tom Corbett in March 2009. Corbett, now governor, declined comment through his spokesman.

Kelly Hastings, current superintendent of Keystone Central School District, said she has no first-hand knowledge of the report and that no documents from the school have been subpoenaed by police.

DiNunzio, who has had a long career in education, said he was shocked when he heard the allegation and surprised that he was not contacted again.

"No one has ever called me about it in any way shape or form," he said.

When Sandusky quit as a volunteer in 2009 with Central Mountain High School, he told officials there he was leaving to devote more time to The Second Mile, DiNunzio said. Sandusky retired from The Second Mile about a year and a half later.

Second Mile Executive Director Dr. Jack Raykovitz, wrote in an email: "While we are aware of the rumors circulating regarding Mr. Sandusky, we believe it would be inappropriate to respond to rumors. Further ... I am aware of no investigation of The Second Mile or our programs."

A Second Mile Board member, who asked not to be named, said Sandusky informed the board of the allegations against him and the investigation. At that point in time, Sandusky distanced himself from the kids but continued fundraising for the organization for a period of time before he finally retired, the board member said.

"We all know there's an investigation going on," the board member said.

### **Earlier allegation**

Two months ago, state police at Rockview in Centre County began calling witnesses to a May 1998 report by Penn State University police detailing an earlier allegation of inappropriate contact against Sandusky by another boy.

According to several sources, that boy, who was 12 at the time, alleged he and Sandusky were showering in the football building on Penn State's campus when the incident took place.

The boy's mother told The Patriot-News she was specifically instructed by state police at Rockview not to speak with a reporter. Her name is being withheld by The Patriot-News to protect the identity of her son.

No charges were ever filed against Sandusky.

According to sources close to the investigation, the boy told police in 1998 that Sandusky had showered with him in a locker room of the Lasch Building — home to the football program — during a tour. The boy claimed Sandusky washed his body during the shower, sources said.

As part of the May 1998 investigation, police had the boy's mother call Sandusky to her State College home and confront him while they hid in another room, according to sources.

Another boy, now an adult in the armed forces, was named as a witness in the 1998 Penn State police report and has been contacted by state police, his wife confirmed.

When reached by phone, his mother said she took her son to Penn State police for questioning in 1998 but didn't listen to the interview. She said she never asked her son what happened.

Retired Penn State Police Officer Ron Schreffler handled the 1998 case. When approached recently, Schreffler said he couldn't comment and asked a reporter, "How did you see that report?"

While the grand jury has been hearing testimony, Sandusky has been devoting time to fundraising for The Second Mile.

In January, the organization received the go-ahead from Centre County commissioners to apply for a \$3 million state grant to pay for an \$8.5 million learning center on 60 acres near the University Park Airport.

The facility would eventually include housing for up to 100 children.

Sandusky's devotion to the program was the reason he gave for turning down job offers for football head coaching jobs at Temple University and the University of Maryland.

In his autobiography, Sandusky wrote, "Any time you deal with young people, there will be extreme highs and lows. There have been moments of frustration, despair and heartache."

- **In 2007**, the statute of limitations for sex crimes against minors was extended so that police have until the alleged victim's 50th birthday to file charges. That applies to any alleged victim of child sex abuse who turned 18 on or after Aug. 27, 2002.

*Patriot-News staff writers Jan Murphy and Bob Flounders contributed to this report.*

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# Appendix M

## OAG

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**From:** Fina, Frank G.  
**Sent:** Monday, May 23, 2011 4:28 PM  
**To:** Sassano, Anthony; LEITER, JOSEPH A; Rossman, Scott F; Yakicic, Mark; Yakicic, Robert E; Eshbach, Jonelle H.; Shaffer, Timothy; Cranga, Michael J.  
**Cc:** Feathers, Randy  
**Subject:** RE: Task force meeting

I completely agree that this evidence should be acquired. Thx FGF

-----Original Message-----

**From:** Sassano, Anthony  
**Sent:** Monday, May 23, 2011 4:12 PM  
**To:** LEITER, JOSEPH A; Rossman, Scott F; Yakicic, Mark; Yakicic, Robert E; Eshbach, Jonelle H.; Shaffer, Timothy; Cranga, Michael J.; Fina, Frank G.  
**Cc:** Feathers, Randy  
**Subject:** RE: Task force meeting

Jonelle and Frank:

Based on GJ testimony, 5-19-11, I believe we need to take the following steps. Please advise if you agree/disagree.

1. Need to memorialize testimony of James Calhoun in case he passes before the prosecution is completed against Sandusky. Right now we have GJ testimony from Trp. Bob Yakicic, Trp Yakicic's report and an audio recording of Calhoun's statement. Should Calhoun pass away or his condition deteriorate, is this enough to be able to use in a trial? If not, is there something else we can do to memorialize Calhoun's statement so that we can use it in court? Is just video recording another Calhoun statement enough? Should one of you be there for the recording?
2. [B.S.H.] testified that he had PSU football items given to him by Sandusky. I believe we should either gather and retain the items for evidence or at least photograph the items for use in court if you agree. The items are an autographed football, a team equipment bag, a team helmet and Sandusky's Orange Bowl watch.
3. [B.S.H.] testified that he attended the 1998 Outback Bowl in Tampa, FLA, and the 1999 Alamo Bowl in San Antonio, TX. He testified to sexual contact in San Antonio, TX. [B.S.H.] traveled to these games on either Sandusky's or PSU's expense. Also, he stayed in Sandusky's Hotel room(s). I believe we need to:
  - A. Get Hotel records for both 1998 and 1999 trips.
  - B. Get PSU flight information as to who flew to both games.
  - C. Get airline records as to who flew to both games from the charter airline company
4. [B.S.H.] testified he participated in a published football video made by/for Sandusky and yet he didn't play football. This was about linebacker drills. I believe we need to get the video.
5. [B.S.H.] testified he was photographed for a Sports Illustrated article on Sandusky and the 2nd Mile. I believe we need to obtain a copy.
6. [B.S.H.] testified he participated I believe once as a camper and another time as an instructor at two PSU summer football camps for high school students. I believe we need to obtain documentation of same.
7. [B.S.H.] testified he participated in a PSU soccer camp as a camper. I believe we need to obtain record of same.

8. [B.S.H.] testified he and Sandusky stayed together in the PSU dorms at one of the previously listed events and that touching occurred. Once again, we need the records.

9. Toftrees Hotel records for stays by Sandusky and [B.S.H.]. This may be a waste of time as I believe Toftrees merely provided X number of keys to PSU for team rooms and did not keep records as to who stayed in what room.

I believe all of the above provides us with documentation verifying [B.S.H.] testimony and assists his credibility. Once again, please advise me what you think.

Agent Anthony L. Sassano  
Narcotics Agent  
Pennsylvania Office of Attorney General, Bureau of Narcotics Investigation  
[REDACTED]  
State College, Pa. 16803  
814-[REDACTED] Office  
814-[REDACTED] Fax

---

From: LEITER, JOSEPH A [REDACTED]  
Sent: Friday, May 20, 2011 1:18 PM  
To: Rossman, Scott F; Yakicic, Mark; Yakicic, Robert E; Sassano, Anthony; Eshbach, Jonelle H.; Shaffer, Timothy; Cranga, Michael J.; LEITER, JOSEPH A  
Cc: Watson, Jeffrey S  
Subject: Task force meeting

A task force meeting was held at 1000 hours on Friday, May 20. In attendance were: Tpr. Scott F. C. ROSSMAN, Tpr. Mark YAKICIC, Tpr. Robert YAKICIC, Agent Tim SHAFFER, Agent Mike CRANGA, and Cpl. Joseph A. LEITER. The status of the investigation was discussed and progress reports were given by each member in attendance. Tpr. ROSSMAN established a time line of events which is posted at our meeting place. Tim and Mike will further the investigation by continuing to contact past Centre County CYS workers, interview [REDACTED] and [REDACTED] (Centre County CYS worker who handled adoptions). The YAKICIC brothers will further the investigation by interviewing [REDACTED] (Jim CALHOUN'S supervisor), try to obtain a video recording of another interview of James CALHOUN, track down and identify [REDACTED] and a [REDACTED] boy in Allegheny County, and attempt to secure a large map of the PSU, University Park campus. Tony, Scott, and I will further the investigation by tracking down [REDACTED] [M.K.], [REDACTED] and his brother [REDACTED] (Tony, these guys are in Altoona, could you interview them?), Mike SULLIVAN (Automated Records Center-I will check on this on Monday) and the Centre County D.A.

Due to the many scheduling conflicts next week and the holiday weekend coming up we won't meet again here in Bellefonte until Thursday, June 2 at 1000.

Thank you all for the work you are doing, it will make a difference.

Joe

# Appendix N

**OAG**

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**From:** Sassano, Anthony  
**Sent:** Friday, June 03, 2011 1:45 PM  
**To:** Feathers, Randy  
**Subject:** Sandusky  
**Attachments:** Sandusky case 6-3-11 reasons to arrest in July.docx

Reason to arrest asap

Agent Anthony L. Sassano  
Pennsylvania Office of Attorney General  
Bureau of Narcotics Investigation  
[REDACTED]

State College, PA 16803

Office 814-[REDACTED]

Fax 814-[REDACTED]



Sandusky case. Reasons to obtain a presentment in the July GJ session and arrest ASAP after the presentment is obtained, in approximately the last week of July. Continue with PSU investigation as needed independent of filing against Sandusky if necessary.

1. We will have 4 victims who will testify.
  - A. [A.F.] (7 or 8 counts IDSI)
  - B. [B.S.H.] (many counts IDSI, if I recall...50)
  - C. [D.S.] Either indecent assault or criminal attempt at indecent assault.
  - D. [Z.K.] (1998 incident). Indecent Assault.
2. We have 3 incidents witnesses by PSU staff. We don't know the victim's names but have been advised by Jonelle that she can prosecute.
  - A. 2002 PSU Coach McQueary witnessed incident. IDSI.
  - B. PSU janitor Jim Calhoun observed IDSI around 2000.
  - C. PSU janitor Brian Huffman witnessed shower incident between Sandusky and unknown kid somewhere early 2000's.
3. Calhoun 82 years old and in failing health and dementia. As I understand it, upon Sandusky's arrest we can memorialize Calhoun's testimony by video recording his interview/statement with Sandusky's defense attorney present. Risk of losing Calhoun's information due to his health conditions.
4. [A.F.] is becoming impatient after the two year GJ investigation and there is potential he will be unwilling to testify if the arrest is not ASAP. Also, he will be out of school (Central Mountain High School) in July with about a month to go before school begins around the beginning of September. This would allow a cooling off period from when the news of the arrest is public and when [A.F.] goes back to school. Hopefully, this will lessen harassment etc. from classmates.
5. We have one potential victim to track down, [M.K.], who resides in the Philadelphia area. Rossman and I plan to travel on Tuesday to locate and interview him. He has not been cooperative, refusing to return calls and respond to emails. After him, we have no substantial information to follow up on for other potential victims, other than the hundreds of names listed as being in the 2<sup>nd</sup> Mile.
6. We have recently been interviewing kids who don't believe the allegations as published and believe Sandusky is a great role model for them and others to emulate.

7. PSU attorney Cynthia Baldwin continues to stall by filing motions to try to thwart our subpoena requests. I don't anticipate finding victim's names in the PSU information, but rather I would hope to further confirm what we believe PSU knew about Sandusky's behavior. Additionally, we could gather info on other witnesses to Sandusky's evening shower ritual with kids, via other janitors who worked at the Lasch building.
8. Essentially, I believe our case against Sandusky is strong at this time and ready to proceed to charging. With the passage of time before filing charges, our current case will potentially weaken.
9. I anticipate that after arresting Sandusky, other victims will come forward and we can then proceed with those matters.
10. The longer we wait to file charges, the greater the potential for Sandusky to molest other kids.

## OAG

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**From:** Feathers, Randy  
**Sent:** Friday, June 03, 2011 1:56 PM  
**To:** Fina, Frank G.  
**Cc:** Eshbach, Jonelle H.  
**Subject:** Sandusky  
**Attachments:** Sandusky case 6-3-11 reasons to arrest in July.docx

Thoughts on the investigation. Let me know what you think.

### Randy P. Feathers

Regional Director Randy P. Feathers  
Pennsylvania Office of Attorney General

State College, Pa., 16803

(814) [REDACTED]

Fax: (814) [REDACTED]



## Sandusky Investigation:

Reasons to obtain a presentment in the July GJ session and arrest ASAP after the presentment is obtained, in approximately the last week of July. Continue with PSU investigation as needed independent of filing against Sandusky if necessary.

1. We will have 4 victims who will testify.
  - A. [A.F.] (7 or 8 counts IDSI)
  - B. [B.S.H.] (many counts IDSI, if I recall...50)
  - C. [D.S.] Either indecent assault or criminal attempt at indecent assault.
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2. We have 3 incidents witnesses by PSU staff. We don't know the victim's names but have been advised by Jonelle that she can prosecute.
  - A. 2002 PSU Coach McQueary witnessed incident. IDSI.
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3. Calhoun 82 years old and in failing health and dementia. As I understand it, upon Sandusky's arrest we can memorialize Calhoun's testimony by video recording his interview/statement with Sandusky's defense attorney present. Risk of losing Calhoun's information due to his health conditions.
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5. We have one potential victim to track down, [M.K.], who resides in the Philadelphia area. Rossman and Sassano plan to travel on Tuesday to locate and interview him. He has not been cooperative, refusing to return calls and respond to emails. After him, we have no

substantial information to follow up on for other potential victims, other than the hundreds of names listed as being in the 2<sup>nd</sup> Mile.

6. We have recently been interviewing kids who don't believe the allegations as published and believe Sandusky is a great role model for them and others to emulate.
7. PSU attorney Cynthia Baldwin continues to stall by filing motions to try to thwart our subpoena requests. I don't anticipate finding victim's names in the PSU information, but rather I would hope to further confirm what we believe PSU knew about Sandusky's behavior. Additionally, we could gather info on other witnesses to Sandusky's evening shower ritual with kids, via other janitors who worked at the Lasch building.
8. Essentially, I believe our case against Sandusky is strong at this time and ready to proceed to charging. With the passage of time before filing charges, our current case will potentially weaken.
9. I anticipate that after arresting Sandusky, other victims will come forward and we can then proceed with those matters.
10. The longer we wait to file charges, the greater the potential for Sandusky to molest other kids.

I plan on being in Harrisburg for the next Grand Jury session on 17 July 11. I would like to sit down with you and Jonelle that date and discuss some type of end game concerning the Sandusky part of this investigation. The PSU part I believe is still ongoing and we have more work to do.

Randy

# Appendix O

## Commonwealth of Pennsylvania

APPLICATION FOR  
SEARCH WARRANT  
AND AUTHORIZATION

## COUNTY OF CENTRE

Docket Number  
(Issuing Authority):Police Incident  
Number: G07-1146135Warrant Control  
Number: 1-1

Trooper Scott F.C. ROSSMAN PA State Police / Rockview

814-

06/20/11

AFFIANT NAME

AGENCY

PHONE NUMBER

DATE OF APPLICATION

IDENTIFY ITEMS TO BE SEARCHED FOR AND SEIZED (Be as specific as possible):

Photo albums; photographs of boys and young men; records or evidence of contact between Jerry Sandusky and boys and/or young men; mementos or souvenirs of past contact with boys and/or young men; personal computers, computer disks, computer jump drives and any items used for mass storage of photographs; cameras and camera storage, all undeveloped film, letters, records; address books or lists and any other item which may be used to establish the identity of children preyed upon by Sandusky; child pornography.

SPECIFIC DESCRIPTION OF PREMISES AND/OR PERSON TO BE SEARCHED (Street and No., Apt. No., Vehicle, Safe Deposit Box, etc.):

Social security numbers and financial information (e.g. PINS) should not be listed. If the identity of an account number must be established, list only the last four digits, 204 Pa.Code §§ 213.1 - 213.7.

Residence at 130 Grandview Road State College, PA 16801, College Township, Centre County

NAME OF OWNER, OCCUPANT OR POSSESSOR OF SAID PREMISES TO BE SEARCHED (If proper name is unknown, give alias and/or description):

Gerrald Arthur (Jerry) SANDUSKY and Dorothy Dean SANDUSKY

VIOLATION OF (Describe conduct or specify statute):

PACC 3126 Indecent Assault

DATE(S) OF VIOLATION

01/01/89-12/31/2009

☐ Warrant Application Approved by District Attorney - DA File No. \_\_\_\_\_  
(If DA approval required per Pa.R.Crim.P. 202(A) with assigned File No. per Pa.R.Crim.P. 507)☐ Additional Pages Attached (Other than Affidavit of Probable Cause)☐ Probable Cause Affidavit(s) MUST be attached (unless sealed below) Total number of pages: \_\_\_\_\_

TOTAL NUMBER OF PAGES IS SUM OF ALL APPLICATION, PROBABLE CAUSE AND CONTINUATION PAGES EVEN IF ANY OF THE PAGES ARE SEALED

The below named Affiant, being duly sworn (or affirmed) before the Issuing Authority according to law, deposes and says that there is probable cause to believe that certain property is evidence of or the fruit of a crime or is contraband or is unlawfully possessed or is otherwise subject to seizure, and is located at the particular premises or in the possession of the particular person as described above.

Signature of Affiant

PA State Police / Rockview

8491

Agency or Address if private Affiant

Badge Number

Sworn to and subscribed before me this 20th day of JUNE, 2011. Mag. Dist. No. \_\_\_\_\_

Signature of Issuing Authority

Office Address

(SEAL)

SEARCH WARRANT  
TO LAW ENFORCEMENT  
OFFICER:

WHEREAS, facts have been sworn to or affirmed before me by written affidavit(s) attached hereto from which I have found probable cause, I do authorize you to search the premises or person described, and to seize, secure, inventory and make return according to the Pennsylvania Rules of Criminal Procedure.

☒ This Warrant shall be served as soon as practicable and shall be served only between the hours of 6AM to 10PM but in no event later than:\*☐ This Warrant shall be served as soon as practicable and may be served any time during the day or night but in no event later than: \*\*11:50 A M, o'clock JUNE 22nd, 2011

\* The issuing authority should specify a date not later than two (2) days after issuance. Pa.R.Crim.P. 205(4).

\*\* If the issuing authority finds reasonable cause for issuing a nighttime warrant on the basis of additional reasonable cause set forth in the accompanying affidavit(s) and wishes to issue a nighttime warrant, then this block shall be checked. Pa.R.Crim.P. 206(7).

Issued under my hand this 20th day of JUNE, 2011 at 11:50 A M, o'clock.

Signature of Issuing Authority

Mag. Dist. or Judicial Dist. No.

Date Commission Expires:

Title of Issuing Authority: ☐ Magisterial District Judge ☒ Common Pleas Judge ☐ \_\_\_\_\_☒ For good cause stated in the affidavit(s) the Search Warrant Affidavit(s) are sealed for 60 days by my certification and signature. (Pa.R.Crim.P. 211)

Signature of Issuing Authority

(Judge of the Court of Common Pleas or Appellate Court Justice or Judge)

6-20-2011 (Date) (SEAL)

TO BE COMPLETED BY THE ISSUING AUTHORITY

**Commonwealth of Pennsylvania****AFFIDAVIT OF  
PROBABLE CAUSE****COUNTY OF CENTRE**

Docket Number

Police Incident

Warrant Control

(Issuing Authority):

Number: G07-1146135

Number: 1-1

**PROBABLE CAUSE BELIEF IS BASED UPON THE FOLLOWING FACTS AND CIRCUMSTANCES:**

*Social security numbers and financial information (e.g. PINS) should not be listed. If the identity of an account number must be established, list only the last four digits. 204 Pa.Code §§ 213.1 - 213.7.*

Items to be seized: Photo albums; photographs of boys and young men; records or evidence of contact between Jerry Sandusky and boys and/or young men; mementos or souvenirs of past contact with boys and/or young men; personal computers, computer disks, computer jump drives and any items used for mass storage of photographs; cameras and camera storage, all undeveloped film, letters, records; address books or lists and any other item which may be used to establish the identity of children preyed upon by Sandusky; child pornography.

Affiant is Trooper Scott ROSSMAN a member of the Pennsylvania State Police for the past 12 years and currently assigned to the Criminal Investigation Unit at Troop G Rockview.

Affiant has been engaged, along with agents from the Commonwealth Office of Attorney General, in the investigation of Gerald A. "Jerry" Sandusky for criminal sexual conduct with a variety of minor males from the 1990's through 2008, when his conduct was thwarted by the establishment of a Child Protective Services ("CPS") investigation and a mandatory referral to law enforcement. Sandusky is the founder and former Board Member of The Second Mile, a charity he established in 1977 to help young men from troubled backgrounds or with behavioral and/or psychological issues, through character building activities and mentoring. As such, Sandusky had access to literally thousands of boys over the course of three decades. The 2008 CPS investigation of Sandusky resulted in an INDICATED report; Sandusky therefore lost his ChildLine clearances and cannot participate in activities of the Second Mile which actively involve minors. Sandusky is aware of the investigation.

Affiant has knowledge, through the criminal investigation, of several different boys with whom Sandusky engaged in grooming behavior and/or with whom Sandusky had criminal sexual contact. Sandusky was an adult at all relevant times. Affiant has reason to believe that there may be other as yet-unidentified victims. Sandusky developed close relationships with a select few boys from Second Mile programs and groomed them for sexual conduct with him. A number of boys spent nights and even entire weekends at Sandusky's home. Sandusky often maintains contact with past participants in his inner circle of boys. As recently as May, 2011, Sandusky and his wife Dorothy, made phone contacts with several young men who were part of his inner circle. Sandusky's conduct is predatory and pedophilic.

For at least one child with whom Sandusky had contact, the child was promised by Sandusky that he and Sandusky would go to Sandusky's house and Sandusky would hold the boy on his lap in front of Sandusky's home computer and they would play on the computer. The youth from the incidents which were reported in 2008 testified that Sandusky gave his family a computer, which the boy's mother set up and used. The 2008 victim was molested in Sandusky's residence. Prior incidents occurred with other victims on Penn State University property and in hotels. After 2002, Sandusky was barred by Penn State University from bringing minors on campus following an incident witnessed on campus by an employee.

**I, THE AFFIANT, BEING DULY SWORN ACCORDING TO LAW, DEPOSE AND SAY THAT THE FACTS SET FORTH IN THE AFFIDAVIT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION AND BELIEF.**

(SEAL)

Affiant Signature

Date

Issuing Authority Signature

Date

Page 1 of 3 Pages



**Commonwealth of Pennsylvania****AFFIDAVIT OF  
PROBABLE CAUSE****COUNTY OF CENTRE**

Docket Number

Police Incident

Warrant Control

(Issuing Authority):

Number: G07-1146135

Number: 1-1

**PROBABLE CAUSE BELIEF IS BASED UPON THE FOLLOWING FACTS AND CIRCUMSTANCES:***Social security numbers and financial information (e.g. PINs) should not be listed. If the identity of an account number must be established, list only the last four digits. 204 Pa.Code §§ 213.1 - 213.7.*

Such an individual may receive sexual gratification, stimulation and satisfaction from contact with children and / or from fantasies they may have while viewing children engaged in sexually suggestive poses or engaged in sexual activity. The individual may save sexually explicit or suggestive materials in a variety of media (example: photographs, digital images, videos, drawings).

They may use these materials for (a) self sexual gratification and (b) to lower the inhibition of children they are attempting to seduce or demonstrate as a sexual act. These individuals sometimes possess and maintain their "libraries" of child pornographic material in the privacy and security of their home or another secured location. They typically retain these items for months or years.

Your affiant knows from training and prior investigations that computer files or remnants of such files can be recovered months or even years after they have been downloaded onto a hard drive, deleted, or viewed via the Internet or software programs that enable such events or activities. Electronic files downloaded to a hard drive can be stored for years at little or no cost. Even when such files have been deleted, they can be recovered months or years later using readily-available forensics tools. When a person deletes a file on a home computer, the data contained in the file does not actually disappear; rather, that data remains on the hard drive until it is overwritten by new data. Deleted files, or remnants of deleted files, may reside in free space or slack space - that is, in space on the hard drive that is not allocated to an active file or that is unused after a file has been allocated to a set block of storage space - for long periods of time before they are overwritten. A computer's operating system may also keep a record of deleted data in a "swap" or "recovery" file. Similarly, files that have been viewed via the Internet are automatically downloaded into a temporary Internet directory or "cache." The browser typically maintains a fixed amount of hard drive space devoted to these files and the files are only overwritten as they are replaced with more recently viewed Internet pages. Thus, the ability to retrieve residue of an electronic file from a hard drive depends less on when the file was downloaded or viewed than on a particular user's operating system, storage capacity, and computer habits.

In the experience of the members of the Child Predator Unit and the Computer Forensics Unit of the Pennsylvania Office of Attorney General, examination and recovery of electronically stored records and data requires that the computer(s) and storage devices be removed to a laboratory setting for examination and analysis by a qualified computer expert as this is a highly technical process which can take many days or weeks to complete. To attempt such an examination on-site would be both impractical and overly invasive. In the collective training and experience of the members of the Child Predator Unit and Computer Forensics Unit of the Pennsylvania Office of Attorney General, which includes more than 250 arrests of child predators who have either traveled to engage in sexual activity with minors or have transmitted sexually explicit materials to minors over the internet, it is very common for the types of evidence involved in these cases to be stored on the subject's computer or other storage devices for extended periods of time, including several months and even up to a year or more.

I, THE AFFIANT, BEING DULY SWORN ACCORDING TO LAW, DEPOSE AND SAY THAT THE FACTS SET FORTH IN THE AFFIDAVIT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION AND BELIEF.

(SEAL)

Affiant Signature

Date

Issuing Authority Signature

Date

Page 2 of 3 Pages

## Commonwealth of Pennsylvania

AFFIDAVIT OF  
PROBABLE CAUSE

## COUNTY OF CENTRE

Docket Number

Police Incident

Warrant Control

(Issuing Authority):

Number: G07-1146135

Number: 1-1

**PROBABLE CAUSE BELIEF IS BASED UPON THE FOLLOWING FACTS AND CIRCUMSTANCES:**

*Social security numbers and financial information (e.g. PINS) should not be listed. If the identity of an account number must be established, list only the last four digits. 204 Pa. Code §§ 213.1 - 213.7.*

It is also common for these types of evidence to be saved on remote storage devices, such as floppy drives, ZIP discs, thumb drives, CDs, data tapes, web cameras, optical storage devices, personal digital assistants such as Palm Pilots or other devices capable of storing data electronically, such as digital cameras and cell phones; peripheral input/output devices such as keyboards, printers, facsimile machines, optical readers, modems, wireless routers, and other network devices. Said types of evidence include copies of the online chats that are frequently stored on the subject's computer, and copies of photographs and/or videos that were sent online between the subject and the undercover identity, as well as (in cases where a meeting was arranged) maps that were accessed to facilitate the subject's journey to the location of the arranged meeting. Said types of evidence also include evidence of sexual attraction to minors, including images of child pornography, which in your affiant's training and experience are commonly found in the possession of individuals who engage in sexually explicit online chats with minors, and who either arrange to meet a minor or transmit sexually explicit images to a minor. Moreover, with today's technology, photographic images can be transmitted to a computer from another computer, or from a digital camera, cell phone, scanner, remote storage device such as a CD or thumb drive, or other device capable of storing images electronically. Based on past experience and training, your affiant believes that those who possess images of child pornography rarely dispose of said images because the images are difficult to obtain due to their illegal nature, and because the images provide the possessor with sexual gratification. This is so even if the person has replaced or "upgraded" his computer. Users of personal computers routinely transfer all or most of their saved data onto their new computer when replacing or upgrading their old computer. This type of data transfer is often done by saving files from the old computer to media sources or remote storage devices (CDs or floppy disks, zip drives, thumb drives, etc.), then opening them onto the new computer and saving them to the new hard drive.

I, THE AFFIANT, BEING DULY SWORN ACCORDING TO LAW, DEPOSE AND SAY THAT THE FACTS SET FORTH IN THE AFFIDAVIT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION AND BELIEF.

(SEAL)

Affiant Signature

Date

Issuing Authority Signature

Date

Page 3 of 3 Pages

**Commonwealth of Pennsylvania****RETURN of SERVICE  
AND INVENTORY****COUNTY OF Centre**

Docket Number

Police Incident

Warrant Control

(Issuing Authority):

Number: G07-1146135

Number: 1-1

Date of Search:

Time of Search:

Property Seized as result of Search (Y/N):Y

06/21/11

0905

Date of Return:

Time of Return:

Officer making Return:

06/23/11

1500

Trooper Scott F.C. ROSSMAN

Signature of Person Seizing Property:

*[Signature]* #8491  
Other Officers Participating in Search: Cpl Joseph LEITER, Tpr Mark YAKICIC, Tpr Robert YAKICIC, Agent Randy FEATHERS, Agent Tony SASSANO, Agent Mike CRANGA and Agent Tim SHAFFER

**Pa.R.Crim.P. Chapter 2000. SEARCH WARRANTS****Rule 2002A. Approval of Search Warrant Applications by Attorney for the Commonwealth - Local Option.**

- (a) The District Attorney of any county may require that search warrant applications filed in the county have the approval of an attorney for the Commonwealth prior to filing.

**Rule 2004. Person To Serve Warrant.**

A search warrant shall be served by a law enforcement officer.

**Rule 2005. Contents of Search Warrant.**

Each search warrant shall be signed by the issuing authority and shall:

- (a) specify the date and time of issuance;
- (b) identify specifically the property to be seized;
- (c) name or describe with particularity the person or place to be searched;
- (d) direct that the search be executed within a specified period of time, not to exceed 2 days from the time of issuance;
- (e) direct that the warrant be served in the daytime unless otherwise authorized on the warrant, PROVIDED THAT, for purposes of the Rules of Chapter 2000, the term "daytime" shall be used to mean the hours of 6 a.m. to 10 p.m.;
- (f) designate by title the judicial officer to whom the warrant shall be returned;
- (g) certify that the issuing authority has found probable cause based upon the facts sworn to or affirmed before the issuing authority by written affidavit(s) attached to the warrant; and
- (h) when applicable, certify on the face of the warrant that for good cause shown the affidavit(s) is sealed pursuant to Rule 2011 and state the length of time the affidavit(s) will be sealed.

**Rule 2006. Contents of Application for Search Warrant.**

Each application for a search warrant shall be supported by written affidavit(s) signed and sworn to or affirmed before an issuing authority, which affidavit(s) shall:

- (a) state the name and department, agency, or address of the affiant;
- (b) identify specifically the items or property to be searched for and seized;
- (c) name or describe with particularity the person or place to be searched;
- (d) identify the owner, occupant, or possessor of the place to be searched;
- (e) specify or describe the crime which has been or is being committed;
- (f) set forth specifically the facts and circumstances which form the basis for the affiant's conclusion that there is probable cause to believe the items or property identified are evidence or the fruit of a crime, or are contraband, or are otherwise unlawfully possessed or subject to seizure, and that these items or property are located on the particular person or at the particular place described;
- (g) if a "nighttime" search is requested (i.e., 10 p.m. to 6 a.m.), state additional reasonable cause for seeking permission to search in the nighttime; and
- (h) when the attorney for the Commonwealth is requesting that the affidavit(s) be sealed pursuant to Rule 2011, state the facts and circumstances which are alleged to establish good cause for the sealing of the affidavit(s).

**Rule 2008. Copy of Warrant; Receipt for Seized Property.**

- (a) A law enforcement officer, upon taking property pursuant to a search warrant, shall leave with the person from whom or from whose premises the property was taken a copy of the warrant and affidavit(s) in support thereof, and a receipt for the property seized. A copy of the warrant and affidavit(s) must be left whether or not any property is seized.
- (b) If no one is present on the premises when the warrant is executed, the officer shall leave the documents specified in paragraph (a) at a conspicuous location in the said premises. A copy of the warrant and affidavit(s) must be left whether or not any property is seized.
- (c) Notwithstanding the requirements in paragraphs (a) and (b), the officer shall not leave a copy of an affidavit that has been sealed pursuant to Rule 2011.

**Rule 2009. Return with Inventory.**

- (a) An inventory of items seized shall be made by the law enforcement officer serving a search warrant. The inventory shall be made in the presence of the person from whose possession or premises the property was taken, when feasible, or otherwise in the presence of at least one witness. The officer shall sign a statement on the inventory that it is a true and correct listing of all items seized, and that the signer is subject to the penalties and provisions of 18 Pa.C.S. Section 4904(b) - Unsworn Falsification To Authorities. The inventory shall be returned to and filed with the issuing authority.
- (b) The judicial officer to whom the return was made shall upon request cause a copy of the inventory to be delivered to the applicant for the warrant and to the person from whom, or from whose premises, the property was taken.
- (c) When the search warrant affidavit(s) is sealed pursuant to Rule 2011, the return shall be made to the justice or judge who issued the warrant.

**THE LAW ENFORCEMENT OFFICER SHALL MAKE ALL RETURNS TO THE ISSUING AUTHORITY  
DESIGNATED ON THE SEARCH WARRANT.**

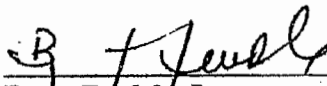
IN THE COURT OF COMMON PLEAS  
DAUPHIN COUNTY, PENNSYLVANIA

IN RE: : SUPREME COURT OF PENNSYLVANIA  
: 217 M.D. MISC. DKT. 2010  
: DAUPHIN COUNTY COMMON PLEAS  
THE THIRTY-THIRD STATEWIDE : NO. 1325 M.D. 2010  
INVESTIGATING GRAND JURY : NOTICE NO. 1

SEALING ORDER

AND NOW, this 20th day of JUNE, 2011, pursuant to the Investigating  
Grand Jury Act, and upon consideration of the Commonwealth's Motion to Seal Search Warrant No.  
1-1 and Supporting Affidavit of Probable Cause, it is hereby ORDERED that said  
Search Warrant, Affidavit, and Motion to Seal shall be filed under seal with the Clerk of Courts of  
Dauphin County until further Order of this Court.

BY THE COURT:

  
\_\_\_\_\_  
Barry Feudale, Jr.  
Supervising Judge

IN THE COURT OF COMMON PLEAS  
DAUPHIN COUNTY, PENNSYLVANIA

IN RE: : SUPREME COURT OF PENNSYLVANIA  
: 217M.D. MISC. DKT. 2010  
: DAUPHIN COUNTY COMMON PLEAS  
THE THIRTY-THIRD STATEWIDE : NO. 1325 M.D. 2010  
INVESTIGATING GRAND JURY : NOTICE NO. 1

**MOTION TO SEAL SEARCH WARRANT NO. 1.1**  
**AND SUPPORTING AFFIDAVIT OF PROBABLE CAUSE**

The Commonwealth, by and through the Office of Attorney General, files this Motion to Seal Search warrant No.1.1 and Supporting Affidavit of Probable Cause. In support thereof, the Commonwealth avers:

1. This search warrant concerns an investigation described in Notice No. 1 that has been submitted to the Grand Jury.
2. The investigation concerns allegations of multiple offenses of sexual offenses committed on minors.
3. The place to be searched is [see page of warrant].
5. The affidavit of probable cause accompanying the search warrant describes the status of the investigation and the information developed to date.
6. If a copy of the search warrant and affidavit of probable cause was provided to JERRY SANDUSKY in accordance with Pa.R.Crim.P. 208, the status of the investigation and information developed to date would become known to media and others.
7. Disclosure at the current time of the status of the investigation and the information developed to date would seriously impair the ability of the Commonwealth to garner truth testimony from witnesses who are subpoenaed to appear before the Grand Jury in this investigation.

8. The Commonwealth submits that it has shown sufficient good cause to permit such sealing of the search warrant affidavit pursuant to 42 Pa.C.S. § 8934 and Pa.R.Crim.P. 211.

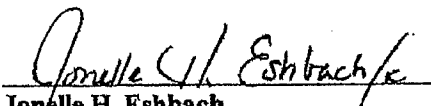
9. Sealing of the search warrant affidavit and this application is also required under the Investigating Grand Jury Act, 42 Pa.C.S. § 4541 *et seq.*

WHEREFORE, the Commonwealth respectfully requests that this Court grant the Motion to Seal Search Warrant and Supporting Affidavit of Probable Cause.

Respectfully submitted,

LINDA L. KELLY  
Attorney General

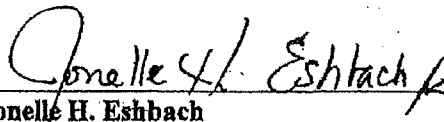
By:

  
Jonelle H. Eshbach  
Senior Deputy Attorney General

Date: 6/20/11

**VERIFICATION**

I, Jonelle H. Eshbach, Senior Deputy Attorney General, hereby verify that the information contained in the Commonwealth's Motion to Seal Search Warrant and Supporting Affidavit of Probable Cause is true and correct to the best of my knowledge, information, and belief. This statement is made subject to the penalties for unsworn falsification to authorities under the Crimes Code, 18 Pa.C.S. § 4904.

  
Jonelle H. Eshbach  
Senior Deputy Attorney General

Date: 6/20/11

# Appendix P



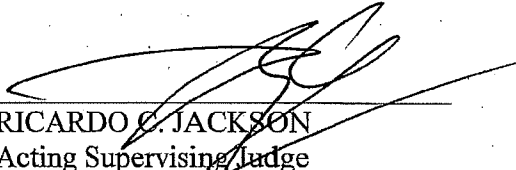
**IN THE COURT OF COMMON PLEAS  
DAUPHIN COUNTY, PENNSYLVANIA**

**IN RE:** : **SUPREME COURT OF PENNSYLVANIA**  
: **217 M.D. MISC. DKT. 2010**  
**THE THIRTY-THIRD STATEWIDE** :  
: **DAUPHIN COUNTY COMMON PLEAS**  
**INVESTIGATING GRAND JURY** : **NO. 1325 M.D. 2010**  
:  
: **NOTICE NO. 1**

**ORDER SEALING PRESENTMENT NO. 12**

The Court has accepted Presentment No. 12. This presentment shall be sealed and no person shall disclose a return of the Presentment except when necessary for issuance and execution of process, or as otherwise directed or permitted by order of the supervising judge.

SO ORDERED this 4<sup>th</sup> day of November, 2011.

  
RICARDO C. JACKSON  
Acting Supervising Judge  
The Thirty-Third Statewide Investigating  
Grand Jury

**IN THE COURT OF COMMON PLEAS  
DAUPHIN COUNTY, PENNSYLVANIA**

**IN RE:** : **SUPREME COURT OF PENNSYLVANIA**  
: **217 M.D. MISC. DKT. 2010**  
**THE THIRTY-THIRD STATEWIDE** :  
: **DAUPHIN COUNTY COMMON PLEAS**  
**INVESTIGATING GRAND JURY** : **NO. 1325 M.D. 2010**  
:  
: **NOTICE NO. 1**

**ORDER ACCEPTING PRESENTMENT NO. 12**


1. The Court finds Presentment No. 12 of the Thirty-Third Statewide Investigating Grand Jury is within the authority of said Grand Jury and is in accordance with the provisions of the Investigating Grand Jury Act, 42 Pa.C.S. § 4541, et seq. Accordingly, this Presentment is accepted by the Court.

2. The County for conducting the trial of all charges pursuant to this Presentment shall be Centre County (Sandusky) and Dauphin County (Schultz and Curley).

3. The Attorney General of the Commonwealth of Pennsylvania, or her designee, is hereby authorized to prosecute as recommended in this Presentment by instituting appropriate criminal proceedings in the aforesaid County.

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SO ORDERED this 4th day of November, 2011.

  
\_\_\_\_\_  
RICARDO C. JACKSON  
Acting Supervising Judge  
The Thirty-Third Statewide Investigating  
Grand Jury

## **INTRODUCTION**

We, the members of the Thirty-Third Statewide Investigating Grand Jury, having received and reviewed evidence regarding violations of the Crimes Code occurring in Centre County, Pennsylvania, and elsewhere pursuant to Notice of Submission of Investigation No. 1, do hereby make the following findings of fact and recommendation of charges.

## **FINDINGS OF FACT**

The Grand Jury conducted an investigation into reported sexual assaults of minor male children by Gerald A. Sandusky ("Sandusky") over a period of years, both while Sandusky was a football coach for the Pennsylvania State University ("Penn State") football team and after he retired from coaching. Widely known as Jerry Sandusky, the subject of this investigation founded The Second Mile, a charity initially devoted to helping troubled young boys. It was within The Second Mile program that Sandusky found his victims.

Sandusky was employed by Penn State for 23 years as the defensive coordinator of its Division I collegiate football program. Sandusky played football for four years at Penn State and coached a total of 32 years. While coaching, Sandusky started "The Second Mile" in State College, Pennsylvania, in 1977. It began as a group foster home dedicated to helping troubled boys. It grew into a charity dedicated to helping children with absent or dysfunctional families. It

is now a statewide, three region charity and Sandusky has been its primary fundraiser.<sup>1</sup> The Second Mile raises millions of dollars through fundraising appeals and special events. The mission of the program is to "help children who need additional support and would benefit from positive human interaction." Through The Second Mile, Sandusky had access to hundreds of boys, many of whom were vulnerable due to their social situations.

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<sup>1</sup> Sandusky retired from The Second Mile in September 2010.

### VICTIM 1

The Grand Jury conducted an investigation into the reported sexual assault of a minor child, Victim 1, by Sandusky, when Victim 1, a Second Mile participant, was a houseguest at Sandusky's residence in College Township, Centre County, Pennsylvania. During the course of the multi-year investigation, the Grand Jury heard evidence that Sandusky indecently fondled Victim 1 on a number of occasions, performed oral sex on Victim 1 on a number of occasions and had Victim 1 perform oral sex on him on at least one occasion.

Victim 1 testified that he was 11 or 12 years old when he met Sandusky through The Second Mile program in 2005 or 2006. As with the remaining victims, Victim 1 only came to Sandusky's attention during his second year in the program, when the boy attended The Second Mile's camp on the Penn State University Park campus. During the 2007 track season, Sandusky began spending time with Victim 1 weekly, having the boy stay overnight at his residence in State College, Pennsylvania. Sandusky took Victim 1 to professional and college sporting events, such as Philadelphia Eagles games, or pre-season practices at Penn State. When Victim 1 slept at the Sandusky residence, he would sleep in a finished bedroom in the basement. Occasionally, other boys would also stay overnight at Sandusky's home but usually it was only Victim 1. Sandusky also encouraged Victim 1 to participate in The Second Mile as a volunteer.

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Sandusky gave Victim 1 a number of gifts, including golf clubs, a computer, gym clothes, dress clothes and cash. Sandusky took the boy to restaurants, swimming at a hotel near Sandusky's home, and to church.

Victim 1 testified that Sandusky had a practice of coming into the basement room after he told Victim 1 that it was time to go to bed. Victim 1 testified that Sandusky would "crack his back." He described this as Sandusky getting onto the bed on which Victim 1 was already lying

and rolling under the boy. With Victim 1 lying on top of him, face to face, Sandusky would run his arms up and down the boy's back and "crack" it. The back-cracking became a ritual at bedtime. Victim 1 said that after Sandusky had cracked his back a number of times, he progressed to rubbing Victim 1's backside while they lay face-to-face on the bed. Victim 1 testified that this began to occur during the summer of 2005 or 2006, before he entered sixth or seventh grade. Sandusky then began to blow on Victim 1's bare stomach. Eventually, Sandusky began to kiss Victim 1 on the mouth. Victim 1 was uncomfortable with the contact and would sometimes try to hide in the basement to avoid Sandusky. Victim 1 testified that ultimately Sandusky performed oral sex on him more than 20 times through 2007 and early 2008. Sandusky also had Victim 1 perform oral sex on him one time and also touched Victim 1's penis with his hands during the 2007-2008 time period. Victim 1 did not want to engage in sexual conduct with Sandusky and knew it was wrong. Victim 1 stopped taking Sandusky's phone calls and had his mother tell Sandusky he was not home when Sandusky called. This termination of contact with Sandusky occurred in the spring of 2008, when Victim 1 was a freshman in high school.

Before Victim 1 ceased contact with Sandusky, Sandusky routinely had contact with him at a Clinton County high school where the administration would call Victim 1 out of activity period/study hall in the late afternoon to meet with Sandusky in a conference room. No one monitored these visits. Sandusky assisted the school with coaching varsity football and had unfettered access to the school.

Victim 1 testified about an incident that occurred one evening at the high school when he and Sandusky were alone in the weight room where there was a rock climbing wall. After Victim 1 fell off the wall a few times, Sandusky lay down on top of him, face to face, and was

rolling around the floor with the boy. No one was able to see Victim 1 and Sandusky because of the configuration of the room. Sandusky was lying under Victim 1 with his eyes closed. Suddenly a wrestling coach, Joe Miller, unexpectedly entered the room and Sandusky jumped up very quickly and explained that they had just been wrestling.

Joseph Miller testified that he was head wrestling coach for the elementary wrestling program for that school district. He knew Victim 1, who had wrestled for him. Miller corroborated that one evening in 2006 or 2007, he returned to the high school to retrieve something he had forgotten. He saw a light on in the weight room which should have been turned off and when he went in, he discovered Victim 1 and Sandusky, lying on their sides, in physical contact, face to face on a mat. He said both Victim 1 and Sandusky were surprised to see him enter the room. He recalls that Sandusky jumped up and said, "Hey Coach, we're just working on wrestling moves." Sandusky was not a wrestling coach. Miller found the use of that secluded room odd for wrestling because the bigger wrestling room right outside the weight room had more room to wrestle and more mats. He had seen Victim 1 with Sandusky frequently before the weight room incident. He saw them together after school and before athletic practice time.

Steven Turchetta testified that he was an assistant principal and the head football coach at the high school attended by Victim 1. He testified that Sandusky was a volunteer assistant football coach. Sandusky also worked with children in the Second Mile program in that school district. Turchetta described the Second Mile as a very large charitable organization that helped children who are from economically underprivileged backgrounds and who may be living in single parent households. Turchetta first met Sandusky in 2002 when Sandusky attempted to assist some Second Mile members who were on Turchetta's football team. Sandusky's

involvement grew from there. In the 2008 season, Sandusky was a full-time volunteer coach. Turchetta said it was not unusual for him, as assistant principal, to call a Second Mile student out of activity period at the end of the day, at Sandusky's request, to see Sandusky. He knew of several students who were left alone with Sandusky, including Victim 1. Turchetta characterized Sandusky as very controlling within the mentoring relationships he established with Second Mile students. Sandusky would often want a greater time commitment than the teenagers were willing to give and Sandusky would have "shouting matches" with various youths, in which Turchetta would sometimes be the mediator. Turchetta would also end up being Sandusky's point of contact for a youth whom he had been unable to reach by phone the previous evening. Turchetta testified that Sandusky would be "clingy" and even "needy" when a young man broke off the relationship he had established with him and called the behavior "suspicious." Turchetta became aware of Victim 1's allegations regarding sexual assault by Sandusky when the boy's mother called the school to report it. Sandusky was barred from the school district attended by Victim 1 from that day forward and the matter was reported to authorities as mandated by law.

Office of Attorney General Narcotics Agent Anthony Sassano testified concerning phone records that establish 61 phone calls from Sandusky's home phone to Victim 1's home phone between January 2008 and July 2009. In that same time, there were 57 calls from Sandusky's cell phone to Victim 1's home phone. There were four calls made from Victim 1's home phone to Sandusky's cell phone and one call from Victim 1's mother's cell phone to Sandusky's cell phone. There were no calls made to Sandusky's home phone by Victim 1 during that time period.

Another youth, F.A., age fifteen, testified that Sandusky had taken him and Victim 1 to a Philadelphia Eagles football game and that Sandusky had driven. He witnessed Sandusky place

his right hand on Victim 1's knee; Sandusky had also done this to F.A. on more than one occasion when they were in Sandusky's car. F.A. was uncomfortable when Sandusky did this and moved his leg to try to avoid the contact. Sandusky would keep his hand on F.A.'s knee even after F.A. tried to move it. F.A. also testified that Sandusky would reach over, while driving, and lift his shirt and tickle his bare stomach. F.A. did not like this contact. F.A. also witnessed Sandusky tickling Victim 1 in similar fashion. Sandusky invited F.A. to stay over at his house but F.A. only stayed one time when he knew Victim 1 was also staying over, after returning from the Philadelphia Eagles game. F.A. confirmed that Victim 1 slept in Sandusky's basement room when F.A. stayed there. F.A. testified that he stayed away from Sandusky because he felt he didn't want to be alone with him for a long period of time, based on the tickling, knee touching and other physical contact. Victim 1 confirmed that Sandusky would drive with his hand on Victim 1's leg.

## **VICTIM 2**

On March 1, 2002, a Penn State graduate assistant ("graduate assistant") who was then 28 years old, entered the locker room at the Lasch Football Building on the University Park Campus on a Friday night before the beginning of Spring Break. The graduate assistant, who was familiar with Sandusky, was going to put some newly purchased sneakers in his locker and get some recruiting tapes to watch. It was about 9:30 p.m. As the graduate assistant entered the locker room doors, he was surprised to find the lights and showers on. He then heard rhythmic, slapping sounds. He believed the sounds to be those of sexual activity. As the graduate assistant put the sneakers in his locker, he looked into the shower. He saw a naked boy, Victim 2, whose age he estimated to be ten years old, with his hands up against the wall, being subjected to anal



intercourse by a naked Sandusky. The graduate assistant was shocked but noticed that both Victim 2 and Sandusky saw him. The graduate assistant left immediately, distraught.

The graduate assistant went to his office and called his father, reporting to him what he had seen. His father told the graduate assistant to leave the building and come to his home. The graduate assistant and his father decided that the graduate assistant had to promptly report what he had seen to Coach Joe Paterno ("Paterno"), head football coach of Penn State. The next morning, a Saturday, the graduate assistant telephoned Paterno and went to Paterno's home, where he reported what he had seen.

Joseph V. Paterno testified to receiving the graduate assistant's report at his home on a Saturday morning. Paterno testified that the graduate assistant was very upset. Paterno called Tim Curley ("Curley"), Penn State Athletic Director and Paterno's immediate superior, to his home the very next day, a Sunday, and reported to him that the graduate assistant had seen Jerry Sandusky in the Lasch Building showers fondling or doing something of a sexual nature to a young boy.

Approximately one and a half weeks later, the graduate assistant was called to a meeting with Penn State Athletic Director Curley and Senior Vice President for Finance and Business Gary Schultz ("Schultz"). The graduate assistant reported to Curley and Schultz that he had witnessed what he believed to be Sandusky having anal sex with a boy in the Lasch Building showers. Curley and Schultz assured the graduate assistant that they would look into it and determine what further action they would take. Paterno was not present for this meeting.

The graduate assistant heard back from Curley a couple of weeks later. He was told that Sandusky's keys to the locker room were taken away and that the incident had been reported to The Second Mile. The graduate assistant was never questioned by University Police and no other

entity conducted an investigation until he testified in Grand Jury in December, 2010. The Grand Jury finds the graduate assistant's testimony to be extremely credible.

Curley testified that the graduate assistant reported to them that "inappropriate conduct" or activity that made him "uncomfortable" occurred in the Lasch Building shower in March 2002. Curley specifically denied that the graduate assistant reported anal sex or anything of a sexual nature whatsoever and termed the conduct as merely "horsing around". When asked whether the graduate assistant had reported "sexual conduct" "of any kind" by Sandusky, Curley answered, "No" twice. When asked if the graduate assistant had reported "anal sex between Jerry Sandusky and this child," Curley testified, "Absolutely not."

Curley testified that he informed Dr. Jack Raykovitz, Executive Director of the Second Mile of the conduct reported to him and met with Sandusky to advise Sandusky that he was prohibited from bringing youth onto the Penn State campus from that point forward. Curley testified that he met again with the graduate assistant and advised him that Sandusky had been directed not to use Penn State's athletic facilities with young people and "the information" had been given to director of The Second Mile. Curley testified that he also advised Penn State University President Graham Spanier of the information he had received from the graduate assistant and the steps he had taken as a result. Curley was not specific about the language he used in reporting the 2002 incident to Spanier. Spanier testified to his approval of the approach taken by Curley. Curley did not report the incident to the University Police, the police agency for the University Park campus or any other police agency.

Schultz testified that he was called to a meeting with Joe Paterno and Tim Curley, in which Paterno reported "disturbing" and "inappropriate" conduct in the shower by Sandusky upon a young boy, as reported to him by a student or graduate student. Schultz was present in a

subsequent meeting with Curley when the graduate assistant reported the incident in the shower involving Sandusky and a boy. Schultz was very unsure about what he remembered the graduate assistant telling him and Curley about the shower incident. He testified that he had the impression that Sandusky might have inappropriately grabbed the young boy's genitals while wrestling and agreed that such was inappropriate sexual conduct between a man and a boy. While equivocating on the definition of "sexual" in the context of Sandusky wrestling with and grabbing the genitals of the boy, Schultz conceded that the report the graduate assistant made was of inappropriate sexual conduct by Sandusky. However, Schultz testified that the allegations were "not that serious" and that he and Curley "had no indication that a crime had occurred." Schultz agreed that sodomy between Sandusky and a child would clearly be inappropriate sexual conduct. He denied having such conduct reported to him either by Paterno or the graduate assistant.

Schultz testified that he and Curley agreed that Sandusky was to be told not to bring any Second Mile children into the football building and he believed that he and Curley asked "the child protection agency" to look into the matter. Schultz testified that he knew about an investigation of Sandusky that occurred in 1998, that the "child protection agency" had done, and he testified that he believed this same agency was investigating the 2002 report by the graduate assistant. Schultz acknowledged that there were similarities between the 1998 and 2002 allegations, both of which involved minor boys in the football showers with Sandusky behaving in a sexually inappropriate manner. Schultz testified that the 1998 incident was reviewed by the University Police and "the child protection agency" with the blessing of then-University counsel Wendell Courtney. Courtney was then and remains counsel for The Second Mile. Schultz confirmed that University President Graham Spanier was apprised in 2002 that a report of an

incident involving Sandusky and a child in the showers on campus had been reported by an employee. Schultz testified that Spanier approved the decision to ban Sandusky from bringing children into the football locker room and the decision to advise The Second Mile of the 2002 incident.

Although Schultz oversaw the University Police as part of his position, he never reported the 2002 incident to the University Police or other police agency, never sought or reviewed a police report on the 1998 incident and never attempted to learn the identity of the child in the shower in 2002. No one from the University did so. Schultz did not ask the graduate assistant for specifics. No one ever did. Schultz expressed surprise upon learning that the 1998 investigation by University Police produced a lengthy police report. Schultz said there was never any discussion between himself and Curley about turning the 2002 incident over to any police agency. Schultz retired in June 2009 but currently holds the same position as a senior vice president with Penn State, on an interim basis.

Graham Spanier testified about his extensive responsibilities as President of Penn State and his educational background in sociology and marriage and family counseling. He confirmed Curley and Schultz's respective positions of authority with the University. He testified that Curley and Schultz came to him in 2002 to report an incident with Jerry Sandusky that made a member of Curley's staff "uncomfortable." Spanier described it as "Jerry Sandusky in the football building locker area in the shower [ ] with a younger child and that they were horsing around in the shower." Spanier testified that even in April, 2011, he did not know the identity of the staff member who had reported the behavior. Spanier denied that it was reported to him as an incident that was sexual in nature and acknowledged that Curley and Schultz had not indicated any plan to report the matter to any law enforcement authority, the Commonwealth of

Pennsylvania Department of Public Welfare or any appropriate county child protective services agency. Spanier also denied being aware of a 1998 University Police investigation of Sandusky for incidents with children in football building showers.

Department of Public Welfare and Children and Youth Services local and state records were subpoenaed by the Grand Jury; University Police records were also subpoenaed. The records reveal that the 2002 incident was never reported to any officials, in contravention of Pennsylvania law.

Sandusky holds emeritus status with Penn State. In addition to the regular privileges of a professor emeritus, he had an office and a telephone in the Lasch Building. The status allowed him access to all recreational facilities, a parking pass for a vehicle, access to a Penn State account for the internet, listing in the faculty directory, faculty discounts at the bookstore and educational privileges for himself and eligible dependents. These and other privileges were negotiated when Sandusky retired in 1999. Sandusky continued to use University facilities as per his retirement agreement. As a retired coach, Sandusky had unlimited access to the football facilities, including the locker rooms. Schultz testified that Sandusky retired when Paterno felt it was time to make a coaching change and also to take advantage of an enhanced retirement benefit under Sandusky's state pension.

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Both the graduate assistant and Curley testified that Sandusky himself was not banned from any Penn State buildings and Curley admitted that the ban on bringing children to the campus was unenforceable.

The Grand Jury finds that portions of the testimony of Tim Curley and Gary Schultz are not credible.

The Grand Jury concludes that the sexual assault of a minor male in 2002 should have been reported to the Pennsylvania Department of Public Welfare and/or a law enforcement agency such as the University Police or the Pennsylvania State Police. The University, by its senior staff, Gary Schultz, Senior Vice President for Finance and Business and Tim Curley, Athletic Director, was notified by two different Penn State employees of the alleged sexual exploitation of that youth. Pennsylvania's mandatory reporting statute for suspected child abuse is located at 23 Pa.C.S. §6311 (Child Protective Services Law) and provides that when a staff member reports abuse, pursuant to statute, the person in charge of the school or institution has the responsibility and legal obligation to report or cause such a report to be made by telephone and in writing within 48 hours to the Department of Public Welfare of the Commonwealth of Pennsylvania. An oral report should have been made to Centre County Children and Youth Services but none was made. Nor was there any attempt to investigate, to identify Victim 2 or to protect that child or any others from similar conduct, except as related to preventing its re-occurrence on University property. The failure to report is a violation of the law which was graded a summary offense in 2002, pursuant to 23 Pa.C.S. §6319.<sup>2</sup>

The Grand Jury finds that Tim Curley made a materially false statement under oath in an official proceeding on January 12, 2011, when he testified before the 30<sup>th</sup> Statewide Investigating Grand Jury, relating to the 2002 incident, that he was not told by the graduate assistant that Sandusky was engaged in sexual conduct or anal sex with a boy in the Lasch Building showers.

Furthermore, the Grand jury finds that Gary Schultz made a materially false statement under oath in an official proceeding on January 12, 2011, when he testified before the 30<sup>rd</sup> Statewide Investigating Grand Jury, relating to the 2002 incident that the allegations made by the

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<sup>2</sup> The grading of the failure to report offense was upgraded from a summary offense to a misdemeanor of the third degree in 2006, effective May 29, 2007.

graduate assistant were "not that serious" and that he and Curley "had no indication that a crime had occurred."

### VICTIM 3

Victim 3, now age 24, met Sandusky through The Second Mile in the summer of 2000, when he was between seventh and eighth grade. The boy met Sandusky during his second year in the program. Sandusky began to invite Victim 3 to go places with him. Victim 3 was invited to Sandusky's home for dinner, to hang out, walk the family dogs and to go to Penn State football games and to Holuba Hall and the gym. When Victim 3 went to the gym with Sandusky, they would exercise and then shower. He recalls feeling uncomfortable and choosing a shower at a distance from Sandusky. Sandusky then made him feel bad about showering at a distance from him, so Victim 3 moved closer. Sandusky initiated physical contact in the shower with Victim 3 by patting him, rubbing his shoulders, washing his hair and giving him bear hugs. These hugs would be both face to face and with Sandusky's chest to Victim 3's back. Victim 3 said that on at least one occasion, Sandusky had an erection when he bear hugged Victim 3 from behind. He also recalled that when he slept over at Sandusky's residence, he slept in the basement bedroom. He testified that Sandusky would come into the bedroom where he was lying down. He sometimes said he was going to give Victim 3 a shoulder rub; sometimes he would blow on Victim 3's stomach; other times he tickled Victim 3. Sandusky would rub the inside of Victim 3's thigh when he tickled him. On two occasions Victim 3 recalls that Sandusky touched Victim 3's genitals through the athletic shorts Victim 3 wore to bed. Victim 3 would roll over on his stomach to prevent Sandusky from touching his genitals.

Victim 3 knew Victim 4 to spend a great deal of time with Sandusky.

#### VICTIM 4

The investigation revealed the existence of Victim 4, a boy who was repeatedly subjected to Involuntary Deviate Sexual Intercourse and Indecent Assault at the hands of Sandusky. The assaults took place on the Penn State University Park campus, in the football buildings, at Toftrees Golf Resort and Conference Center ("Toftrees") in Centre County, where the football team and staff stayed prior to home football games and at bowl games to which he traveled with Sandusky. Victim 4, now age 27, was a Second Mile participant who was singled out by Sandusky at the age of 12 or 13, while he was in his second year with The Second Mile program in 1996 or 1997. He was invited to a Sandusky family picnic at which there were several other non-family members and Sandusky's adopted children. Victim 4 described that on that first outing, Sandusky had physical contact with him while swimming, which Victim 4 described as testing "how [Victim 4] would respond to even the smallest physical contact." Sandusky engaged Victim 4 in workouts or sports and then showered with him at the old East locker rooms across from Holuba Hall, the football practice building. Sandusky initiated physical contact with Victim 4 by starting a "soap battle"--throwing a handful of soap at the boy and from there, the fight turned into wrestling in the shower. Victim 4 remembers indecent contact occurring many times, both in the shower and in hotel rooms at Toftrees.

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Victim 4 became a fixture in the Sandusky household, sleeping overnight and accompanying Sandusky to charity functions and Penn State football games. Victim 4 was listed, along with Sandusky's wife, as a member of Sandusky's family party for the 1998 Outback Bowl and the 1999 Alamo Bowl. He traveled to and from both bowl games with the football team and other Penn State staff, coaches and their families, sharing the same accommodations. Victim 4 would frequently stay overnight at Toftrees with Sandusky and the football team prior to home



games; Sandusky's wife was never present at Toftrees when Victim 4 stayed with Sandusky. This was where the first indecent assaults of Victim 4 occurred. Victim 4 would attend the pre-game banquet and sit with Sandusky at the coaches' table. Victim 4 also accompanied Sandusky to various charity golf outings and would share a hotel room with him on those occasions.

Victim 4 stated that Sandusky would wrestle with him and maneuver him into a position in which Sandusky's head was at Victim 4's genitals and Victim 4's head was at Sandusky's genitals. Sandusky would kiss Victim 4's inner thighs and genitals. Victim 4 described Sandusky rubbing his genitals on Victim 4's face and inserting his erect penis in Victim 4's mouth. There were occasions when this would result in Sandusky ejaculating. He testified that Sandusky also attempted to penetrate Victim 4's anus with both a finger and his penis. There was slight penetration and Victim 4 resisted these attempts. Sandusky never asked to do these things but would simply see what Victim 4 would permit him to do. Sandusky did threaten to send him home from the Alamo Bowl in Texas when Victim 4 resisted his advances. Usually the persuasion Sandusky employed was accompanied by gifts and opportunities to attend sporting and charity events. He gave Victim 4 dozens of gifts, some purchased and some obtained from various sporting goods vendors such as Nike and Airwalk. Victim 4 received clothes, a snowboard, Nike shoes, golf clubs, ice hockey equipment and lessons, passes for various sporting events, football jerseys, and registration for soccer camp. Sandusky even guaranteed Victim 4 he could be a walk-on player at Penn State. Victim 4 was in a video made about linebackers that featured Sandusky, and he appeared with him in a photo accompanying an article about Sandusky in Sports Illustrated.

The Penn State football program relocated to the Lasch Football Building in 1999 and that facility had a sauna. Victim 4 reported that after the move, most of the sexual conduct that did not occur in a hotel room occurred in the sauna, as the area is more secluded.

Victim 4 remembers Sandusky being emotionally upset after having a meeting with Joe Paterno in which Paterno told Sandusky he would not be the next head coach at Penn State and which preceded Sandusky's retirement. Sandusky told Victim 4 not to tell anyone about the meeting. That meeting occurred in May, 1999.

Eventually, Victim 4 began to intentionally distance himself from Sandusky, not taking his phone calls and at times even hiding in closets when Sandusky showed up at Victim 4's home. Victim 4 had a girlfriend, of whom Sandusky did not approve. Sandusky tried to use guilt and bribery to regain time with Victim 4. Victim 4 had begun to smoke cigarettes and had Sandusky buy them for him. Victim 4 also said that Sandusky once gave him \$50 to buy marijuana at a location known to Victim 4. Sandusky drove there at Victim 4's direction and Victim 4 smoked the marijuana in Sandusky's car on the ride home. This was when Victim 4 was trying to distance himself from Sandusky because he wanted no more sexual contact with him.

#### VICTIM 5

Victim 5, now age 22, met Sandusky through The Second Mile in 1995 or 1996, when he was a 7 or 8 year old boy, in second or third grade. Sometime after their initial meeting at a Second Mile camp at Penn State, Sandusky called to invite the boy to a Penn State football game. Victim 5 was thrilled to attend. Sandusky picked him up at home and then Sandusky drove to pick up Victim 6. There were a couple of other kids in the car. The boys were left at Holuba Hall by Sandusky. They attended the Sandusky family tailgate and the football game. This

became a pattern for Victim 5, who attended perhaps as many as 15 football games as Sandusky's guest. Victim 5 also traveled with Sandusky to watch other college football games. Victim 5 remembers that Sandusky would often put his hand on Victim 5's left leg when they were driving in Sandusky's car, any time Victim 5 was in the front seat.

Victim 5 was taken to the Penn State football locker rooms one time by Sandusky. Sandusky put his hand on Victim 5's leg during the ride to the locker room. To the best of his recollection, this occurred when he was 8 to 10 years old, sometime during 1996-1998. The locker room was the East Area Locker rooms, next to Holuba Hall. No one was present in the locker rooms. Victim 5 was sweaty from a brief period of exercise and then Sandusky took him in the sauna and "pushed" Victim 5 "around a little bit". Looking back on it as an adult, Victim 5 says it was inappropriate. Sandusky would press his chest and body up against Victim 5's back and then push him away. All the contact was initiated by Sandusky. Then Sandusky said they needed to shower. Victim 5 was uncomfortable because he had never been naked in front of anyone who wasn't a family member. So he turned his back to Sandusky and chose a shower that was a distance away from where Sandusky was showering. Victim 5 looked back over his shoulder and saw that Sandusky was looking at him and that Sandusky had an erection. Victim 5 did not understand the significance of this at the time but still averted his gaze because he was uncomfortable. The next thing he knew, Sandusky's body touched Victim 5 from behind and Sandusky was rubbing Victim 5's arms and shoulders. Victim 5 crept forward and so did Sandusky. Victim 5 then took another step, this time to the right, and Sandusky pinned Victim 5 up against a wall in the corner. Sandusky then took Victim 5's hand and placed it on his erect penis. Victim 5 was extremely uncomfortable and pulled his hand away and slid by Sandusky.

Victim 5 walked out of the shower and dried himself off and got dressed. Sandusky never touched him again. Victim 5 thinks that he did not get invited to any football games after that.

#### VICTIM 6

Victim 6, who is now 24 years old, was acquainted with Victim 5 and another young boy in The Second Mile program, B.K.; their interaction with Sandusky overlapped. Victim 6 was referred to the Second Mile program by a school counselor. He met Sandusky at a Second mile picnic at Spring Creek Park when he was seven or eight years old, in 1994 or 1995. After Sandusky interacted with Victim 6 after a skit at the picnic, Sandusky telephoned to invite Victim 6 to tailgate and attend a football game with some other boys. He was picked up by Sandusky. Victim 5, B.K., and other boys were present. They went to Holuba Hall, a football practice building on the Penn State campus, and were left there by Sandusky. They threw footballs around until it was time for them to walk to the tailgate hosted by Sandusky's family and then attended the football game. Victim 6 recalls this pattern repeating many times.

Victim 6 recalls being taken into the locker room next to Holuba Hall at Penn State by Sandusky when he was 11 years old, in 1998. Sandusky picked him up at his home, telling him he was going to be working out. As they were driving to the University, Sandusky put his right hand upon Victim 6's left thigh several times. When they arrived, Sandusky showed Victim 6 the locker rooms and gave him shorts to put on, even though he was already dressed in shorts. They then lifted weights for about 15 or 20 minutes. They played "Polish bowling" or "Polish soccer", a game Sandusky had invented, using a ball made out of tape and rolling it into cups. Then Sandusky began wrestling with Victim 6, who was much smaller than Sandusky. Then Sandusky said they needed to shower, even though Victim 6 was not sweaty. Victim 6 felt awkward and tried to go to a shower some distance away from Sandusky but Sandusky called him over, saying

he had already warmed up a shower for the boy. While in the shower, Sandusky approached the boy, grabbed him around the waist and said, "I'm going to squeeze your guts out." Sandusky lathered up the boy, soaping his back because, he said, the boy would not be able to reach it. Sandusky bear-hugged the boy from behind, holding the boy's back against his chest. Then he picked him up and put him under the showerhead to rinse soap out of his hair. Victim 6 testified that the entire shower episode felt very awkward. No one else was around when this occurred. Looking back on it as an adult, Victim 6 says Sandusky's behavior towards him as an 11 year old boy was very inappropriate.

When Victim 6 was dropped off at home, his hair was wet and his mother immediately questioned him about this and was upset to learn the boy had showered with Sandusky. She reported the incident to University Police who investigated. After a lengthy investigation by University Police Detective Ronald Shreffler, the investigation was closed after then-Centre County District Attorney Ray Gricar decided there would be no criminal charges. Shreffler testified that he was told to close the investigation by the director of the campus police, Thomas Harmon. That investigation included a second child, B.K., also 11, who was subjected to nearly identical treatment in the shower as Victim 6, according to Detective Schreffler.

Detective Schreffler testified that he and State College Police Department Detective Ralph Ralston, with the consent of the mother of Victim 6, eavesdropped on two conversations the mother of Victim 6 had with Sandusky on May 13, 1998, and May 19, 1998. The mother of Victim 6 confronted Sandusky about showering with her son, the effect it had on her son, whether Sandusky had sexual feelings when he hugged her naked son in the shower and where Victim 6's buttocks were when Sandusky hugged him. Sandusky said he had showered with other boys and Victim 6's mother tried to make Sandusky promise never to shower with a boy

again but he would not. She asked him if his "private parts" touched Victim 6 when he bear-hugged him. Sandusky replied, "I don't think so...maybe." At the conclusion of the second conversation, after Sandusky was told he could not see Victim 6 anymore, Sandusky said, "I understand. I was wrong. I wish I could get forgiveness. I know I won't get it from you. I wish I were dead." Detective Ralston and the mother of Victim 6 confirm these conversations.

Jerry Lauro, an investigator with the Pennsylvania Department of Public Welfare, testified that during the 1998 investigation, Sandusky was interviewed on June 1, 1998, by Lauro and Detective Schreffler. Sandusky admitted showering naked with Victim 6, admitted to hugging Victim 6 while in the shower and admitted that it was wrong. Detective Schreffler advised Sandusky not to shower with any child again and Sandusky said that he would not.

The Grand Jury was unable to subpoena B.K. because he is in the military and is stationed outside the United States.

#### VICTIM 7

Victim 7, now 26 years old, met Sandusky through the Second Mile program, to which he was referred by a school counselor at about the age of 10, in 1994. When Victim 7 had been in the program for a couple of years, Sandusky contacted Victim 7's mother and invited Victim 7 to a Penn State football game. He would also attend Sandusky's son's State College High School football games with Sandusky. Victim 7 enjoyed going on the field at Penn State games, interacting with players and eating in the dining hall with the athletes. Victim 7 would stay overnight at Sandusky's home on Friday nights before the home games and then go to the games with him. Sometimes they would go out for breakfast and would attend coaches meetings. Victim 6 was also a part of this group of boys. He knew B.K. and several other boys that were in Sandusky's circle.

Victim 7 testified that Sandusky made him uncomfortable when he was a young boy. He described Sandusky putting his hand on Victim 7's left thigh when they were driving in the car or when they would pull into his garage. Victim 7 eventually reacted to this by sitting as far away from Sandusky as he could in the front seat.

He also described more than one occasion on which Sandusky put his hands down the waistband of Victim 7's pants. Sandusky never touched any private parts of Victim 7. Victim 7 would always slide away because he was very uncomfortable with Sandusky's behavior. Victim 7 described Sandusky cuddling him when he stayed at his home, lying behind him with his arm around the boy. Sandusky also bear-hugged Victim 7 and cracked his back. He also took Victim 7 to Holuba Hall to work out and then to the East Area Locker rooms to shower. Victim 7 was very uncomfortable with this shared showering. Sandusky would tell Victim 7 to shower next to him even though there were multiple other showerheads in the locker room. Victim 7 testified that he has a "blurry memory" of some contact with Sandusky in the shower but is unable to recall it clearly. Victim 7 had not had contact with Sandusky for nearly two years but was contacted by Sandusky and separately by Sandusky's wife and another Sandusky friend in the weeks prior to Victim 7's appearance before the Grand Jury. The callers left messages saying the matter was very important. Victim 7 did not return these phone calls.

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#### VICTIM 8

In the fall of 2000, a janitor named James "Jim" Calhoun ("Jim") observed Sandusky in the showers of the Lasch Building with a young boy pinned up against the wall, performing oral sex on the boy. He immediately made known to other janitorial staff what he had just witnessed.

Fellow Office of Physical Plant employee Ronald Petrosky was also working that evening and recalls that it was football season of 2000 and it was a Thursday or Friday evening,

because the football team was away for its game. Petrosky, whose job it was to clean the showers, first heard water running in the assistant coaches' shower room. He then saw that two people were in the assistant coaches' shower room. He could only see two pairs of feet; the upper bodies were blocked. Petrosky waited for the two persons to exit the shower so he could clean it. He later saw Jerry Sandusky exit the locker room with a boy, who he described as being between the ages of 11 and 13. They were carrying gym bags and their hair was wet. Petrosky said good evening and was acknowledged by Sandusky and the boy. He noted that the hallway in the Lasch building at that point is long and that Sandusky took the boy's hand and the two of them walked out hand in hand. Petrosky began to clean the shower that Sandusky and the boy had vacated. As he worked, Jim approached him. Petrosky described Jim as being upset and crying. Jim reported that he had seen Sandusky, whose name was not known to him, holding the boy up against the wall and licking on him. Jim said he had "fought in the [Korean] war....seen people with their guts blowed out, arms dismembered...I just witnessed something in there I'll never forget." And he described Sandusky performing oral sex on the boy. Petrosky testified that Jim was shaking and he and his fellow employees feared Jim might have a heart attack. Petrosky testified that all the employees working that night except Witherite were relatively new employees. In discussions held later that shift, the employees expressed concern that if they reported what Jim had seen, they might lose their jobs. Jim's fellow employees had him tell Jay Witherite what he had seen.

Jay Witherite was Jim's immediate supervisor. Witherite testified that Jim was "very emotionally upset", "very distraught", to the point that Witherite "was afraid the man was going to have a heart attack or something the way he was acting." Jim reported to Witherite that he had observed Sandusky performing oral sex on the boy in the showers. Witherite tried to calm Jim,



who was cursing and remained upset throughout the shift. Witherite told him to whom he should report the incident, if he chose to report it.

Witherite testified that later that same evening, Jim found him and told him that the man he had seen in the shower with the young boy was sitting in the Lasch building parking lot, in a car. Witherite confirmed visually that it was Sandusky who was sitting in his car in the parking lot. Witherite says that this was between 10:00 p.m. and 12:30 a.m. Petrosky also saw Sandusky drive very slowly through the parking lot about 2 to 3 hours after the incident was reported to him by Jim, at approximately 11:30 p.m. to 12:00 a.m. Petrosky recognized Sandusky in his vehicle. Petrosky testified that Sandusky drove by another time, about two hours later, again driving by very slowly but not stopping. The second drive-by was between 2:00 and 3:00 a.m. Petrosky testified that Sandusky did not enter the building either time. The area is well lit and the coaches' cars were known to Petrosky.

Jim was a temporary employee at the Lasch Building, working there for approximately 8 months. No report was ever made by Jim Calhoun. Jim presently suffers from dementia, resides in a nursing home and is incompetent to testify. Victim 8's identity is unknown.

### RECOMMENDATION OF CHARGES

Based upon the evidence that we have obtained and considered, which establishes a *prima facie* case, we, the members of the Thirty-Third Statewide Investigating Grand Jury recommend that the Attorney General or her designee institute criminal proceedings against the persons listed below and charge them with the following offenses:

#### Gerald A. Sandusky

Involuntary deviate sexual intercourse, 18 Pa.C.S. §3123(a)(7)(F-1)(7 counts)

Aggravated indecent assault, 18 Pa.C.S. § 3125 (a)(8)(F-2)

Indecent assault, 18 Pa.C.S. §3126(a)(7)(8)(F-3; M-1; M-2)(8 counts)

Attempt to commit indecent assault, 18 Pa C.S. §901/3126(a)(8)(M-2)

Unlawful contact with a minor, 18 Pa.C.S. §6318(a)(1)(5)(F-1, F-2, F-3)(8 counts)

Corruption of minors, 18 Pa.C.S. §6301(a)(ii)(F-3)(8 counts)

Endangering welfare of children, 18 Pa.C.S. §4304(F-3, M-1)(8 counts)

#### Tim Curley

Perjury, 18 Pa.C.S. §4902 (F-3)

Penalties for failure to report or to refer, 23 Pa.C.S. §6319 (S)

#### Gary Schultz

Perjury, 18 Pa.C.S. §4902 (F-3)

Penalties for failure to report or to refer, 23 Pa.C.S. §6319 (S)

# Appendix Q

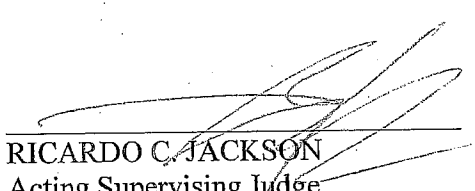
IN THE COURT OF COMMON PLEAS  
DAUPHIN COUNTY, PENNSYLVANIA

IN RE: : SUPREME COURT OF PENNSYLVANIA  
: 217 M.D. MISC. DKT. 2010  
THE THIRTY-THIRD STATEWIDE :  
: DAUPHIN COUNTY COMMON PLEAS  
INVESTIGATING GRAND JURY : NO. 1325 M.D. 2010  
:  
: NOTICE NO. 1

**ORDER SEALING PRESENTMENT NO. 13**

The Court has accepted Presentment No. 13. This presentment shall be sealed and no person shall disclose a return of the Presentment except when necessary for issuance and execution of process, or as otherwise directed or permitted by order of the supervising judge.

SO ORDERED this 7 day of December, 2011.

  
RICARDO C. JACKSON  
Acting Supervising Judge  
The Thirty-Third Statewide Investigating  
Grand Jury

IN THE COURT OF COMMON PLEAS  
DAUPHIN COUNTY, PENNSYLVANIA

IN RE: : SUPREME COURT OF PENNSYLVANIA  
: 217 M.D. MISC. DKT. 2010  
THE THIRTY-THIRD STATEWIDE :  
: DAUPHIN COUNTY COMMON PLEAS  
INVESTIGATING GRAND JURY : NO. 1325 M.D. 2010  
:  
: NOTICE NO. 1


**ORDER ACCEPTING PRESENTMENT NO. 13**

1. The Court finds Presentment No. 13 of the Thirty-Third Statewide Investigating Grand Jury is within the authority of said Grand Jury and is in accordance with the provisions of the Investigating Grand Jury Act, 42 Pa.C.S. § 4541, et seq. Accordingly, this Presentment is accepted by the Court.

2. The County for conducting the trial of all charges pursuant to this Presentment shall be Centre County.

3. The Attorney General of the Commonwealth of Pennsylvania, or her designee, is hereby authorized to prosecute as recommended in this Presentment by instituting appropriate criminal proceedings in the aforesaid County.

SO ORDERED this 7<sup>th</sup> day of December, 2011.

  
\_\_\_\_\_  
RICARDO C. JACKSON  
Acting Supervising Judge  
The Thirty-Third Statewide Investigating  
Grand Jury

## INTRODUCTION

We, the members of the Thirty-Third Statewide Investigating Grand Jury, having received and reviewed evidence regarding violations of the Pennsylvania Crimes Code and related laws, occurring in Centre County, Pennsylvania, pursuant to Notice of Submission of Investigation No. 1, do hereby make the following findings of fact, conclusions and recommendation of charges.

## FINDINGS OF FACT

This investigation commenced as a result of allegations of sexual assaults of minor male children by Gerald R. Sandusky ("Sandusky") occurring over a period of years while Sandusky was a football coach with the Pennsylvania State University ("Penn State") football team and after he retired from coaching. The Thirty-third Statewide Investigating Grand Jury issues this presentment in furtherance of its ongoing investigation of this matter and hereby incorporates all of its previous findings from Presentment No. 12 herein as if fully set forth.

## VICTIM 9

Victim No. 9 is currently an 18 year old male who met Sandusky through his childhood participation in The Second Mile Program. Victim No. 9 began participating in activities through The Second Mile Program in approximately 2004. From 2004 to 2008, Victim 9 participated in a number of Second Mile camps and activities.

Victim 9 testified that during his second summer attending Second Mile camps, he met Sandusky while participating in a pool activity as part of the Second Mile camp. Sandusky approached him, asked him about his life and spoke with him about hobbies and activities that

interested the child. After speaking for a while, Sandusky expressed an interest in spending time in the future with Victim 9. Sandusky asked for his phone number and eventually called Victim 9's mother and made arrangements to spend additional time with him. At the time of this initial contact, Victim 9 would have been 11 or 12 years old.

Subsequently, Sandusky took Victim 9 to numerous Penn State University football games. Over time, he also gave Victim 9 a number of gifts and even provided him with money. Eventually, Sandusky would also go directly to Victim 9's school and pick him up on Friday afternoons. Victim 9 would often spend overnights with Sandusky and be returned to his home, following these visits, by Sandusky.

Victim 9 testified that Sandusky was a very affectionate person. The victim testified "I took it at first he was just a nice guy, like he went to church every weekend, his kids would come over every once in a while and stuff. And after a while, like, he got used to me and stuff and started getting further and further, wanting -- to touchy feely". He further stated that, in the beginning, Sandusky started out with hugging, rubbing, cuddling and tickling. These contacts, initially viewed by the victim as simple acts of affection, escalated to sexual assaults.

Victim 9 testified that, during his overnight visits with Sandusky, he always stayed in a bedroom located in the basement of the Sandusky home. He stated that there were a number of bedrooms located elsewhere in the home and that a least two of these were not occupied. Victim 9 was always, without exception, told to sleep in the basement bedroom. Victim 9 testified that Sandusky specifically told him to stay in the basement unless otherwise directed by Sandusky. He ate meals in the basement and the food would be brought to him by Sandusky. Victim 9 testified that he spent overnights in the Sandusky home on numerous occasions between the ages of 12 and 15. He further testified that despite being in the Sandusky home on these numerous

occasions, he had "barely any" contact with Sandusky's wife during his visits. He specifically testified that she "never" came into the basement when he was there.

Victim 9 described a pattern of sexual assaults by Sandusky over a period of years. Many of these assaults occurred in the basement bedroom of Sandusky's residence. The victim testified that Sandusky forced him to perform oral sex on numerous occasions. Sandusky also attempted to engage in anal penetration of Victim 9 on at least sixteen occasions and at times did penetrate him. The victim testified that on at least one occasion he screamed for help, knowing that Sandusky's wife was upstairs, but no one ever came to help him.

Victim 9 also testified that Sandusky would take him to a hotel in the State College area. At this hotel Sandusky would utilize the swimming pool, Jacuzzi and work out equipment. These visits often occurred at times when the pool was not occupied. Victim 9 testified that on one of these visits, when only he and Sandusky were in the pool, Sandusky exposed his erect penis to the victim. He stated that at other times Sandusky had him touch his erect penis and perform oral sex on him during some of these visits to the hotel.

Sandusky frequently told him that he loved and cared for him. He also told the victim to keep these things a secret.

Victim 9 contacted the Pennsylvania State Police following the public disclosure of Sandusky's arrest pursuant to Presentment Number 12.

#### VICTIM 10

Victim 10 testified that he became involved with The Second Mile in 1997 at the age of ten. He describes himself as a troubled child who was referred to The Second Mile at the recommendation of a counselor because he was experiencing difficulties in his home life.



Jerry Sandusky began to take an interest in Victim 10 after his first summer in the Second Mile camp program at Penn State. Sandusky called Victim 10's mother to invite Victim 10 to a Penn State football game in the fall of 1997. Sandusky picked Victim 10 up at his home in Centre County and took him to Sandusky's home for a meal and gathering with other children. He and other boys then went to Holuba Hall where they played football until it was time to go to the Penn State football game. Victim 10 testified that he went to several games and attended meals at the Sandusky home and tailgates given by the Sanduskys. Victim 10 says he never spent the night at Sandusky's residence but did spend most of his time in the basement when he was there.

Victim 10 described that Sandusky would wrestle with him and eventually, during one of those wrestling sessions, Sandusky pulled the boy's gym shorts down and performed oral sex on him. The boy was startled by the act. He testified that Sandusky repeated this behavior on several subsequent occasions, wrestling with him in the basement and then performing oral sex on him. Victim 10 testified that towards the end of their relationship, Sandusky asked the boy to perform oral sex on him and Victim 10 did so. Victim 10 also described Sandusky cuddling with him on the floor and that he would rub the boy's body with his hands.

Victim 10 described how Sandusky indecently touched him in the outdoor pool on campus. Sandusky would swim underneath Victim 10 and put Victim 10 up on his shoulders. While doing this, Sandusky would slide his hands up underneath Victim 10's swimming suit, touching his genitals before picking him up. This happened several times.

Sandusky took Victim 10 shopping, buying him gifts of clothes and shoes. Sandusky frequently told the boy that he loved him.

Victim 10 says that the relationship ended after an incident in Sandusky's vehicle. Sandusky was driving his car and Victim 10 was his front seat passenger. Sandusky opened his pants, exposing his penis and indicated that he wanted Victim 10 to perform oral sex on him. Victim 10 refused and Sandusky was displeased with his refusal. Victim 10 testified that after that, he told his foster mother he did not wish to spend any more time with Sandusky.

Victim 10, following the initial arrest of Sandusky, contacted the Office of Attorney General through its Child Exploitation Tip line on the Office of Attorney General Website to report his victimization.

### RECOMMENDATION OF CHARGES

Based upon the evidence that we have obtained and considered, which establishes a *prima facie* case, we, the members of the Thirty-Third Statewide Investigating Grand Jury recommend that the Attorney General or her designee institute criminal proceedings against the persons listed below and charge them with the following offenses:

Gerald A. Sandusky

Involuntary deviate sexual intercourse, 18 Pa.C.S. § 3123(a)(7) (F-1) (4 counts)

Indecent assault, 18 Pa.C.S. § 3126(a)(7), (8) (F-3) (2 counts)

Unlawful contact with a minor, 18 Pa.C.S. § 6318(a)(1)(5) (M-1) (2 counts)

Corruption of minors, 18 Pa.C.S. § 6301(a)(ii) (F-3) (2 counts)

Endangering welfare of children, 18 Pa.C.S. § 4304 (F-3, M-1) (2 counts)

# Responses

Attached here are the written responses submitted by certain individuals who were provided either the entire report or the sections of the report in which they are mentioned and who elected to respond, in accordance with their rights under the decision in *Simon v. Commonwealth*, 659 A.2d 631 (Pa. Cmwlth. Ct. 1995). The responses are attached in the order in which they were received. While we have provided these individuals with the opportunity to respond and have attached their responses to this report, the viewpoints expressed in each response are those of the author of that response and are not endorsed by me or by the Office of Attorney General. All changes to the body of the report resulting from the responses are noted by asterisk footnote.



**FRANCE  
PASKEY**

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OF COUNSEL  
ANDREW F. KAGEN

June 10, 2014

Geoff Moulton  
Special Deputy Attorney General  
Office of the Attorney General  
Strawberry Square, 16th Floor  
Harrisburg, PA 17120

**RE: Sandusky Case Review**

Dear Attorney Moulton:

My client, Attorney Jonelle Eshbach, and I thank you and the Office of Attorney General for granting us the opportunity to respond to the written findings and recommendations authored by you regarding the Sandusky child sexual abuse investigation and prosecution.

Attorney Eshbach and I both believe that the factual history contained in your report is an unbiased representation of how the investigation into this matter progressed. On balance, we believe your factual narrative clearly demonstrates that Attorney Eshbach served as the aggressive, dedicated prosecutor that has been the hallmark of her entire professional career. Her only objective was, and remains, to be a zealous advocate of justice for those victimized by the actions of a now-convicted child abuser, Gerald Sandusky. Although we cannot agree with all of the conclusions contained in your report, we can agree that it is important to learn best practices from a review of any criminal investigation and prosecution. There is no such thing as the perfect investigation and prosecution, particularly in the unforgiving light of hindsight.

Although reasonable minds may differ on the pace of the Sandusky investigation, Attorney Eshbach, as an experienced prosecutor, maintains that a conviction in a child sexual abuse case "can be obtained based solely upon the credible statements and/or testimony of the child victim." (see National Center for Prosecution of Child Abuse, 2004, p. 178). For that reason, Attorney Eshbach strongly advocated, as reflected in the multiple emails noted in your report, for a prompt presentment to the Grand Jury so Mr. Sandusky could be charged. Ultimately, the decision to charge Mr. Sandusky was not hers to make. Likewise, the ability to protest the decision not to charge Mr.

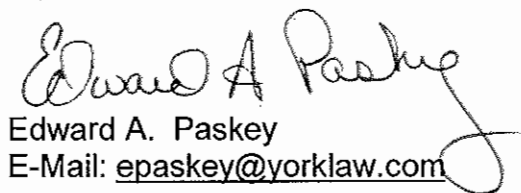
Sandusky in 2010 was not hers. Even though Attorney Eshbach's persistence in charging Mr. Sandusky in 2010 may have generated angst for some in the Office of Attorney General (see attached email dated July 14, 2010), having the benefit of hindsight does not change her position.

Finally, we are saddened that some individuals will choose to politicize the issues raised in your report rather than focusing their energy on what truly matters: the best interests of our children. We believe that reports of incidents involving sexual assault will increase because of this case and other high profile cases involving children. Using the issues and controversies involved in the Jerry Sandusky case to forward any personal, organizational or political agenda is shameful. The victims of Jerry Sandusky, as well as past and future generations of sexual assault victims, deserve so much better than that.

Should you have any questions, do not hesitate to contact me.

Sincerely,

FRANCEPASKEY

A handwritten signature in cursive script that reads "Edward A. Paskey". The signature is written in dark ink and is positioned above the printed name and email address.

Edward A. Paskey

E-Mail: [epaskey@yorklaw.com](mailto:epaskey@yorklaw.com)

EAP:cjb

Enclosure

**Moulton, Jr., Geoffrey**

---

**From:** Sheetz, Richard A.  
**Sent:** Wednesday, July 14, 2010 11:28 AM  
**To:** Ryan, Jr. William H.  
**Subject:** Fw: Presentment

FYI. Maybe we can talk to Tom about this on Friday, too? (And, we don't like Jonelle's tone on this.)

---

**From:** Eshbach, Jonelle H.  
**To:** Sheetz, Richard A.; Fina, Frank G.; Carusone, Christopher D.  
**Sent:** Wed Jul 14 10:57:52 2010  
**Subject:** Presentment

The grand jury asked me again, as they have for the last 4 months, why we don't have that particular presentment for them. They are very anxious to approve it. Likewise, I continue to get calls and mail from the victim's mother and therapist. Can someone please tell me what the hold up is?

Jonelle







## MARK R ZIMMER

---

Attorney and Counselor At Law

June 11, 2014

Geoff Moulton  
Special Deputy Attorney General  
Office of the Attorney General  
Strawberry Square, 16<sup>th</sup> Floor  
Harrisburg, PA 17120

*Sent via Email with Hard Copy to Follow*

Dear Special Deputy Attorney General Moulton:

I am writing this on behalf of my client Governor Thomas Corbett, former Attorney General. He and I have read the Report. He appreciates the opportunity afforded him by the Court and you to read and comment on the Report. He wishes to make no formal response to the Report at this time.

The recommendations contained within the Report are more properly discussed in public. Once they are made public, he may address those recommendations.

Very truly yours,

A handwritten signature in cursive script that reads "Mark R Zimmer".

Mark R Zimmer  
MRZ:mm

cc: Governor Thomas Corbett

[zimmeratty.com](http://zimmeratty.com)

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**Response to**  
**“Report to the Attorney General on the Investigation of Gerald A. Sandusky”**  
**June 11, 2014**

**Summary**

We have reviewed the Report generated by Special Deputy Attorney General Geoffrey Moulton, Jr., and while we admit to having never respected his task, or why it exists, we will for purposes of our response take at face value his protestations that he is not an aid of a political agenda. And we acknowledge that the Report does arrive at a reasonable, if limited, understanding of the falsity of the unwarranted criticism leveled at the Sandusky investigation. We must, however, correct some of its errors of fact, and unsupported assertions and conclusions.

But first, in regard to our acknowledgment, we are gratified that the Report clearly and conclusively rebuts the claims that, in fact, led to the existence of the Report itself. The Report makes clear that all of the investigative choices made were properly motivated and clearly supportable, and that they were arrived at by use of the sound discretion of career law enforcement professionals. We applaud any who aided in the proper rebuttal of unfounded and ill-informed claims to the contrary. The most egregious and false of the claims are:

- The claim that Sandusky should have been charged earlier – **REBUTTED BY THE REPORT;**
- The claim that Sandusky should not have been investigated through the use of a grand jury – **REBUTTED BY THE REPORT;**
- The claim that the Sandusky investigation was slowed or hindered by some kind of political conspiracy – **REBUTTED BY THE REPORT;**
- The claim that charges should have been filed solely upon the first victim who reported abuse – **REBUTTED BY THE REPORT;** and
- The claim that the investigative efforts and resources were somehow inadequate or insufficient – **REBUTTED BY THE REPORT.**

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### I. Introduction

Having read and reviewed the entirety of the “Report to the Attorney General on the Investigation of Gerald A. Sandusky” by Special Deputy Attorney General Geoffrey Moulton, Jr., the entire Report can be distilled simply to a single word: choices. We wish to comment here on several of them.

#### (1) *The Investigation Choices*

We are career prosecutors and investigators, having spent decades in service of the public by investigating and prosecuting the violators of this state’s laws; violators both infamous and otherwise largely unknown. In these positions, we have the power to act because the positions we have held and now hold are supported by the public trust, and we show fidelity to that trust through the exercise of appropriate investigative and prosecutorial discretion. This discretion is seldom a mathematical equation: investigations infrequently present “if/then” scenarios, where “Fact A” leads necessarily to “Decision B.” Instead, we are frequently presented with *choices*. We make these choices by use of expertise in investigations and the law, guided by *experience*. Collectively, we represented in excess of a hundred years of experience in all manner of investigating crimes, including sexual assaults on children.

The problem with choices in a criminal investigation is that the ones you make are sometimes only reasoned best guesses, not made with the benefit of certainty, but solely with guidance from experiences of past successful (and unsuccessful) decisions. Planning and executing a criminal investigation is not like putting together a puzzle with all of the pieces and a picture on the box; in reality, it is often like being handed the pieces, one-at-a-time, with no knowledge of what they will collectively reveal. The Report points out some of the choices we made and how they allegedly could have been done differently, yet what must not be lost is one basic, unimpeachable fact: the investigation – and the choices made therein – led to the conviction on 45 counts of this state’s worst child molester. Given the outcome, we stand by the choices we made.

#### (2) *The Choice to Release a Report*

In a September 2012 meeting with the Times-Tribune editorial board, then-candidate Kathleen Kane declared that the delay in charging Sandusky was “probably” due to “politics.” See Borys Krawczeniuk, “Kane says Corbett ‘Probably’ Played Politics with Sandusky Case,” The Times-Tribune (Sept. 27, 2012). In that same meeting, she also criticized putting the matter before a grand jury. With the release of the Report by Special Deputy Moulton, these allegations and criticisms, and others, have been conclusively dispelled or laid to rest. See Report at 107, 108-09. It is worth further noting that in that same September 2012 meeting, candidate Kane also challenged the leadership of the Office of Attorney General, a leadership role that she now fills.

The Report, perhaps not surprisingly, seeks to constantly justify itself as necessitated by an outcry of “legitimate public concerns.” It studiously avoids mention of the actual manner of its birth. To us, the career professionals who investigated and prosecuted this case, the Report was clearly born of political opportunism and posturing. We must admit that, despite emerging from such unsavory origins, it is, like a mushroom, at least in part palatable. We are obviously

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heartened by those portions of the Report that properly, and certainly without surprise to us, employ the undeniable facts in vindicating our actions from the largely baseless and irresponsible claims of various self-interested parties. This is especially true where the Report refutes assertions that:

- Sandusky should have been charged earlier;
- Sandusky should not have been investigated through the use of a grand jury;
- The Sandusky investigation was slowed or hindered by some kind of political conspiracy;
- Charges should have been filed solely upon the first victim who reported abuse; or
- The investigative efforts and resources were somehow inadequate or insufficient.

In this regard, we applaud any who ensured the accurate reporting, however unnecessary, of such truths.

### *II. The Report's Shortcomings*

To be clear, while the Report is not without accurate moments, it also contains a number of contextual errors, factual errors, presumptions and conclusions that are not meritorious. This response will not endeavor to address each and every one of these failings. We shall, in the future, make those corrections at the time and place of our choosing. However, there are two assertions in the Report that deserve immediate response.

The Report's conclusions about the timing of the search warrant for Sandusky's residence embody the abuse of hindsight. The conclusion that the search warrant could have, and should have, been pursued prior to 2011 is factually and legally offensive. In 2009, when this case came to the Office of Attorney General, we were presented with a report, which was over 5 months old, that Sandusky had engaged in various potentially criminal activities with a minor. These initial claims, even according to the findings of this Report, were varied and uncorroborated. A decision to proceed with a search warrant at that time, based upon solely that information, significantly risked subsequent suppression of the search warrant based upon staleness and other possible challenges. The costs of such a suppression would have been enormous. Suppression of the search warrant of Sandusky's residence would have not only meant the loss of any evidence acquired from his residence, but also the loss of the ability to ever charge Sandusky for any victims subsequently identified as a result of information or evidence found in his residence as the "fruits of the poisonous tree." Any search warrant in the Commonwealth of Pennsylvania necessarily requires that the evidence demonstrate a connection between an individual's crimes and the place desired to be searched. Our investigation did not uncover further evidence of this nature until the spring of 2011. The discovery of Michael McQueary (who observed a sexual assault by Sandusky on the campus of Penn State University) and the 1998 incident (in which Sandusky showered with two young boys at Penn State) did not provide any evidence linking Sandusky's criminality to his residence. It was not until further victims were discovered, such as B.S.H. and D.S., that the Commonwealth had fresh evidence of Sandusky's use of his residence for pedophilia such that it could obtain an airtight search warrant for his residence. Contrary to the Report's assertion that "the failure to search Sandusky's residence earlier in the investigation is difficult to defend," it is simply irresponsible for this Report to blithely ignore and misconstrue the facts and law that led to our prudent decision to forgo a search warrant until 2011. The

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Report also engages in extraordinary grandstanding on this issue by presuming that an earlier executed search warrant would have shortened the investigation without risk or consequence. Indeed, a non sequitur of this criticism (and others like it) is that the execution of an earlier search warrant would have necessarily led to the same ultimate result, i.e., Sandusky's conviction for abuse of multiple victims. There is no effort to handicap, or even consider, the possibility that a search warrant executed at the Report's preferred time would have led to an outcome other than the success our investigation accomplished, or perhaps even destroyed the case's viability altogether. As with all aspects of this Report, it is worth restating that the strategies and discretion employed resulted in the arrest and successful conviction of a serial pedophile who had been preying on victims, *without any hindrance*, for decades.<sup>1</sup>

The second gross misrepresentation in the Report, worthy of immediate response, involves the alleged "unfathomable" failure by investigators to uncover the Penn State University police report from the 1998 allegations against Sandusky. Indeed, the Report engages in an "unfathomable" factual sleight-of-hand in this regard. The Report fails to note, in any manner, that the 1998 police report and all documentation and indications of its existence, *had been hidden by the University*. One needs to look no further than the charging documents against Spanier, Schultz and Curley (and the extensive transcripts and evidence already presented in court against those individuals) to know that this police report was not readily available to investigators. While we are hesitant to detail all of the facts in this regard, due to the pending nature of the charges against Spanier, Schultz and Curley, it is clear from the allegations in that case the significant challenges that investigators faced in discovering the 1998 incident. For example, in January 2010, a grand jury subpoena was issued to Penn State University for Sandusky's personnel and employment records. As investigators would eventually discover nearly 2 years later, an employment file for Sandusky had been kept in the office of Penn State University Vice President Gary Schultz. In that file, there was direct evidence of the 1998 *and* 2001 incidents. This information, now evidence in a pending trial, was specifically not disclosed to the investigators in response to that subpoena. It is also part of the pending trial evidence that the 1998 Penn State University police report was not identifiable on any police blotter or other normal filing index in the Penn State University Police Department. That evidence will show that there was a concerted effort to hide this information for *years*. Again, the details of how this report was actually filed will be revealed in the pending trial against Spanier, Schultz and Curley. All of these facts make clear, unlike the verbiage in the Report, that finding the 1998 Penn State University police report was not as simple as walking into the Penn State University Police Department and asking for it.

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<sup>1</sup> We cannot help but hypothesize about what would have happened if the search warrant had been suppressed and this investigation had subsequently been fully or partially unsuccessful at convicting Sandusky for his crimes. Somehow we are certain that this Report would have still been pursued, although to look into the errors that allowed Sandusky to escape justice. Most assuredly, the Report would question and criticize the rash decision to get a search warrant too soon and the failure to fully investigate Sandusky before charging him.

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### *III. Context and Conclusion*

The career investigators and prosecutors who handled this matter were part of a team composed of individuals with exceptional experience and ability. Like all teams, we possessed individual strengths, weaknesses, differences and personalities, but our differences and disagreements never hindered or weakened our efforts. Rather they made us stronger. No member of this team deserves criticism or censure by the public because this team accomplished a very rare feat: the near perfect discovery and prosecution of a horribly successful serial pedophile. This team never altered from its pursuit of discovering the truth about Jerry Sandusky and achieving justice for his many victims. No report, regardless of how much time, effort or verbiage is invested therein, can ever change this fact.

The efforts of our team need to also be understood in proper context. While the Report hints at the enormity of the challenges that we faced, it significantly fails to properly define them. This investigation was commenced against an individual, Jerry Sandusky, who was an icon to many and even deified by some. He was one of the foremost figures in arguably the flagship program (Penn State University football) in an extremely wealthy and powerful University. Sandusky was also the founder of a multi-million-dollar charity and was an accomplished fundraiser for both that charity and for Penn State University. He was a prominent member of his church and community for over 30 years. At the time that the Office of Attorney General received the case, there was also not the slightest hint that any of the child protective services in Pennsylvania - social, educational or law enforcement - had ever previously detected an issue with Sandusky, despite his nearly 30 year involvement with at risk children. In addition, many in the Penn State Community were unwilling to ever speak ill, or at cross purposes, of Penn State or any of its icons. Against this, there was a single, brave complainant - A.F. - who unfortunately presented without any physical or significant corroborative evidence.

In addition, the public servants who worked on this case were, throughout the time in question, involved in a multitude of other important investigations and prosecutions. The idea that anyone in law enforcement has the ability to focus solely for years on one or two matters is a complete and utter fiction. Throughout the time in question all of us were extensively involved in any number of murder, rape, drug, political corruption, child predator and other cases. Indeed, the Office of Attorney General during these years was arguably more productive than at any other point in its history. The Sandusky investigative efforts also occurred in years in which our resources were constantly subject to cuts and limitations and this group of public servants, instead of succumbing to these challenges, chose to do more with less. And we did.

Are these successful efforts to be rewarded and measured by ill-advised reports or measured by the success of those efforts? We believe the citizens of Pennsylvania are far more interested in results than in attempts to second-guess and finely sift for criticisms. The team of career professionals that we knew – Special Agents, State Police Troopers, and prosecutors – were hard working people who believed that facts (elusive though they at times may be), the law, and justice are not obstacles but the means to an honorable and important end. The work we did was not for ourselves or for any in the political class, it was solely for the victims and the citizenry who, as always, deserved truth and justice.

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Submitted on behalf of:

William H. Ryan, Jr.  
Richard A. Sheetz, Jr.  
Randy P. Feathers  
Frank G. Fina  
Joseph E. McGettigan





**Response by Colonel Frank Noonan**  
**Commissioner of the Pennsylvania State Police**

On June 5, 2014, I, along with several other members of the Pennsylvania State Police (collectively hereinafter "PSP"), received a 165 page report (Moulton Report) authored by Mr. H. Geoffrey Moulton, Jr. (Mr. Moulton). PSP's review of the Moulton Report was, at the invitation of Mr. Moulton, for the purpose of providing comments to the Office of Attorney General (OAG) on those portions addressing the actions of PSP and its members during the investigation and successful prosecution of Gerald A. Sandusky. PSP was provided five business days to provide comments to the Moulton Report.

The conviction of Mr. Sandusky on 45 of 48 criminal counts in reliance upon the investigation conducted by PSP and OAG is testament to the thorough and effective work of the individuals that handled this case. Throughout this investigation, and long before any decision to review it was made, those dedicated investigators and prosecutors made innumerable tactical and technical decisions that only those who conducted the investigation in real time, without the benefit of hindsight or sixteen months to deliberate, were uniquely positioned to make. To their credit, the decisions of those able, experienced, and dedicated men and women resulted in the successful prosecution of a serial child predator and the vindication of those victimized by Mr. Sandusky.

PSP respects that Mr. Moulton was told to review a comprehensive investigation in a very high profile matter in which he had no involvement. PSP understands the temptations that the public spotlight and the benefit of hindsight and sixteen months of deliberation invoke, specifically, enticing a second-guessing of the decisions made by investigators and prosecutors, in spite of the successful prosecution of Mr. Sandusky. However, Mr. Moulton's hindsight does not equate to the investigators' experience of actually having conducted the investigation; interviewing the witnesses and assessing their credibility, working through obstacles and roadblocks, and making immensely difficult decisions in real time.

In cases in which an investigation leads to an unsuccessful prosecution, such after-the-fact critical review makes logical sense. However, in cases where the investigation leads to a highly successful prosecution and conviction, particularly when coupled with the existence for jeopardizing on-going related prosecutions, such an investigation is difficult to justify. For this reason, PSP's investigators refused to take part in Mr. Moulton's investigation – a decision PSP supported and respects. I have no intention of debating each of Mr. Moulton's assertions regarding the merits of potential investigative actions – such a debate is pointless as it can have no definitive resolution. However, I will correct two specific problems with the report which evidence the inherent dangers in Mr. Moulton's overall approach and should have been evident to Mr. Moulton by the documentary evidence and interviews before him.

**I. Specific Problems with Mr. Moulton's Report**

PSP was not aware of, nor were investigators invited to participate in, the 2009 Children and Youth Services (CYS) interview of Mr. Sandusky. Mr. Moulton states: "Despite earlier discussions between Dershem and Tpr. Cavanaugh about a possible Sandusky interview, neither

Tpr. Cavanaugh nor any other law enforcement official participated in this interview.” However, a review of the CYS report and the PSP Incident Report, two documents to which Mr. Moulton cited numerous times, clearly demonstrates that PSP had no knowledge of that interview.

According to the CYS report, Ms. Dershem contacted Tpr. Cavanaugh on December 30, 2008, and asked to be informed of any interview he may conduct of Mr. Sandusky. The report then indicates that Ms. Dershem spoke with her supervisor that same day about the need to interview Mr. Sandusky within the statutorily required 60 days of initiation of her report. The CYS report goes on to indicate that Ms. Dershem made the required coordination with Mr. Sandusky to conduct the interview on January 2, 2009. Both the CYS report and PSP Incident Report indicate that Ms. Dershem’s next contact with Tpr. Cavanaugh occurred on January 16, 2009, after completion of the interview. Neither the CYS Report, nor the Incident Report, provide any reference to contact between Ms. Dershem and Tpr. Cavanaugh from December 30, 2008, until January 16, 2009. While PSP agrees with Mr. Moulton that this incident highlights the need for greater coordination between law enforcement and CYS, as I will discuss in greater detail below, PSP began that process over two years ago, long before Mr. Moulton began his investigation.

Additionally, Mr. Moulton completely ignored the statements I provided in my interview when he asserted that investigators did not search for prior criminal investigations regarding Mr. Sandusky until January 3, 2011. I specifically informed him that efforts were made prior to January of 2011 to locate any criminal investigations regarding Mr. Sandusky and, because of those efforts, the investigators were extremely surprised to eventually learn of their existence. Given the importance of this discovery, I am sure others associated with the investigation made similar statements to Mr. Moulton. Furthermore, Mr. Moulton failed to mention that the Penn State University Police Department (PSU PD) report was titled as “administrative information” rather than a criminal investigation and was not listed in PSU PD’s crime log. This is clearly relevant information that I mentioned in my interview and is available through multiple other sources to include the PSU PD investigation itself.

Prior to learning of the 2001 incident from Mr. McQueary, it was entirely reasonable to conclude there were no previous investigations of child abuse involving Mr. Sandusky by the PSU PD or State College Police Department (SCPD). There were no indications of a report in Mr. Sandusky’s PSU personnel files, there were no reports of an incident in the CYS database, there was no evidence of an arrest in Mr. Sandusky’s criminal history record, and there was no indication from the Centre County District Attorney’s Office of the incident. Additionally, given Mr. Sandusky’s status, the investigators were justified in assuming such a report would have generated media attention. Based on these factors, it was reasonable for the investigators to conclude that had a previous report been made, they would have known of its existence.

After reviewing Mr. Moulton’s report, investigators reviewed their personal notes and determined they did, in fact, contact both the SCPD and PSU PD on November 26, 2010 and were informed there were no criminal investigations related to Mr. Sandusky in the previous ten years. Whether the 1998 reports were unable to be located at that time, either because of the scope of the search or the manner in which the departments filed the investigations, is

unknown.<sup>1</sup> However, the fact remains that the report was not located by investigators in their first attempt, a piece of information I specifically provided Mr. Moulton and he neglected to include in his report. Therefore, even if the attempt had been made two years earlier, it likely would not have yielded a positive result. Prior to learning of the 2001 incident, there simply was no obvious reason to contact PSU PD or SCPD for records, let alone travel to the departments and request a detailed search of their records.

## **II. The Moulton Report is an Inappropriate Approach to Reform**

The fact that PSP takes issue with the Moulton Report's approach to reform – marked by second-guessing individual investigative decisions while criminal cases remain active and pending – does not mean that PSP is unwilling to learn from the Sandusky investigation. Since the completion of the Sandusky prosecution, PSP has been committed, through appropriate means, to affecting change in the Commonwealth with regard to the handling of child abuse investigations. PSP began this process over two years ago, when it committed to and energetically participated in the Joint State Government Commission's Task Force on Child Protection. Three PSP members testified before the Commission and one of our non-commissioned officers was personally asked to provide direction and guidance to the Task Force on best practices in child abuse investigations. PSP has worked diligently to implement the Task Force's recommendations and the legislative changes brought about as a result.

The Task Force's Final Report, issued in November of 2012, made numerous recommendations that specifically addressed most of the primary issues raised by Mr. Moulton. Those recommendations include an increased emphasis and use of Multi-Disciplinary Teams (MDITs) and Child Advocacy Centers (CACs), expanded retention of child abuse allegations, and greater access of CYS records by law enforcement. Many of these changes have already been implemented through legislation, but there is still work to be done. For that reason, the PSP Legislative Affairs Office has been tirelessly tracking the status of all pieces of legislation that affect child protection and providing comment where appropriate.

Additionally, the PSP Bureau of Criminal Investigation has been working hand-in-hand with the PSP Bureau of Training and Education to review the curriculum of all PSP basic and advanced courses to ensure they have incorporated the lessons learned from the Task Force and its resulting legislative initiatives. PSP will also be incorporating a block of training on those changes into this year's annual Mandatory In-Service Training (MIST) which is required to be completed by every Trooper in the field. Through these efforts, PSP will continue to provide its Troopers, and all Commonwealth law enforcement officers, with the most comprehensive and up-to-date training possible.

PSP has also increased its efforts to work with its MDIT partners to ensure a unified effort in the area of child protection. Those efforts include seven training sessions hosted by PSP since 2009 on the proper use and benefit of forensic interviews for child victims. Those trainings

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<sup>1</sup> As stated above, the PSU PD report was inappropriately categorized and not listed on a crime log. Additionally, the SCPD report would not have been listed in a crime log as it was a Request for Assistance from another department.

were attended by over 350 Troopers, municipal police officers, CYS workers, CYS solicitors, Assistant District Attorneys, and Department of Public Welfare Judges. They also include the first Pennsylvania Child Abuse Conference which was conducted at the PSP Academy in 2012 in coordination with PSP and the Hershey Medical Center. That one week conference included presentations from some of the foremost medical, law enforcement, and social work experts in the field of child protection and was attended by over 250 law enforcement officers, medical personnel, CYS employees, and prosecutors from across the state. PSP is actively planning a second Pennsylvania Child Abuse Conference at the PSP Academy for the fall of 2015, which will specifically address many of the recent legislative changes.

### **III. PSP's Participation in Mr. Moulton's investigation**

I would like to close by addressing Mr. Moulton's comments on the limited involvement of PSP in his investigation. The correspondence between PSP and Mr. Moulton contained in Appendix A of this report provides the full justification for PSP investigators not participating in Mr. Moulton's investigation. However, I would like to clarify some of the points which may be misconstrued based solely upon reading the body of Mr. Moulton's report.

PSP did not participate in Mr. Moulton's report in order to avoid any potential interference between Mr. Moulton's investigation and PSP's on-going criminal investigations and prosecutions. As Mr. Moulton is aware, PSP did not open a separate incident report into the subjects of those on-going prosecutions – those prosecutions are based on the initial Sandusky investigation and serve as the very foundation for those charges and upcoming trials. Nearly every PSP investigator Mr. Moulton asked to interview worked on at least some issue that will bear on the prosecutions of Mr. Curley, Mr. Schultz, and Mr. Spanier. Furthermore, five of those investigators are still actively working with the OAG on those on-going prosecutions. There exists a multitude of reasons that investigators should not make specific statements with respect to on-going investigations and prosecutions,<sup>2</sup> to include: maintaining confidentiality of potential leads; protection of eyewitnesses and victims; and limiting the number of statements made by witnesses—an investigative strategy clearly appreciated by Mr. Moulton as reflected on page 106 of his report.

Given PSP's ultimate obligation to the citizens of the Commonwealth, when our members were presented with Mr. Moulton's invitation to participate in his investigation, they were unanimously opposed to the request. As Mr. Moulton indicated in his report, he had no power to compel our members to be interviewed. PSP fully supported their decision and, under the circumstances, had an obligation to respect it. Given the fact that I did not personally

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<sup>2</sup> These justifications are demonstrated in the numerous statutes and authorities which restrict the dissemination of investigative information and/or protect it from public disclosure, to include: Pennsylvania's Criminal History Records Information Act (CHRIA), 18 Pa.C.S. § 9101 et. seq.; Rule 573 of the Pennsylvania Rules of Criminal Procedure; Rule 3.6 and Rule 3.8 of the Pennsylvania Rules of Professional Conduct; 28 C.F.R. Part 23; PSP Field Regulation (FR) 1-1, Code of Conduct; PSP Administrative Regulation (AR) 6-1, Department Information; PSP AR 4-6, Rules of Conduct for Employees; Pennsylvania's Right to Know Law (RTKL) exception for criminal investigations, 65 P.S. § 67.708(b)(16); and RTKL exception for non-criminal investigations, 65 P.S. § 67.708(b)(17).

conduct any interviews or investigation in this case and acted solely as a supervisor, there was little chance my interview will impact those prosecutions. However, as indicated above, that effort may have been for naught, as Mr. Moulton failed to include critical pieces of my interview.

### **Conclusion**

On behalf of PSP, I stand proudly behind its members who investigated these crimes, which led to the successful conviction and a minimum incarceration of 30 years for Mr. Sandusky. This case was investigated by dedicated, seasoned professionals with decades of investigatory experience. Mr. Moulton, or others, may never praise the investigators and prosecutors for the immensely difficult decisions they made in this case. However, they should take immense pride and satisfaction in the result and should never question if that is enough.



**Glenn A. Parno, Esquire**

June 12, 2014

**Via Hand Delivery**

H. Geoffrey Moulton, Jr.  
Office of Attorney General  
Strawberry Square, 16<sup>th</sup> Floor  
Harrisburg, PA 17120

**Re: Report to the Attorney General on the Investigation of Gerald A. Sandusky**

Dear Mr. Moulton:

I have reviewed the portions of your above-referenced report that relate to my interview with you and Special Agent David Pifer which took place in January 2014.

I would like to clarify the findings contained in footnote 92 of your report:

1. After reviewing the draft Presentment prepared by DAG Eshbach in March 2010, my concern regarding the viability of a criminal prosecution was based primarily on three factors: (1) Gerald Sandusky's outstanding reputation in the community; (2) insufficient corroborative evidence of AF's allegations; and (3) the inability to locate any additional victims of abuse.
2. Although I did not make a specific recommendation to my superiors with respect to proceeding with a Presentment, I advised both DAG Eshbach and EDAG Sheetz of my aforementioned concerns shortly after reviewing the draft Presentment.

Thank you for giving me an opportunity to comment on your report. Please feel free to contact me if you have any questions or would like to discuss this matter further.

Sincerely,

A handwritten signature in black ink, appearing to be 'GAP' with a long horizontal stroke extending to the right.

Glenn A. Parno





*Gillum Psychological & Counseling Services*

454 Pine Street • Williamsport, PA 17701

Phone: (570) 321-6390 • Fax: (570) 321-6393

email: [gillumpc@comcast.net](mailto:gillumpc@comcast.net)

June 11, 2014

H. Geoffrey Moulton, Jr., Special Deputy Attorney General  
Office of Attorney General  
Commonwealth of Pennsylvania  
Strawberry Square, 16<sup>th</sup> Floor  
Harrisburg, PA 17120

Dear Mr. Moulton:

I am writing on behalf of Aaron Fisher, Dawn Hennessy, and myself. First, let me note that it is very difficult to adequately respond to this partial (redacted) preliminary report concerning the Sandusky investigation in such a limited time period. As per our telephone call of 06/11/2014, we have only a couple of days to formulate a response. Consequently, the following response is not all inclusive or comprehensive. Rather, it is an overview. There is a great deal of information to review and compare to your report including my private notes, and our book *Silent No More Victim 1's Fight for Justice Against Jerry Sandusky*. Certainly, the report does not completely address many of the significant concerns raised via the book or our direct communication with you.

Although I appreciate your efforts, it is clear that you are working within a political machine and are not a truly independent investigator nor were you given the necessary authority to obtain documents, email correspondence, and other information from top officials at the Office of Attorney General including Tom Corbett. Although I may agree with some points in the report, my response focuses upon the issues.

Overall, the report glosses over what are very blatant and significant issues and facts regarding the delays in prosecuting this case and the obvious lack of manpower assigned to the case. I submitted my report of Aaron Fisher's abuse on November 20, 2008. A "task force" was finally formed in June 2011. The report lacks criticism of major failures on the part of top officials within the Office of Attorney General including the Attorney General himself. Instead, there seems to be a lot of verbiage dedicated to rationalizing or explaining away very strange if not bizarre and suspicious behaviors on the part of these officials. It did include referencing correspondence from Jonelle Eshbach of the Attorney General's office (our main contact throughout the investigation) to her superiors (2010) where at one point she clearly demanded to know why the investigation was "stalled". The report also acknowledges Agent Sassano's correspondence to these same officials at the Office of Attorney General asking for subpoenas (2009) of Centre County Children and Youth and a search warrant for Sandusky's home and computer.

The report lacks explanation or commentary on many topics including critical scrutiny of the personnel assigned to the case. Pennsylvania State troopers were assigned and would

inexplicably leave the case with Aaron Fisher, his mother, and I waiting to find out if or when another state trooper would be taking over. That is after being promised by the various state troopers that they would see the case through. I believe most of the state troopers who came and went had no choice in the matter. The latter three were very enthusiastic about prosecuting the case and were frustrated about delays associated with the Office of Attorney General. Reviewing simply the manpower devoted to the case, we must keep in mind the report was received by law enforcement November 21, 2008. There was either one state trooper assigned, followed by a period of no state trooper assigned, followed by a period of one state trooper assigned repeating through Scott Rossman who inexplicably was "transferred". Later, Agent Sassano was added from a division of Office of Attorney General (narcotics). When the nature of the criminal report involves someone with the power and access of Jerry Sandusky committing sexual acts on young boy(s), this should have resulted in the immediate formation of a task force in order to gather evidence and find victims as quickly as possible. This was a case where all the law enforcement officials involved stated believing Aaron Fisher (Victim 1) and further that Jerry Sandusky was likely victimizing multiple children, yet there were no significant personnel assigned to the case or any task force until the summer of 2011. The report continues to rationalize delays on the basis of needing to find other victims to substantiate the case; however, there was only one state trooper assigned who then left, replaced by another state trooper who then left, replaced by another state trooper who then inexplicably was transferred after promising Aaron Fisher, Dawn Hennessy, and myself he would see the case through to the end. I would later learn that this state trooper (Rossman) had no control over being pulled off the case. How do you collect evidence and find other victims with one or no staff assigned?

I see excuses and rationale which are ridiculous in terms of defending decisions not to issue subpoenas to gather information from Centre County Children and Youth, law enforcement agencies, and Jerry Sandusky's home and computers for valuable information. This would have tipped off law enforcement immediately to the 1998 case which surely would have brought about a task force of law enforcement officers interviewing potential victims, Penn State employees, Penn State coaching staff, staff from The Second Mile, and others who likely had information. The Office of Attorney General's course of action is defended by stating that they did not want to take a chance of tipping off the public concerning the investigation as this would inhibit other victims from coming forward. This is simply untrue and ridiculous. The fact is that when the case did generate a media story, that is when many important leads came in (as documented). In fact, when perpetrators are arrested, this also brings about contacts from victims who are now willing to come forward.

In addition to the rationalization, lack of obvious criticism, and glaring shortcomings in this case including delays, I am very discouraged by the attempts to undermine and devalue Victim 1's testimony and veracity as a witness at the grand jury and otherwise. The facts are, as I was there in the same room with Aaron Fisher when he testified, he did make a very sincere, credible, and compelling witness, which was obvious to the grand jury who later indicated what appears to be an anxiousness to continue with the prosecution as documented by Jonelle Eshbach. Aaron also proved once again to be an excellent witness at the criminal trial. An attempt to label him as "troubled" is despicable. As everyone knew at the Office of Attorney General from my reports, Aaron was suffering from acute anxiety and depression associated with Post Traumatic Stress Disorder. Although he had initially responded very well to treatment, the delays and inconsistencies that occurred led to Aaron becoming much more disillusioned, anxious, and depressed which is more than understandable. A suggestion that there was long-term danger that he might pull out as a witness is ridiculous. The truth is, I actually told Jonelle Eshbach on more

than one occasion throughout the investigation that the victim, his mother, and I were prepared to contact the FBI as well as other authorities to ensure justice occurred in this case. I am sure Jonelle Eshbach would have verified these conversations had she been asked those questions. I continued (verbally and in writing) to complain to Clinton County Children and Youth and others that this case was obviously being stalled and we needed to take action in order to resolve the situation. We did much in this regard over three years, it culminated in a meeting I demanded in August 2011. That is the meeting where Aaron, his mother, and I met with Mr. Fina along with Jonelle Eshbach and a couple of other officials to discuss the fact that we believed they were not going to prosecute or arrest Jerry Sandusky. We demanded a promise that Jerry Sandusky would be arrested in the near future or we would follow through with plans to contact (or re-contact) federal law enforcement and other authorities, perhaps even the media. At that meeting, Mr. Fina argued that he would not promise any arrest date for Jerry Sandusky. It was only at the very end of the meeting after hours of arguing did he finally offer that an arrest would be made by the end of the calendar year. In that meeting, Aaron did stand up and explain his disgust with the process and that he was prepared to walk away from that group. That did not mean he would not be a witness against his perpetrator. That meant he had no faith in the Office of Attorney General at that time. That was the only time he even referenced not working with that particular high level group of the Office of Attorney General. Aaron Fisher performed amazingly throughout this time period despite the horrible circumstances. He continued to be an excellent student, attend school daily, and be a champion athlete. Incidentally, in the meeting we heard nothing about "Bonusgate" or critical personnel shortages. Mr. Fina did state he had to take time to clean up what mistakes the Pennsylvania State Police had made. I am not sure what he was referring to.

The staff shortages reported by the Office of Attorney General due to "Bonusgate" speak to the desperateness of the Office of Attorney General's office to try to explain why the Sandusky investigation was stalled. In addition to Office of Attorney General having their own staff who work in the field and would have nothing to do with "Bonusgate", they also partner with law enforcement agencies in order to form task forces. There should have been no higher priority than investigating and stopping a serial pedophile with the access and power of Jerry Sandusky. The report also fails to mention the tension and disagreements between the Office of Attorney General and the command of the Pennsylvania State Police. The police I interacted with as well as Agent Sassano and Senior Deputy Attorney General Jonelle Eshbach all wanted the case to move forward. As noted previously, so did the grand jury. (I wonder why Ms. Eshbach left the Office of Attorney General immediately after the case was tried.)

In terms of the Central Mountain School officials, once again the report gives rather generous latitude and almost ignores relevant facts. The latitude provided includes the generosity in terms of the definition of when child sex abuse needs to be reported. You note there are different individuals with irreconcilable accounts, however, you have the account of Aaron Fisher and his mother Dawn Hennessy which matches the account of the Clinton County Children and Youth Services official who took a phone call from the principal of the school before any report was made indicating the agency should not believe Dawn Daniels Hennessy if she were to call and make a report about Jerry Sandusky. The CYS employee has no reason to lie and should be considered a reliable source who would be neutral in the case. Her report of that phone call along with the delay in the school reporting abuse at all until they realized the victim and his mother were on their way to CYS completely supports what Aaron Fisher and his mother have stated since November 20, 2008. The report also seems to be saying even if the school was guilty of this wrongdoing, the case eventually was reported to Children and Youth anyway and was prosecuted so "no harm done".

As noted, you did not have the independence or authority of a true independent investigator. There are critical questions concerning the behavior of the Attorney General and his top aides within the Office of Attorney General. We lack emails, other correspondence, and the ability to compel individuals to speak the truth regarding what actually occurred. Despite all the problems and issues I have raised, I do have faith that the people of Pennsylvania and the United States will read this report and come away with a fairly accurate understanding of what likely happened. They can consider the possibility that this investigation was done well despite staff shortages, a troubled witness, and various other issues noted or if the delays, lack of staff assigned, and rationalizations are more consistent with political motives like running for governor and fearing the public response to an initially unpopular arrest and subsequent scandal. It is a shame that there is no accountability, and the entire investigation represents such a lost opportunity to have agencies including law enforcement, county Children and Youth Services, and other professionals work together to secure the health and wellbeing of victims and work cohesively and in an organized fashion to prosecute the case and obtain justice.

In the course of speaking to various groups of law enforcement, prosecutors, judges, child welfare staff, and mental health professionals all over the United States, we have had the opportunity to meet groups and organizations that do work as a very effective team for the benefit of victims. This includes the Child Advocacy Center in Dallas, Texas where police, children and youth/child welfare workers, mental health professionals, and medical professionals work together in the same building on a permanent basis to meet the needs of child abuse victims. Another model exists in the state of Massachusetts. In fact, there are several states that have implemented these types of models with great success. Pennsylvania has initiated some programs they refer to as "Child Advocacy Centers" but they are not as advanced as the ones I referenced. They also are not available to everyone. I urge law makers in our state to not only learn and make adjustments as a result of this investigation, but also take a close look at the serious problem of sexual abuse crime prosecution overall. Prosecution is inadequate and there is too much prosecutor discretion.

Sincerely,

Michael W. Gillum, MA  
Licensed Psychologist  
Board Member, *Let Go...Let Peace Come In*  
Children's Counsel, NY Society for the  
Prevention of Cruelty to Children

Aaron Fisher (Victim 1)  
Dawn Hennessy

MWG/aew





COMMISSIONERS:  
Robert "Pete" Sineltz  
Jeffrey A. Snyder  
Joel Long

Clinton County  
Children and Youth Social Services

Garden Building, 232 E. Main Street, Lock Haven, PA  
(Mailing Address-P.O. Box 787, Lock Haven, PA 17745)  
Telephone: (570) 893-4100  
Fax: (570) 748-4783

Administrator:

Gerald J. Rosamilia

June 12, 2014

Mr. H. Geoffrey Moulton, Jr.  
Special Deputy Attorney General  
Office of Attorney General  
Strawberry Square, 16<sup>th</sup> Floor  
Harrisburg, PA 17120

RE: Report to the Attorney General on the Investigation  
of Gerald A. Sandusky

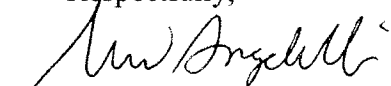
Dear Mr. Moulton:

In discussing the actions of the Clinton County Children and Youth Social Services Agency, the Report to the Attorney General fails to point out that Child Protective Services regulations require children and youth agencies to conduct *independent* investigations of reports of suspected child abuse, and that the investigations must be completed within 60 days of the initial report. Furthermore, these regulations also require agencies to interview the alleged perpetrator. As I am sure you are aware, law enforcement agencies have no time constraints (except for statutes of limitations) when conducting criminal investigations. This is relevant with respect to the report because at the time Sandusky was interviewed by the Agency, the Pennsylvania State Police had not even decided which county (Clinton or Centre) would take the lead in the criminal investigation.

The Report states that not having law enforcement participate in Sandusky's interview was a "notable failure"; however, the Report also points out that Sandusky made damaging admissions during this interview. It is fair to say that Sandusky may have refused to be interviewed had law enforcement been present (given his subsequent lack of cooperation) and therefore the criminal investigation would have been deprived of these admissions. It is also difficult to understand how this facet of the investigation was a "failure" when a) it resulted in Sandusky being labeled as an indicated perpetrator over 2 ½ years before he was actually charged with a crime, and b) Sandusky was ultimately convicted based in part on this interview.

In summary, it is disingenuous to suggest that the Clinton County Children and Youth Social Services Agency, or any other local agencies, in any way contributed to the extraordinary delay of the criminal investigation concerning the Sandusky case.

Respectfully,

A handwritten signature in black ink, appearing to read "Michael Angelelli". The signature is fluid and cursive, with a long horizontal stroke at the beginning.

Michael Angelelli  
Solicitor, Clinton County Children and  
Youth Social Services Agency





Dear Geoff:

Thank you for affording, Dr. John R. Raykovitz and Katherine Genovese the opportunity to review and comment before the report is released. With regard to the portions of the report we discussed:

- 1) PAGE 36 - Rosamilia stated that Genovese surmised that the perpetrator was Sandusky. Genovese did not surmise that the individual being investigated was Sandusky. She asked for the name of the individual so that The Second Mile could ensure there would be no further contact with Second Mile youth. The conversation concluded with Genovese concerned about what remained an unidentified threat to the children of the Second Mile.

Raykovitz met with Sandusky the next day. He shared the contents of Rosamilia's call. Sandusky indicated that he was being investigated by Clinton County. Genovese called Rosamilia to state she had learned that Sandusky was the subject of the investigation and to inform Rosamilia that Sandusky had been removed from all involvement with Second Mile children's programming.

- 2) PAGES 69, 85, and 123 – In contrast to Kelly's statement, that The Second Mile contributed to an "uncooperative atmosphere," both presiding Judge Feudale and Assistant Attorney General Eshbach thanked the Second Mile staff for conducting a dedicated search when a limited number of documents could not be located. The Second Mile provided voluminous documents which were housed off site to the Office of the Attorney General. Two boxes and one file could not be located. The Second Mile kept the Attorney General's office apprised of the search, from January 2011 through September 2011. A meeting in Judge Feudale's chambers was held with regard to the missing documents. In that meeting, Feudale affirmed that The Second Mile could not be deemed in contempt for a third party's inability to find the missing documents.

The Judge considered the extensive documentation that the organization had provided. The Second Mile did not delay the investigation. It responded to every request for information on or before the date on which the information was requested.

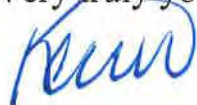
- 3) PAGE 72 and 126 - Following the phone call cited in item 1, Raykovitz learned from Sandusky in November 2008 that Sandusky was being investigated. As per Second Mile policy, Sandusky was immediately separated from youth programming.

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. With regard to the 1998 investigation of Sandusky, no individual, organization, or government agency contacted The Second Mile or Raykovitz about an investigation of Sandusky.

The Second Mile routinely sought clearances for any individual associated with programs. At the time of Sandusky's separation in November 2008, Sandusky had a PA Child Abuse History Clearance dated 9/25/2008 which indicated that there was "no record" listing Sandusky as a perpetrator of child abuse. He also had a clear PA State Police Criminal Record Check dated 8/12/2008.

Thank you for providing us with an opportunity to review this report and correct any statements or footnotes we found to be misleading or inaccurate.

Very truly yours,



Kevin L. Hand, Esquire