

Elliot A. Strokoff, Esq.
Strokoff & Cowden, PC
132 State Street
Harrisburg, PA 17101
(717)233-5353
eas@strokoffandcowden.com

IN THE COURT OF COMMON PLEAS OF
CENTRE COUNTY, PENNSYLVANIA

MICHAEL J. MCQUEARY,
Plaintiff

v.

THE PENNSYLVANIA STATE
UNIVERSITY,
Defendant

DOCKET NO. 2012-1804

JURY TRIAL DEMANDED

COMPLAINT

1. The Plaintiff, Michael J. McQueary, is an adult individual and, at all times relevant to this Complaint, was a resident of State College, Centre County, Pennsylvania.

2. The Defendant, The Pennsylvania State University (hereafter PSU), was incorporated for educational purposes by the Act of February 22, 1855, PL 46, and has its principal administrative office located at 201 Old Main, University Park, Centre County, Pennsylvania 16802.

3. Defendant PSU, at all times relevant to this Complaint, received millions of dollars annually from the Commonwealth of Pennsylvania for use in funding its operations.

4. From February 2000 through February 2003, the Plaintiff was a Graduate Assistant Coach for the Defendant's intercollegiate football team.

5. In February 2001, Plaintiff's supervisor was Head Football Coach Joseph V. Paterno.

6. In February 2001, Head Football Coach Paterno's supervisor was the PSU Director of Intercollegiate Athletics, Tim Curley (hereafter Athletics Director Curley).

7. In February 2001, Athletics Director Curley's supervisor was PSU's Senior Vice President, Finance and Business, Gary Schultz (hereafter Senior Vice President Schultz).

8. In February 2001, the Defendant's University Police provided all law enforcement and security services to the Defendant's University Park Campus located in State College, Pennsylvania, with the same powers as police of municipalities, including the power and duty to prevent crime, investigate criminal acts, apprehend, arrest, and charge criminal offenders.

9. In February of 2001, the Director of the University Police, Thomas Harman, was supervised by, and reported to, the Defendant's Senior Vice President Schultz.

10. At approximately 9:00 p.m. on February 9, 2001, the Plaintiff witnessed an adult male, formerly employed by the Defendant as an Assistant Football Coach and Defensive Coordinator, engaging in highly

inappropriate and illegal sexual conduct with a boy who appeared to be about ten to twelve years old in the Support Staff Locker Room showers in the Lasch Football Building located on the Defendant's University Park Campus.

11. At no time prior to February 9, 2001, had the Defendant University, or any of its employees or agents, provided the Plaintiff with any instruction, guidance or training as to the jurisdictions of the Defendant's University Police and/or the police of the Borough of State College, and/or the Pennsylvania State Police, with respect to criminal acts occurring on the University Park Campus, nor had the Defendant provided the Plaintiff with any instruction, guidance or training with respect to reporting sexual misconduct under the federal Clery Act.

12. At about 8:00 a.m. February 10, 2001, Plaintiff personally reported what he had witnessed the night before, as described in paragraph 10 above, to his supervisor, Head Football Coach Paterno. Coach Paterno told the Plaintiff that he had done the right thing in reporting this to him, that this was very disturbing, that he would tell some people about what the Plaintiff had witnessed and that he would get back to the Plaintiff.

13. Based upon information and belief, Plaintiff avers that by February 11, 2001, Head Coach Paterno reported what the Plaintiff had witnessed to Athletics Director Curley.

14. A few days after February 10, 2001, Head Football Coach Paterno told the Plaintiff that he had reported what Plaintiff had witnessed on

February 9, 2001, to Athletics Director Curley and at that time Head Football Coach Paterno reiterated that the Plaintiff had done the right thing in reporting what he had witnessed to him.

15. About 9 or 10 days after making his report to Head Coach Paterno, at the direction of Athletics Director Curley, the Plaintiff met with Athletics Director Curley and Senior Vice President Schultz in a conference room in the Bryce Jordan Center and told them about the aforementioned highly inappropriate sexual misconduct that he had witnessed the night of February 9, 2001.

16. Senior Vice President Schultz and Athletics Director Curley thanked the Plaintiff for providing them with this information, told the Plaintiff that they thought this was a serious matter, that they would see that it was properly investigated and that appropriate action be taken.

17. The Plaintiff believed and relied upon Athletics Director Curley's and Senior Vice President Schultz's statements that they would see that the incident was properly investigated and that appropriate action be taken.

18. Athletics Director Curley and Senior Vice President Schultz requested the aforementioned meeting and conducted the aforementioned meeting within the scope of their employment by Defendant.

19. Plaintiff believes and therefore avers, that neither Athletics Director Curley nor Senior Vice President Schultz reported what the Plaintiff

had reported to them to the Defendant's University Police, or to the State College Police, or the Pennsylvania State Police or to the Centre County Children and Youth Services.

20. Beginning about March 1, 2004, the Plaintiff became a full-time Assistant Coach for the football team of Pennsylvania State University.

21. As an inducement to retain the Plaintiff as an Assistant Football Coach, on or about December 17, 2008, Athletics Director Curley provided the Plaintiff with a letter memorializing a severance commitment, a true and correct copy of which is attached hereto as Exhibit A hereto. Plaintiff believes and therefore avers that on or about December 17, 2008, the Defendant's other Assistant Football Coaches received similar severance commitments as an inducement to retain their services.

22. In November 2010, the Plaintiff provided information to investigators from the Pennsylvania Attorney General's Office and the Pennsylvania State Police about what he had witnessed as is described in ¶10 above and that he had, about 10 days thereafter, told Athletics Director Curley and Senior Vice President Schultz what he had witnessed.

23. On December 14, 2010, the Plaintiff testified in Harrisburg, Pennsylvania, before a Statewide Investigating Grand Jury about what he had witnessed in the Lasch Football Building Support Staff Shower Room as described in ¶10 above. Also, included in the Plaintiff's Grand Jury testimony

was that he had reported the incident to Athletics Director Curley and Senior Vice President Schultz.

24. The Plaintiff's base salary for the 2011-2012 year was \$140,400, plus discretionary and/or bowl bonus, and fringe benefits, including paid family health insurance coverage, pension contribution, a motor vehicle and a cell phone.

25. As of November 4, 2011, the present value of the Plaintiff's reasonably anticipated future earnings over the course of the next 25 years in the profession of football coaching was at least \$4,000,000.

26. On or about November 4, 2011, the Statewide Investigating Grand Jury issued a Presentment finding, among other things, that Athletics Director Curley and Senior Vice President Schultz each made a materially false statement to the Grand Jury concerning the Plaintiff's report of sexual misconduct to them.

27. Pursuant to the Grand Jury Presentment, both Athletics Director Curley and Senior Vice President Schultz were charged with violations of the Pennsylvania Crimes Code.

28. On Saturday, November 5, 2011, Defendant's President Spanier, acting within the scope of his employment, issued a statement, published on Penn State Live, the Defendant University's official news service, a true and correct copy of which is attached hereto as Exhibit B.

29. On Monday, November 7, 2011, Defendant's President Spanier, acting within the scope of his employment, reiterated his unconditional support for Athletics Director Curley and Senior Vice President Schultz to a meeting of numerous staff of the Defendant's intercollegiate athletic department held at the Mount Nittany Lounge at Beaver Stadium, reiterating his affirmation of the honesty and integrity of Athletics Director Curley and Senior Vice President Schultz and stating that the charges against them were groundless.

30. Even though the Plaintiff was quite ready, willing and able to do so, on Thursday afternoon, November 10, 2011, Acting Head Coach Tom Bradley told the Plaintiff that the Defendant's Administration was prohibiting the Plaintiff from coaching in any capacity in the upcoming football game that Saturday.

31. On Thursday evening, November 10, 2011, Acting Athletics Director Sherburne told the Plaintiff that the Defendant's Administration was directing that the Plaintiff leave the State College, Pennsylvania area for the weekend.

32. By telephone call from Acting Athletics Director Mark Sherburne on Friday, November 11, 2011, at approximately 1:30 p.m., Mr. Sherburne told the Plaintiff, who had left the state pursuant to the directive of the evening before, that he was going to be placed on paid administrative leave

and that Plaintiff would be advised as to what that meant in a meeting to be scheduled for Sunday, November 13, 2011.

33. On November 13, 2011, shortly after 7:00 p.m., the Plaintiff attended a meeting in the Athletics Director's office in the Bryce Jordan Center with Acting Athletics Director Sherburne, Human Resources Manager Erika Runkle, and the University's General Counsel, Cynthia Baldwin. At that meeting, Acting Athletics Director Sherburne read to the Plaintiff the statement attached hereto as Exhibit C, and then handed Exhibit C to the Plaintiff.

34. In response to Acting Athletics Director Sherburne's reading of the statement to him, the Plaintiff replied that he was ready, willing, able and desirous of coaching at Penn State and that he did not feel he was "negligent in any way with my job responsibilities." University General Counsel Baldwin replied that "No one is accusing you of being negligent at all."

COUNT 1 – (Whistleblower)

35. Paragraphs 1-34 above incorporated by reference herein as if fully set forth.

36. As the result of being placed on paid administrative leave, from November 13, 2011, the Plaintiff was barred from performing any football coaching duties, including coaching in preparation for, and in, the Ticket City Bowl, and deprived of receiving the bonus paid to Assistant Coaches therefore.

37. As the result of being placed on paid administrative leave on November 13, 2011, Plaintiff was required to immediately turn in, and ceased to have the benefit of, his University provided motor vehicle, a benefit fairly valued at \$425 per month.

38. It is believed and therefore averred that the Plaintiff was the only Assistant Football Coach employed by the Defendant at the time of Joseph V. Paterno's departure as Head Football Coach who was not invited to be interviewed for employment as an Assistant Coaching position by Defendant University's incoming new Head Football Coach, Bill O'Brien.

39. The Plaintiff, based upon knowledge and belief, was the only Penn State employee to whom the University has not offered to reimburse counsel fees incurred as a result of legal process related to the Pennsylvania Attorney General's criminal investigations and/or testifying before of the Statewide Investigating Grand Jury. Based upon information and belief, the Plaintiff avers that the Defendant is paying the legal fees incurred by Athletics Director Curley and Senior Vice President Schultz in defending the criminal charges against them. The Plaintiff has incurred substantial and ongoing counsel fees incurred as a result of legal process relative to the Pennsylvania Attorney General's criminal investigations and testifying before the Statewide Investigating Grand Jury.

40. Plaintiff believes, and therefore avers, that all the other Assistant Football Coaches whose employment has been terminated by the

University as a consequence of the decision of the new Head Football Coach not to continue their employment began receiving their severance payments by July 31, 2012. The Defendant University refused to honor its commitment to pay severance to the Plaintiff as set forth in Exhibit A hereto until September 17, 2012.

41. As a result of the Defendant's refusal to honor its commitment to pay severance to the Plaintiff until September 17, 2012, the Plaintiff was financially constrained in August 2012 to take an early withdrawal of his TIAA-CREF Retirement Account, at a substantial, but as of yet undeterminable, tax cost and penalty.

42. Based upon information and belief, all of the other Assistant Football Coaches who were not retained by new Head Football Coach O'Brien, received notices on or before July 31, 2012 of their COBRA rights to continue health insurance to be paid for by the University. Despite repeated demands therefore, Plaintiff, however, did not receive any notice of his COBRA rights until September 15, 2012.

43. It is believed and therefore averred, that every other Assistant Football Coach who was employed by the Defendant in 2011 and who was not retained by new Head Football Coach O'Brien was notified that he would not be retained by the University no later than January 31, 2012.

44. The Plaintiff received no notice that his employment was terminated until he heard during a televised news conference on July 5, 2012,

then Defendant's President Ericson stating that the Plaintiff was no longer employed by the University.

45. By barring the Plaintiff from all facilities associated with Penn State football program as part of being placed on administrative leave, the Plaintiff was ostracized and isolated from a community of individuals, colleagues and friends and a program which had been an integral part of his life for approximately 20 years

46. Plaintiff avers that he was treated in a discriminatory fashion as set forth above, and that his employment was terminated by the Defendant because of his aforementioned cooperation with investigators for the Pennsylvania Attorney General, his provision of truthful testimony to the Statewide Investigating Grand Jury, his truthful testimony at the criminal preliminary hearings for Athletics Director Curley and Senior Vice President Schultz and further because Plaintiff is expected to be a key prosecution witness at the criminal trials of the Athletics Director Curley and Senior Vice President Schultz.

47. The Plaintiff's aforementioned reports to Head Football Coach Paterno, Athletics Director Curley, Senior Vice President Schultz, the investigators from the Pennsylvania State Police and Attorney General's Office, the Plaintiff's testimony to the Statewide Investigating Grand Jury, and at the Preliminary Hearing on the criminal charges against Athletics Director Curley

and Senior Vice President Schultz on December 16, 2011, were truthful, and made without malice or consideration of personal benefit.

48. The aforementioned discriminatory treatment by the University since November 5, 2011 has caused the Plaintiff much distress, anxiety and embarrassment.

WHEREFORE, the Plaintiff demands judgment against the Defendant, Pennsylvania State University liquidated damages consisting of the sum of: (1) the bowl bonus Plaintiff would have received had he not been placed on administrative leave; plus (2) \$4,250 representing the fair rental value of his employer provider vehicle for the period November 13, 2011 through September 30, 2012; plus (3) reimbursement of legal fees he incurred and/or paid for legal counsel in connection with the legal process of the criminal investigations and prosecutions; plus (4) back pay and benefits through the date of trial; and plus (5) the amount of tax and penalty Plaintiff will have to pay on account of the early withdrawal of his TIAA-CREF Retirement Account; prejudgment interest on the foregoing; plus an order for reinstatement, or in lieu thereof front pay, plus general damages as compensation for Plaintiff's distress, anxiety and embarrassment, plus costs of litigation, including reasonable counsel fees.

COUNT II – (Defamation)

49. Paragraphs 1-48 above are incorporated by reference herein as if fully set forth.

50. The written statement released by the University President Spanier on November 4, 2011, as set forth in Exhibit C to the Complaint, and the verbal statement made by University President Spanier to the Athletic Department staff meeting on November 7, 2011, clearly suggest that the Plaintiff was lying in his reports and testimonies that he had reported the sexual misconduct he had witnessed on February 9, 2001 to Athletics Director Curley and Senior Vice President Schultz.

51. The written statement released by the University President Spanier on November 4, 2011, as set forth in Exhibit C to the Complaint, and the verbal statement made by University President Spanier to the Athletic Department staff meeting on November 7, 2011, clearly suggest that the Plaintiff had lied to law enforcement officials and committed perjury to the Statewide Investigating Grand Jury when he stated and testified that he had reported the sexual misconduct he had witnessed on February 9, 2011 to Athletics Director Curley and Senior Vice President Schultz.

52. Exhibit C to this Complaint was widely reported in the mainstream print, television and radio media, and was viewed by innumerable people on the internet.

53. Exhibit C was published by President Spanier with actual malice and/or with reckless disregard for the truth in an outrageous effort to provide full and public support of the University to two criminal defendants in an effort to assist in their exoneration (regardless of their guilt or innocence) in the belief that their exoneration would help to preserve the reputation of the Defendant, to isolate the Plaintiff and to make the Plaintiff the scapegoat in this matter.

54. To this date, the Defendant University has not retracted, withdrawn or apologized for President Spanier's statement as set forth in Exhibit C. On the contrary, the Defendant's continued financial support for Athletics Director Curley and Senior Vice President Schultz and its maltreatment toward the Plaintiff reinforces the perception that the Plaintiff had lied and committed perjury.

55. President Spanier's statements have irreparably harmed the Plaintiff's reputation for honesty and integrity, and have irreparably harmed the Plaintiff's ability to earn a living, especially in his chosen profession of coaching football.

56. The publication and innumerable republications of President Spanier's statement as set forth in Exhibit C, have subjected the Plaintiff to public scorn and vilification.

57. The President's statements to the members of the Athletic Department staff on November 7, 2011, as aforementioned, have caused

certain members of the Athletic Department staff to distance themselves from the Plaintiff and/or cease to communicate or socially interact with him.

58. President Spanier's written and verbal statements as aforementioned have caused the Plaintiff distress, anguish, humiliation and embarrassment.

WHEREFORE, Plaintiff demands judgment against the Defendant Pennsylvania State University for \$4,000,000, or such greater amount as may be proven at trial, for lost future earnings, plus general damages to be determined at trial for distress, anguish, humiliation and embarrassment, plus punitive damages, costs of suit, and such other relief deemed appropriate by the Court.

COUNT III (Misrepresentation)

59. Paragraphs 1-58 above are incorporated by reference herein as if fully set forth.

60. Plaintiff believes, and therefore avers, that during the meeting in February 2011 Athletics Director Curley and Senior Vice President Schultz intentionally misrepresented to the Plaintiff that they thought this was a serious matter, that they would see that it was properly investigated and that appropriate action would be taken. On the contrary, Athletics Director Curley and Senior Vice President Schultz, unbeknownst to the Plaintiff, had decided to pursue a course of action that would avoid an investigation by any law

enforcement investigator or other trained investigator and try to keep Plaintiff's report, and the underlying incident, a secret in an effort to preserve the reputation of the Defendant University.

61. Plaintiff believes, and therefore avers, that Athletics Director Curley and Senior Vice President Schultz intended that their misrepresentation induce the Plaintiff not to report the matter to any other law enforcement authority.

62. The Plaintiff relied upon Athletics Director Curley's and Senior Vice President Schultz's misrepresentation and did not report the incident to any other law enforcement authority until he was approached in November of 2010 by investigators from the Pennsylvania Attorney General and Pennsylvania State Police.

63. As a proximate cause of his reliance on the aforementioned misrepresentation of Athletics Director Curley and Senior Vice President Schultz, the Plaintiff has been labeled and branded as being part of a cover-up, which has caused irreparable harm to his ability to earn a living, especially in his chosen profession of coaching football.

64. As a proximate cause of Athletics Director Curley's and Senior Vice President Schultz's misrepresentation and Plaintiff's reliance thereon, Plaintiff has suffered distress, anxiety, humiliation and embarrassment.

WHEREFORE, Plaintiff demands judgment against the Defendant Pennsylvania State University for \$4,000,000, or such greater amount as may be proven at trial for lost future earnings, general damages to be determined at trial for distress, anguish, humiliation and embarrassment, plus punitive damages, costs of suit, and such other relief deemed appropriate by the Court.

Respectfully submitted,

STROKOFF & COWDEN, P.C.

By: _____

Elliot A. Strokoff
I.D. No. 16677
132 State Street
Harrisburg, PA 17101
(717) 233-5353

Date: _____



Timothy M. Curley
Director of Athletics

The Pennsylvania State University
101T Bryce Jordan Center
University Park, PA 16802-7101

(814) 865-1086
Fax: (814) 863-7955

December 17, 2008

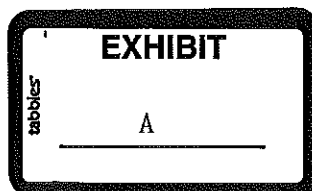
Personal and Confidential

Mike McQueary
208 Lasch Building
University Park, PA 16802

Dear Mr. McQueary:

I am pleased to confirm the University's commitment regarding the following terms for your continued employment as Assistant Football Coach.

1. You will continue to perform such duties as may be assigned to you by the Head Football Coach, Joseph V. Paterno.
2. If you are employed as Assistant Football Coach at the time of Joseph V. Paterno's departure as Head Coach, and in the event you are terminated by the University, other than for cause, and as a consequence of the decision of the new head coach to not continue your employment as Assistant Football Coach, you will be entitled to the following severance benefits:
 - a. The University will continue paying your salary for a period of eighteen (18) months, or until you secure another football coaching position elsewhere at a salary equal to, or greater than, your University salary at the time of termination; provided however, in the event your new salary in another football coaching position is less than your University salary at the time of termination, you will be paid the difference between your former University salary and your salary in the new coaching position for a period not to exceed eighteen (18) months from the date of termination of your University employment.
 - b. You will be entitled to continue using the dealer car and cell phones assigned to you for a period of three (3) months following the date of termination of your University employment.
 - c. You shall have such rights to health insurance for you and your family at the time of termination as are provided by COBRA coverage and University policy. In the event you elect COBRA coverage, University



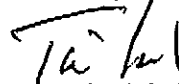
shall pay all COBRA premiums for a period not to exceed eighteen (18) months from the date of termination of your University employment.

3. All of the terms of this commitment are completely confidential except for (a) disclosure required by law or in connection with legal proceedings between the parties, or (b) disclosure by you to members of your immediate family or to your attorneys, accountants or tax advisors.

I am delighted to be able to make this commitment in recognition of your outstanding service as Assistant Football Coach.

Please let me know if you have any questions.

Sincerely,



Timothy M. Curley

Director of Intercollegiate Athletics

Enclosure



Statement from President Spanier

Statement from President Spanier

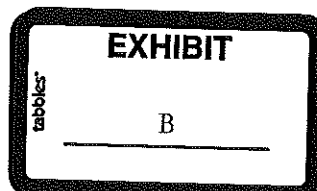
Saturday, November 5, 2011

The allegations about a former coach are troubling, and it is appropriate that they be investigated thoroughly. Protecting children requires the utmost vigilance.

With regard to the other presentments, I wish to say that Tim Curley and Gary Schultz have my unconditional support. I have known and worked daily with Tim and Gary for more than 16 years. I have complete confidence in how they have handled the allegations about a former University employee.

Tim Curley and Gary Schultz operate at the highest levels of honesty, integrity and compassion. I am confident the record will show that these charges are groundless and that they conducted themselves professionally and appropriately.

Graham Spanier



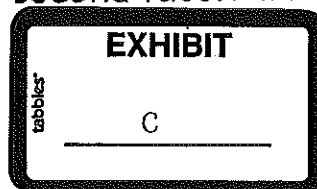
You were placed on administrative leave with pay on Thursday, November 11, 2011 by Acting Athletic Director Mark Sherburne. Your future status has not been determined. During the term of administrative leave you will receive your full current pay and benefits. You are to do no work on behalf of The Pennsylvania State University and any matters for which you are contacted concerning the position from which you are on administrative leave must be referred to Tom Bradley.

The following facilities are off limit: all athletic facilities associated with the Penn State Football Program.

Your fixed term contract is scheduled to end on June 30, 2012 and it has not been determined whether there will be a new contract at this time. A media announcement concerning the above described action was made by President Rodney Erickson on November 11, 2011 at 4:00 p.m.

Arrangements for return of personal items from an office, a locker, etc., may be made through Erikka Runkle, Human Resources Manager, by the close of business on Monday, November 14, 2011.

Arrangements for return of University items, for example, keys, equipment, security badge, second factor authentication token,



purchasing card, and cell phone may be made through Errika Runkle, Human Resources Manager, by the close of business on Monday, November 14, 2011. You may keep your I.D. card and parking permit pursuant to conditions established under University policy.

Arrangements for the return of the dealer vehicle that you have pursuant to your employment with the University may be made through Janet Bosco, Intercollegiate Athletics, by the close of business on Monday, November 14, 2011. You may also discuss the employee assistance program with your Human Resources Manager.