

IN THE COURT OF COMMON PLEAS OF DAUPHIN COUNTY,  
PENNSYLVANIA  
CRIMINAL DIVISION

COMMONWEALTH OF PENNSYLVANIA, :  
: No. G07-1146135  
: :  
: OTN No. T 109768-1  
v. :  
: :  
GARY CHARLES SCHULTZ, :  
: :  
Defendant. :

**ORDER**

AND NOW, to-wit, this \_\_\_\_\_ day of \_\_\_\_\_, 2013,  
upon due consideration of Defendant Gary Schultz' Motion to Prevent  
Publication of Interview it is hereby ORDERED and DECREED that the  
motion is GRANTED. CBS Corporation and Showtime Networks, Inc. must  
refrain from broadcasting the *60 Minutes Sports* interview with Frank Fina.

BY THE COURT:

\_\_\_\_\_, J.

IN THE COURT OF COMMON PLEAS OF DAUPHIN COUNTY,  
PENNSYLVANIA  
CRIMINAL DIVISION

COMMONWEALTH OF PENNSYLVANIA, :  
: No. CP-22-CR-5164-2011  
: & No. G07-1146135  
:  
: OTN No. T 109768-1  
v. :  
:  
GARY CHARLES SCHULTZ, :  
:  
Defendant. :

**DEFENDANT GARY SCHULTZ' EMERGENCY MOTION FOR  
INJUNCTIVE RELIEF AND TO PREVENT PUBLICATION OF  
INTERVIEW**

AND NOW, comes the defendant, Gary Charles Schultz, by and through his attorney, Thomas J. Farrell, Esquire, and respectfully files this Motion to Prevent Publication of Interview and states the following in support:

1. Beginning sometime in 2009, the Office of Attorney General ("OAG") conducted an investigation into reported sexual assaults of minor male children by Gerald A. Sandusky. Deputy Attorney General Frank Fina headed the investigation.

2. On November 7, 2011, defendants Gary C. Schultz ("Schultz") and Timothy M. Curley ("Curley") were each charged with one count of Perjury, a violation of 18 Pa.C.S. § 4902 and a felony of the third degree, and one count of Failure to Report in violation of 23 Pa.C.S. § 6319, a summary

offense. The OAG timed the filing of these charges to coincide with the filing of child molestation charges against Mr. Sandusky, even though the OAG had gathered few if any documentary evidence pertaining to Messrs. Schultz and Curley and had interviewed hardly anyone who worked with them.

3. The OAG, under Mr. Fina's direction and with the assistance of Deputy Bruce Beemer, continued the investigation, and on November 1, 2012, Schultz, Curley, and former PSU President Graham B. Spanier were charged by Complaint with two counts of Endangering Welfare of Children, Obstruction of Justice, and three counts of Conspiracy, based on the underlying offenses of Obstruction of Justice, Perjury, and Endangering Welfare of Children. A Presentment issued by the Thirty-Third Statewide Investigating Grand Jury was attached to the criminal complaint.

5. After current Attorney General Kathleen Kane took office, Mr. Fina left the office, and Mr. Beemer was promoted to Senior Counsel and remained on this prosecution. Ms. Kane has indicated that she stands behind the prosecution.

6. Yesterday, we learned that Mr. Fina has given an extensive question and answer interview to CBS News in which he voices his personal opinion, based on what he learned in the supposedly secret grand jury investigation, about the defendants' guilt. For example, he states:

**FINA:** Of course we -- we come to realize that they're actively obstructing -- our investigation.

**ARMEN KETERYIAN:** They're obstructing justice.

**FINA:** Yeah. And they had been for many years.

See Armen Keteyian, *Sandusky prosecutors: Penn State put school's prestige above abuse*, CBS News, September 3, 2013, available at:

[http://www.cbsnews.com/8301-18563\\_162-57601201/sandusky-prosecutors-penn-state-put-schools-prestige-above-abuse/](http://www.cbsnews.com/8301-18563_162-57601201/sandusky-prosecutors-penn-state-put-schools-prestige-above-abuse/) (last visited September 4, 2013),

attached as Exhibit A; Charles Thompson, *Jerry Sandusky prosecutor: No evidence Joe Paterno participated in criminal cover-up at Penn State*, Patriot News, September 3, 2013, available at:

[http://www.pennlive.com/midstate/index.ssf/2013/09/jerry\\_sandusky\\_prosecutor\\_no\\_e.html](http://www.pennlive.com/midstate/index.ssf/2013/09/jerry_sandusky_prosecutor_no_e.html) (last visited September 4, 2013), attached as Exhibit B.

The full interview is scheduled to air on 60 Minutes Sports today, September 4, 2013, at 10 P.M., on Showtime Networks, Inc. ("Showtime"), a subsidiary of CBS Corporation ("CBS").

7. It is clear from publicized portions of the interview that Mr. Fina violates the most fundamental rules of professional conduct for prosecutors: the prohibitions against giving interviews about open cases that may harm a defendant's right to a fair trial and against expressing a personal opinion of a defendant's guilt. See Pa. Rules of Prof'l Conduct 3.6, 3.8(e); Pa. Eth. Op. 92-70 (A prosecutor may not be interviewed in a question and answer format by the media).

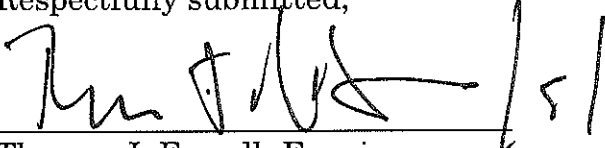
8. Further publication of these statements will create presumptively prejudicial pretrial publicity that will make a fair trial impossible, if that possibility still exists. *See Commonwealth v. Sutton*, 485 Pa. 47, 57, 400 A.2d. 1305, 1309 (1979); *Commonwealth v. Pierce*, 451 Pa. 190, 303 A.2d 209 (1973).

8. It appears that the OAG has done nothing to prevent Mr. Fina, who still is a prosecutor, now in the Office of the District Attorney for Philadelphia County, from making these statements. To correct this, we invite Attorney General Kane to join in this motion.

WHEREFORE, Defendant Gary C. Schultz respectfully requests this Honorable Court enter an Order that CBS Corporation and Showtime Networks, Inc. refrain from broadcasting the interview with Mr. Fina in order to prevent irreparable harm to Mr. Schultz.

Respectfully submitted,

By:

  
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*Attorney for Gary C. Schultz*

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of Defendant Gary Schultz' Motion to Prevent Publication of Interview was emailed and mailed, First Class Mail, postage pre-paid, this 4<sup>th</sup> day of September, 2013, to the following:

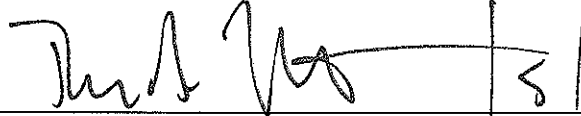
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A handwritten signature in black ink, appearing to read 'Thomas J. Farrell', written over a horizontal line. The signature is stylized and includes a vertical stroke on the right side.

Thomas J. Farrell, Esquire  
*Attorney for Defendant, Gary C. Schultz*

**Distribution:**

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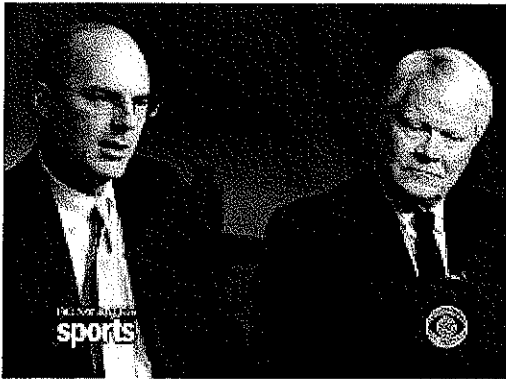


September 3, 2013 7:47 PM

# Sandusky prosecutors: Penn State put school's prestige above abuse

By Armen Keteyian

(CBS News) NEW YORK -- The two men who prosecuted the child sex-abuse case at Penn State are speaking about it for the first time in an interview with "60 Minutes Sports."



Frank Fina and Joseph McGettigan III

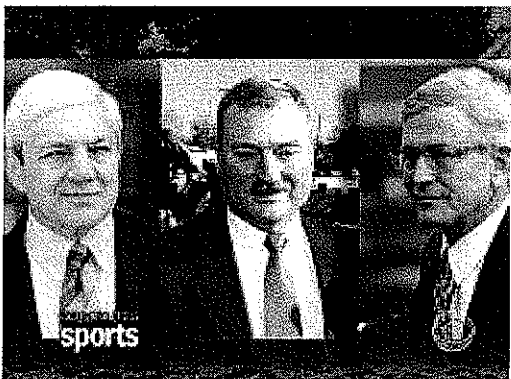
/ CBS News

It was college football's darkest episode. Former assistant coach Jerry Sandusky was convicted of abusing 10 boys; he'll likely spend the rest of his life in prison. But serious questions remain.

Frank Fina, the Chief Deputy Attorney General for Pennsylvania, was the architect of the case against Sandusky. Joseph McGettigan III was the hammer, a seasoned no-nonsense prosecutor.

It took awhile, Fina said, before the prosecutors realized that Penn State President Graham Spanier, Senior Vice President Gary Schultz and Athletic Director Tim Curley were putting the school's brand above the repeated sexual abuse of young boys on its campus.

**FRANK FINA:** We've got a massive multi-billion-dollar entity that -- at the time -- we don't realize, although we would come to realize it, may not be fully committed to disclosing what the reality is. Of course we -- we come to realize that they're actively obstructing -- our investigation.



Penn State President Graham Spanier, Senior Vice President Gary Schultz and Athletic Director Tim Curley

/ CBS News

**ARMEN KETEYIAN:** They're obstructing justice.

**FINA:** Yeah. And they had been for many years.

In a detailed independent investigative report commissioned by the Penn State board of trustees, former FBI Director Louis Freeh found Spanier, Schultz and Curley repeatedly concealed facts about the abuse from the authorities.

**FINA:** I think the evidence -- now they're gonna be tried on that. ... But I investigated that case. They deserve to be charged, and I hope justice will be served there.

**KETEYIAN:** Did you two ever look at each other and go, "I can understand if they're covering up recruiting violations. But this is serial sexual abuse of children that they are institutionally resisting efforts to uncover."

EXHIBIT A-1

**JOSEPH MCGETTIGAN:** Yeah.

Atty: Sandusky's son among 7 who settle with Penn State

Penn State ex-president files libel lawsuit papers

Joe Paterno's widow: We unknowingly helped Jerry Sandusky "groom" his victims

Complete Coverage: The Penn State Scandal

**FINA:** Many times. I mean, that that happened over and over again. I mean, it just – just astonished –

**MCGETTIGAN:** You know what, there – there – some of the thinking on the simplest level, one of the simplest expressions of their thinking is, "Well, that was then. That was Jerry Sandusky. That was someone else. This is now. Let's move on. We are Penn State."

**KETEYIAN:** Do you believe that Coach Paterno was a part of the conspiracy to conceal – to cover up the crimes at Penn State by Jerry Sandusky?

**FINA:** I do not. And – and I – I'm viewing this strictly on the evidence, not any kind of fealty to anybody. I did not find that evidence.

**KETEYIAN:** But you know as well as I do, Frank, Joe Paterno was the most powerful man on that campus, arguably the most powerful coach in college football. He knew what was going on in that university, and the argument is if he knew what he knew, he should have put a stop to it. He should have done more.

**FINA:** Well, that's right. And I don't see any need to judge him beyond his own words. He said it best: "I didn't do enough. I should have done more."

Spanier, Schultz and Curley have vigorously denied taking part in any cover-up and argued they were never informed Sandusky had committed any sexual abuse. They are due to stand trial on charges of perjury and other related crimes sometime next year.

*Watch Armen Keteyian's report on Penn State on "60 Minutes Sports" Wednesday on Showtime.*

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## Jerry Sandusky prosecutor: No evidence Joe Paterno participated in criminal cover-up at Penn State

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on September 03, 2013 at 8:18 PM, updated September 03, 2013 at 10:31 PM



### View full size

Prosecutors Joe McGettigan, left, and Frank Fina, are speaking out about the Jerry Sandusky case to CBS News. CHRIS KNIGHT, The Patriot-News

Another key figure in **the Jerry Sandusky child sex abuse case** weighed in Tuesday with his take on whether former Penn State head football coach Joe Paterno was an active participant in efforts to cover up Sandusky's sex crimes.

In an interview recorded for CBS 60 Minutes Sports, former Chief Deputy Attorney General Frank Fina said flatly: "I did not find that evidence."

That was after Fina stated that he did come to believe, as the state's probe of Sandusky progressed, that former Penn State president Graham Spanier and several of his top aides had **tried to interfere with the probe for years.**

"Now they're going to be tried on that... But I investigated that case," Fina said of Spanier, retired senior vice president Gary Schultz and former Athletic Director Tim Curley. "They deserved to be charged, and I hope justice will be served

there."

Spanier, Curley and Schultz are currently awaiting trial in Dauphin County court on charges of perjury before a grand jury, obstruction of justice, and endangering the welfare of children.

As for Paterno, Fina carved out a space that sounded pretty close to the legal responsibility / moral responsibility divide first raised by Pennsylvania State Police Commissioner Frank Noonan at a press conference on Sandusky's arrest in November 2011.

Paterno met minimal legal obligations, officials said then, because he did alert his superiors at Penn State to a 2001 eyewitness account of alleged sexual abuse by Sandusky, his longtime defensive coordinator, at a football shower facility.

That report was never turned to police or child welfare authorities for investigation.

Paterno was dead from complications from lung cancer months before before the state's probe of Penn State's response to the Sandusky probe was completed.

When pressed by interviewer Armen Keteyian on Paterno's role, and the common perception that he had a controlling hand in all university affairs, Fina suggested the former coach's words will have to speak for themselves.

"He (Paterno) said it best," said Fina, who has since left his state post for a position with the Philadelphia District Attorney's office. "He said: 'I didn't do enough... I should have done more.'"

Fina's reference appeared to be to **a statement issued by Paterno** in the days following Sandusky's arrest in which the longtime coach announced his intent to resign as head football coach at the end of the 2011 season.

Paterno, faced with growing questions about his role in the case, said in part that day: "This is a tragedy. It is one of the great sorrows of my life. With the benefit of hindsight, I wish I had done more."

Penn State trustees instead fired him that night.

Paterno's role in the scandal has become an unending debate for Pennsylvanians and Penn State fans, in part because of a communal need to know what to make of the coach so many lauded for his commitment to "success with honor" for so many years.

**The segment released Tuesday night on CBS Evening News** was excerpted from a longer presentation set to air on "60 Minutes Sports" on the Showtime network at 10 p.m. Wednesday.

It is the first broadcast interview Fina and colleague Joseph P. McGettigan III have done about the case since Sandusky's June 2012 conviction for the serial sexual abuse of 10 different boys between 1994 and 2008.

The state's investigation, meanwhile, is currently the subject of **an internal review by current Attorney General Kathleen Kane**, who promised during her campaign last year to try to review the case's management by her predecessors, including now-Gov. Tom Corbett.

Kane has given no indication when that probe will run its course.

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