

By Adam Smeltz
July 15, 2012

PITTSBURGH TRIBUNE-REVIEW™

Questions swirl over what aided Freeh probe

Joe Paterno was supposed to be in the clear. Graham Spanier walked free, too, and the university granted him emeritus status when trustees forced him out as Penn State's president in November.

While state prosecutors stopped short of blaming the late football coach and former school president for the Jerry Sandusky child rape scandal, an independent report released last week found that both concealed information about the former assistant coach for 14 years.

Former FBI Director Louis Freeh, who led the independent investigation, said Paterno, Spanier, former Penn State athletic director Tim Curley and retired Vice President Gary Schultz all masked signs of Sandusky's child abuse. Curley and Schultz are awaiting trial on charges of perjury and failure to report.

"Who knows the precise mechanism that caused (Freeh) to have more information than the Attorney General's Office," said Wes Oliver, director of the criminal justice program at Duquesne University. He said Penn State might earlier have held back "anything that wasn't specifically asked for" by state prosecutors.

It's also plausible that state investigators simply have a different scope, or that they have yet to reveal all their evidence, Oliver said.

A representative of Freeh Group International Solutions in Philadelphia declined to comment for this story.

Nils Frederiksen, a spokesman for Attorney General Linda Kelly, said he could not comment on evidence bound for a grand jury. But he emphasized that Freeh's civil work is different from the criminal process.

The state's criminal investigation remains open and evolves as new information materializes, he said.

"There has been an ongoing effort by some to conceal information, and we're working to overcome that," Frederiksen said. He said "nothing in the Freeh report contradicts what we've said."

"We, as criminal investigators, face a different set of standards. We need to be able to walk into a court and prove beyond a reasonable doubt that certain things occurred. And we proceed in everything we do with that in mind."

Penn State confirmed Freeh investigators gave prosecutors a critical string of email messages uncovered in the independent review. The emails, from 1998 and 2001, illustrate that Paterno and Spanier joined Curley and Schultz in shielding Sandusky, Freeh said. They contradict Paterno's testimony before a state grand jury, in which he denied knowing about a 1998 campus shower incident.

Paterno, the longtime Penn State football head coach, died on Jan. 22 of lung cancer. Family members have

defended his actions.

Freeh said he would have liked to interview Paterno during his eight-month, \$6.5 million investigation. He called the emails the most critical evidence discovered in the investigation, which was ordered by university trustees less than a month after Sandusky's arrest on Nov. 4.

A Centre County jury last month found Sandusky, 68, guilty of abusing 10 boys over 15 years, often on Penn State property. He is in jail awaiting sentencing.

"The Freeh report appears to be based on an enormous investigative resource pool," said State College attorney Andrew Shubin, a member of a legal team representing at least three Sandusky victims. "At the same time, it has a laser-like focus on 1998 and 2001. The attorney general had a much broader mandate."

Shubin said state prosecutors endured "pressures to move the case quickly and bring it to trial."

The state investigation faced more difficulties from Penn State officials, who were sluggish in turning over subpoenaed documents, a lead investigator testified last month.

And if state prosecutors recovered the internal 1998 and 2001 emails solely from the Freeh group, the private investigators might have invoked a technical advantage, case observers said. Freeh said his team reviewed more than 3.5 million electronic messages and documents, though its methodology was not immediately clear.

"Usually, if (an email) is on a cloud somewhere and it's been deleted, retrieving it would be almost impossible," said Jim McCarthy, a partner with Blue Line Forensics in California. "But if it's on a hard drive, they deleted it and the computer wasn't used much, you might be able to retrieve it."

Either way, prosecutors likely are combing through the emails to see if criminal charges are warranted, said Pittsburgh defense attorney Robert G. Del Greco Jr., who is not connected to the case. He said that review would include a focus on Spanier and his grand-jury testimony in the case.

Potential charges against Spanier might include perjury and endangering the welfare of children, Oliver said. He said additional counts against Curley and Schultz could include endangering the welfare of children and abetting a crime.

Attorneys for Spanier, Curley and Schultz did not comment for this report. They all have maintained their innocence.

Grand jury transcripts show the state took a hard line against Curley and Schultz in their appearances, Oliver said. Prosecutors took a less piercing stance with Paterno.

"The Freeh report illustrates that Joe Paterno was given a complete pass," Oliver said. "The way (prosecutors) questioned Joe Paterno versus the way they questioned Curley and Schultz — it's night and day. The Joe Paterno appearance before the grand jury looks like more a coronation than it does testimony."

For example, the prosecution did not press Paterno when he suggested he might have heard rumors about Sandusky before 2001, Oliver said.

Kelly in November acknowledged the possibility of additional charges.

Philadelphia attorney [Thomas Kline](#) said Freeh, in his report, appears to nudge prosecutors to take that route.

“I see, between the lines, a recommendation to law enforcement to look more carefully,” said Kline, who represents a Sandusky victim. Freeh “comes to the conclusion that there was a cover-up, and he comes to the conclusion that the conduct was reprehensible and there was reckless endangerment of children.

“Those words, of course, parallel various civil causes of action as well as potential criminal liability,” he said.