

## Pleas May Haunt Ex-PSU Prez At Child Endangerment Trial

By **Matt Fair**

Law360, Philadelphia (March 17, 2017, 6:57 PM EDT) -- As he prepares to go to trial this week on charges stemming from the Jerry Sandusky sex abuse scandal, ex-Penn State University president Graham Spanier faces a new challenge from freshly inked plea deals that could send two of his erstwhile co-defendants to the stand against him.

Former vice president Gary Schultz and former athletic director Timothy Curley, both of whom were involved in handling a February 2001 report from a graduate assistant who says he saw Sandusky molesting a young boy in a university locker room, each **pled guilty** on March 13 to a single count of endangering the welfare of children.

Attorneys say the move is almost guaranteed to result in the two men serving as cooperating witnesses against Spanier, and that their testimony could be key to clearing up potential uncertainty for jurors over what exactly Spanier knew about the infamous incident and how he responded to it.

"Who knows what was ultimately told to Spanier? The only people who can really tell us, it seems to me, would be Curley and Schultz because they were at the level where they were dealing with him," said L. George Parry, a former prosecutor currently in private practice with Philadelphia-based Davis Parry & Tyler PC. "Their testimony could be critical."

Spanier, who was **slapped with an indictment** in November 2012, is facing child endangerment and conspiracy charges for allegedly failing to inform authorities that Sandusky had been seen assaulting a child in a locker room shower.

Sandusky, the former defensive coordinator of Penn State's football team, is serving upward of 60 years in prison after being found guilty on 45 counts of child molestation.

Attorneys for Spanier have claimed that the incident — which was reported by Michael McQueary, a one-time graduate assistant for the football program who went on to become an assistant coach — was only ever reported to him as "horseplay" and not as a potential sexual assault.

Curley and Schultz, meanwhile, were indicted in November 2011 on charges that included perjury for allegedly lying to a grand jury about the reports they had received regarding Sandusky's activity with children on campus.

Spanier faced similar allegations as part of his indictment, but a state appeals court threw out the perjury, obstruction of justice and conspiracy charges against the three administrators in January 2016 after ruling that Penn State's general counsel had been improperly permitted to testify against them to a grand jury after representing that she'd served as their personal legal counsel.

The ruling largely gutted the state's case, but left standing child endangerment charges over their

handling of suspected child abuse reports.

For years, all three men vociferously maintained their innocence.

But the guilty pleas entered by Curley and Schultz before a Dauphin County judge on Monday brought an end to their united front, and their potential testimony against Spanier could cast their handling of the Sandusky scandal in an entirely new light.

"Up until the day they entered their pleas, they were denying any culpability at all," Parry said. "Presumably, they're going to change their tune, and it'll be along the lines, I would expect, that they told Spanier what was going on and Spanier did what he did."

Stephen Estey, an attorney with Estey & Bomberger LLP specializing in civil sex abuse cases against institutions, told Law360 that Spanier's defense would likely be based in large part around arguments that he wasn't aware of the severity of the allegations against Sandusky.

Testimony from Curley and Schultz, he said, could severely undercut that position.

"He's going to say he was told it was just horseplay, and they're probably going to say, 'We told him more serious allegations,'" he said.

This is not the first time that jurors have heard claims that top brass at Penn State believed the incident McQueary reported was nothing more than horseplay.

It was a position Spanier aired himself as he testified as part of a trial over McQueary's claims that the university had both mishandled the report he made against Sandusky and ultimately defamed him as part of the school's response to the indictments in November 2011.

A jury in the case **awarded McQueary \$7.3 million in damages** in a verdict handed down in late October.

"They're going to hear a lot of the same facts from the McQueary case in this case, and they found for McQueary in his case," Estey said.

But Walter Cohen, a former Pennsylvania attorney general who is currently in private practice with Obermayer Rebmann Maxwell & Hippel LLP, said it was unfair to use a prior case to make assumptions about how a new jury might react.

"They're different people," he said. "All you need is one to not buy it."

The case against Spanier also includes emails in which the three men discussed reporting the incident to the state's Department of Public Welfare before Curley proposed softening their approach and offering Sandusky "professional help."

"This approach is acceptable to me," Spanier wrote in an email included in the so-called Freeh Report, which the university commissioned in the wake of Sandusky's indictment to investigate the handling of the scandal. "The only downside for us is if the message isn't 'heard' and acted upon, and then we become vulnerable for not having reported it."

Cohen agreed that the emails could be damning in the eyes of jurors.

"There are some emails that tend to indicate that they interpreted it as being sexual abuse," he said.

Cohen said he believed there was one major argument working in Spanier's favor: that a statute requiring university administrators to report suspected child abuse was not on the books in Pennsylvania until 2007.

"The law [in 2001] was addressed to direct care providers like doctors, teachers, coaches — and not administrators who did not have direct care over children," he said.

And even if the law was found to be retroactively applicable to Spanier, he said, there was also an argument to be made that the charge was outside of the applicable two-year statute of limitations.

The prosecution, meanwhile, has countered that the failure to report suspected child abuse constituted a continuing course of conduct that essentially tolled the statute of limitations up to the period when the charges were brought.

Cohen said he found the government's theory troubling.

"I don't say it was OK morally or that we should be happy about what they did or didn't do, but it's something else to say that, 16 years later, you can go to trial and be found guilty for failing to do something in 2001 that you weren't required to do until 2007," he said.

Spanier, Curley and Schultz had **petitioned a trial judge** last month to allow them to bring the arguments to a state appeals court, but that bid was shot down.

Whether such arguments will be allowed to go to the jury as questions of fact is unclear, but Cohen said they could certainly be brought up before the judge in a motion to throw out the charges at the conclusion of the government's case.

"Spanier could very well be found not guilty," he said.

Without that, though, Estey said he believed it would be easy to inflame the passions of the jurors against Spanier.

"When you put a case on that involves sexual abuse of children, jurors get upset and they want to find out how this could happen, especially with a big institution like Penn State," he said. "They'll be looking to hold someone accountable."

The case is being prosecuted by Chief Deputy Attorney General Lauren Ditka and Deputy Attorney General Patrick Schulte.

Spanier is represented by Samuel W. Silver, Bruce Merenstein and Emily Hanlon of Schnader Harrison Segal & Lewis LLP.

The case is Commonwealth of Pennsylvania v. Spanier, case number CP-22-CR-3615-2013, in the Court of Common Pleas of Dauphin County, Pennsylvania.

--Editing by Philip Shea and Bruce Goldman.