

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

COMMONWEALTH OF PENNSYLVANIA,

:  
: No. CP-22- CR-3615-2013  
:

v.

GRAHAM B. SPANIER,

Defendant.

RECEIVED  
OFFICE OF  
CLERK OF COURTS  
DAUPHIN COUNTY  
PENNA  
2014 SEP -9 PM 2:52

**DEFENDANT GRAHAM B. SPANIER'S  
MOTION TO COMPEL PRETRIAL DISCOVERY**

Defendant Dr. Graham B. Spanier, by and through the undersigned counsel, hereby moves for an Order compelling the Commonwealth to comply with his requests for pretrial discovery. In support of this motion, Dr. Spanier avers as follows:

1. On February 5, 2014, Attorney General Kathleen Kane issued a statement indicating that the Office of Attorney General (“OAG”) had developed a recovery process to access emails and electronically stored information that were previously believed to have been destroyed. *See* 2/5/2014 Press Release, *Sandusky case review: Attorney General Kane provides status update*, available at <http://www.attorneygeneral.gov/press.aspx?id=7434> (last visited September 9, 2014).

2. In an article published on March 21, 2014, First Deputy Attorney General Adrian King, Jr. is quoted as stating that former Chief Deputy Attorney General Frank Fina, the former lead prosecutor on Dr. Spanier’s case, may have “improperly taken from the office” a memorandum relating to another case. *See* Brad Bumsted, *State sting eyed lobbyists, Philadelphia lawmakers*, PITTSBURGH TRIBUNE-REVIEW, Mar. 21, 2014, available at

<http://triblive.com/news/editorspicks/5801753-74/memo-fina-attorney#axzz2xko7wAE3> (last visited September 9, 2014). Mr. King stated that Mr. Fina's memorandum was not kept in the official case file, and was only discovered upon a search of "a database of more than 20 million deleted emails that were recently recovered." *Id.*

3. On April 9, 2014, the undersigned counsel sent a letter to Chief Deputy Attorney General Bruce Beemer referencing the above statements and requesting that the OAG search the recently recovered electronically stored information ("ESI") for materials discoverable in the case against Dr. Spanier. *See* 4/9/2014 Ltr., E. Ainslie to B. Beemer, attached hereto as Exhibit A. This letter incorporated the discovery requests submitted by attorneys for defendants Timothy Curley and Gary Schultz. *See* 4/1/2014 Ltr., C. Roberto to B. Beemer, attached hereto as Exhibit B; 4/2/2014 Ltr., T. Farrell to B. Beemer, attached hereto as Exhibit C.

4. All three defendants requested that the OAG search the recently recovered ESI for eleven categories of documents and information. *See* Exhs. A-C. Additionally, the undersigned counsel and counsel for Mr. Schultz included requests for the production of other categories of materials in the Commonwealth's possession in any form. *See* Exhs. A, C. All of the requests sought materials discoverable under Pennsylvania Rule of Criminal Procedure 573.

5. On May 2, 2014, defense counsel participated in a conference call with Mr. Beemer and Chief Deputy Attorney General Laura Ditka to discuss the defendants' discovery requests. During that call, Mr. Beemer stated that OAG Braden Cook was working on defendants' requests with the target date of completing ESI searches by May 20, 2014. Mr. Beemer suggested that defense counsel confer and provide him with proposed search terms for the requested searches.

6. On May 13, 2014, counsel for Mr. Curley sent a list of proposed search terms for the recently recovered ESI by letter to Mr. Beemer. *See 5/13/2014 Ltr., C. Roberto to B. Beemer, attached hereto as Exhibit D.* The undersigned counsel joined in that list and added four additional proposed searches relating to issues specific to the case against Dr. Spanier. *See 5/14/2014 Ltr., E. Ainslie to B. Beemer, attached hereto as Exhibit E.*

7. On June 2, 2014 and June 17, 2014, the OAG produced two subpoenas in response to the additional requests in Dr. Spanier's April 2014 discovery request letter. In her June 17, 2014 letter, Ms. Ditka also stated that the OAG did not have any documents in its possession responsive to one of the requests by counsel for Mr. Schultz. *See 6/17/2014 Ltr., L. Ditka to E. Ainslie, attached hereto as Exhibit F.*

8. On August 6, 2014, having not received any other response to the April 2014 discovery requests or the proposed ESI search terms, the undersigned counsel requested a status update by email to Mr. Beemer and Ms. Ditka. Ms. Ditka responded that she would provide an update upon her return from vacation. *See 8/6/2014 Emails, E. Ainslie and L. Ditka, attached hereto as Exhibit G.*

9. On August 21, 2014, the undersigned counsel again requested, by email to Mr. Beemer and Ms. Ditka, an update on the status of the OAG's discovery responses. On August 22, 2014, Mr. Beemer responded that the OAG would provide responses by September 5, 2014. *See 8/21/2014-8/22/2014 Emails, E. Ainslie and B. Beemer, attached hereto as Exhibit H.*

10. On September 4, 2014, the undersigned counsel received a letter from Ms. Ditka stating: "In response to your request I have enclosed a number of emails that were recovered by the Office of Attorney General." The letter enclosed three email exchanges. The

same cover letter and enclosures were also served by express mail on September 5, 2014. *See* 9/4/2014 Ltr., L. Ditka to E. Ainslie, with enclosures, attached hereto as Exhibit I.

11. The OAG did not provide a privilege log or other explanation for having withheld responsive documents. *See* Exh. I. Nor did the OAG provide an explanation for the five months it took to produce the three email exchanges. *Id.*

12. It strains credulity that there would be only three email exchanges within the 20 million recovered emails that were responsive to defendants' numerous discovery requests.

13. Special Deputy Attorney General H. Geoffrey Moulton, Jr.'s Report of the Attorney General on the Investigation of Gerald A. Sandusky ("Moulton Report"), released on May 30, 2014, indicated that the deleted OAG emails recovered in the email restoration process were "extremely helpful in understanding the course of the Sandusky investigation, both in their own right and in refreshing the recollection of witnesses." Moulton Report at 7, available at [http://www.wjactv.com/images/2014\\_06\\_23\\_REPORT\\_to\\_AG\\_ON\\_THE\\_SANDUSKY\\_INVESTIGATION.pdf](http://www.wjactv.com/images/2014_06_23_REPORT_to_AG_ON_THE_SANDUSKY_INVESTIGATION.pdf) (last visited September 9, 2014). The emails attached to the Moulton Report indicate that the OAG was able to recover emails spanning from, at a minimum, September 2009 to June 2011, substantially overlapping the period in which the OAG was investigating Dr. Spanier and Messrs. Schultz and Curley. *See* Moulton Report, Appxs. D-E, G, I, J-K, M-N. Significantly, Appendix K is a December 2010 email exchange about the OAG's plans to issue subpoenas for the grand jury testimony of Messrs. Schultz and Curley and conversations with then-Penn State General Counsel Cynthia Baldwin about those subpoenas. *Id.* at Appx. K.

14. On September 5, 2014, the undersigned counsel asked Ms. Ditka if the OAG would be producing additional materials in response to Dr. Spanier's discovery requests. Ms. Ditka responded "that is the discoverable material we found." *See 9/5/2014 Emails, E. Ainslie and L. Ditka, attached hereto as Exhibit J.*

15. Dr. Spanier requests that the Court order the OAG to produce any and all results of the ESI searches that are responsive to his discovery requests. Dr. Spanier further requests that the Court order the OAG to account for any and all responsive materials that the OAG intends to withhold from production by providing a log identifying all such materials and the basis for withholding them from production.

16. The undersigned counsel's good faith effort to resolve this discovery dispute proved unsuccessful.

For these reasons, Dr. Spanier respectfully requests that the Court enter an Order compelling the Commonwealth to comply with Dr. Spanier's requests for pretrial discovery.

Respectfully submitted,

  
\_\_\_\_\_

Timothy K. Lewis (PA ID No. 32199)  
Elizabeth K. Ainslie (PA ID No. 35870)  
Schnader Harrison Segal & Lewis LLP  
1600 Market Street, Suite 3600  
Philadelphia, PA 19103  
215-751-2000  
215-751-2205 (facsimile)

*Attorneys for Defendant Dr. Graham B. Spanier*

Dated: September 9, 2014

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

COMMONWEALTH OF PENNSYLVANIA,

:

: No. CP-22- CR-3615-2013

:

: OTN No. T-252359-2

v.

:

:

GRAHAM B. SPANIER,

:

:

Defendant.

:

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing Defendant Graham  
B. Spanier's Motion to Compel Pretrial Discovery was delivered this 9th day of September 2014,  
to the following:

**By Email and First Class Mail**

Bruce Beemer, Esq.  
Deputy Attorney General  
Office of the Attorney General  
Strawberry Square  
Harrisburg, PA 17120  
bbeemer@attorneygeneral.gov

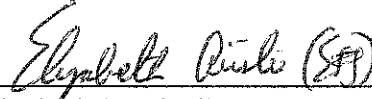
*Attorney for the Commonwealth*

Caroline M. Roberto, Esq.  
429 4th Avenue, Suite 500  
Pittsburgh, PA 15219  
carolineroberto@comcast.net

*Attorney for Defendant Timothy Mark Curley*

Thomas J. Farrell, Esq.  
Farrell & Reisinger, LLC  
200 Koppers Building  
436 7th Avenue  
Pittsburgh, PA 15219  
tfarrell@farrellreisinger.com

*Attorney for Defendant Gary Charles Schultz*

A handwritten signature in cursive script that reads "Elizabeth Ainslie (EPA)". The signature is written in black ink and is positioned above a horizontal line.

---

Elizabeth K. Ainslie

*Attorney for Defendant Graham B. Spanier*

# Exhibit A



April 9, 2014

Elizabeth K. Ainslie  
Direct Dial 215-751-2359  
Direct Fax 215-751-2205  
E-mail: eainslie@schnader.com

**By Email and First Class Mail**

Bruce Beemer  
Chief Deputy Attorney General  
Office of the Attorney General  
Strawberry Square  
Harrisburg, PA 17120  
bbeemer@attorneygeneral.gov

**RE: Commonwealth v. Graham B. Spanier, Dauphin County No. CP-22-0003615-2013**

Dear Bruce:

I write to join and supplement the recent discovery request letters from Carrie Roberto and Tom Farrell. We have recently learned that the Office of Attorney General ("OAG") has developed a recovery process to access emails and electronically stored information which were previously believed to have been destroyed. See 2/4/2014 Statement of Attorney General Kathleen Kane. We have also learned that the former prosecutor(s) investigating Dr. Spanier's case may have "improperly taken from the office" certain memoranda which have now been discovered by searching the database of 20 million deleted emails. See Statement by First Deputy Adrian R. King, Jr., as reported in Brad Bumsted, State Sting Eyed Lobbyists, Philadelphia Lawmakers, TribLive, March 21, 2014, available at <http://triblive.com/news/editorspicks/5801753-74/memo-fina-attorney#axzz2xko7wAE3> (last visited April 2, 2014). The recovered emails and memoranda span the relevant time period of the Penn State investigation.

We join in the requests made by Ms. Roberto and Mr. Farrell that the recently recovered electronically stored information be searched and that production be made of the following:

1. Any evidence favorable to the accused that is material either to guilt or to punishment;
2. Any written confession or inculpatory statement or the substance of any oral confession or inculpatory statement by the accused and the identity of the person to whom the confession or inculpatory statement was made;

Bruce Beemer  
Deputy Attorney General  
April 9, 2014  
Page 2

3. Any tangible objects, including documents, photographs, fingerprints, or any other tangible evidence;

4. Transcripts and recordings of any electronic surveillance and the authority by which the transcripts and records were obtained;

5. The names and addresses of eyewitnesses;

6. All written and recorded statements and substantially verbatim oral statements of eyewitnesses;

7. All written and recorded statements and substantially verbatim oral statements made by co-defendants, co-conspirators, or accomplices, regardless of whether such individuals have been charged;

8. Any communications, in whatever form, with Cynthia Baldwin or her counsel concerning her testimony or the prospect of her prosecution;

9. Any communications, in whatever form, with Mike McQueary or his counsel concerning his testimony or the prospect of his prosecution;

10. Any communications, in whatever form, with Tom Harmon or his counsel concerning his testimony or the prospect of his prosecution; and

11. Any communications, in whatever form, between former Chief Deputy Attorney General Frank Fina and former Grand Jury Supervising Judge Barry F. Feudale relating to the OAG petition to remove Judge Feudale as Grand Jury Supervising Judge.

We also join in Mr. Schultz's requests for production of the following:

12. Any reports, notes, emails, text messages or other correspondence between Mike McQueary and the OAG or agents working on this case which report that Mr. McQueary stated or denied that he had a conversation with Joseph Paterno in which Mr. Paterno commented to Mr. McQueary along the lines that "Old Main screwed up." See 7/29/2013 A.M. Preliminary Hearing Trans. at 62-63;

13. Audio recordings of witness interviews, including but not limited to the agent interviews of victim 4 described in the Sandusky trial testimony of Officers Lieter and Rossman on June 19, 2012;

Bruce Beemer  
Deputy Attorney General  
April 9, 2014  
Page 3

14. Centre County's protocol regarding the investigation of child abuse allegations (described in Agent Sassano's preliminary hearing testimony); and

15. Notes, reports, or any documentation of the interviews of Wendell Courtney and Albert Horvath. Both are believed to have made significant exculpatory statements.

In addition, we request that you produce the following:

16. The subpoena for Dr. Spanier's grand jury testimony;

17. The subpoena for "all emails from 1997 through the present" discussed during the April 13, 2011 proceedings before Judge Feudale;

18. Any communications, in whatever form, with Lisa Powers or her counsel concerning her testimony or the prospect of her prosecution;

19. Notes, reports, or any documentation of the interviews of Carolyn Dolbin and Jack Raykovitz, who are also believed to have made exculpatory statements; and

20. Any communications, in whatever form, between Mr. Fina and Judge Feudale relating to the Penn State investigation.

Thank you for your attention to these requests. We request that production of the material be made to counsel on or before May 1, 2014. If you have any questions, please do not hesitate to contact me

Sincerely,



Elizabeth K. Ainslie

For SCHNADER HARRISON SEGAL & LEWIS LLP

cc: Caroline Roberto, Esq.  
Thomas Farrell, Esq.

# Exhibit B

CAROLINE M. ROBERTO

ATTORNEY AT LAW

429 FOURTH AVENUE

SUITE 500

PITTSBURGH, PENNSYLVANIA 15219

(412) 391-4071

FAX (412) 391-1190

April 1, 2014

Bruce R. Beemer  
Chief Deputy Attorney General  
Office of Attorney General  
16<sup>th</sup> Floor, Strawberry Square  
Harrisburg, PA 17120  
[bbeemer@attorneygeneral.gov](mailto:bbeemer@attorneygeneral.gov)

RE: Commonwealth v. Timothy M. Curley  
No. 5165 CR 2011; 3614 CR 2013  
Request for Production

Dear Mr. Beemer:

It has come to our attention that the Office of Attorney General has recently developed a recovery process to access emails and electronically stored information which were previously believed to have been destroyed. See, February 4, 2014, statement by Attorney General Katherine Kane. We have also learned that the former prosecutor(s) investigating Mr. Curley's case may have "improperly taken from the office" certain memoranda which have now been discovered by searching the database of the deleted emails. See, Public Statement by First Deputy Adrian R. King, Jr. regarding the Philadelphia corruption case. Brad Bumsted, State sting eyed lobbyists, Philadelphia lawmakers, TribLive, March 21, 2014, <http://triblive.com/news/editorspicks/5801753-74/memo-fina-attorney#axzz2xXW3h8wv>. The recovered emails and memoranda span the relevant time period of the investigation and prosecution of Mr. Curley's case.

On December 22, 2011, President Judge Todd Hoover entered an interim order granting defendants Curley and Schultz's motion to preserve all witness interviews, proffer statements, interview statements, and reports of investigation. On August 17, 2012, Judge Hoover entered a final order providing that:

Bruce Beemer  
Page Two (2)  
April 1, 2014

“The Commonwealth shall preserve all notes of witness interviews, proffer statements, interview statements, and reports of investigation related to the within captioned cases, to include any notes of interviews of any persons and any electronic communication with witnesses which were made in preparation of the Grand Jury investigation and instant cases.”

We request that the recently recovered electronically stored information be searched and that production be made of the following:

1. Any evidence in whatever form, favorable to the accused that is material either to guilt or to punishment;
2. Any confession or inculpatory statement, in whatever form, or the substance of any oral confession or inculpatory statement by the accused and the identity of the person to whom the confession or inculpatory statement was made;
3. Any tangible objects, in whatever form, including documents, photographs, fingerprints, or any other tangible evidence;
4. Transcripts and recordings of any electronic surveillance and the authority by which the said transcript and records were obtained;
5. The names and addresses of eyewitnesses;
6. All statements, in whatever form, and substantially verbatim oral statements of eyewitnesses;
7. All statements, in whatever form, and substantially verbatim oral statements, made by co-defendants and by co-conspirators or accomplices, whether such individuals have been charged or not;
8. Any communications, in whatever form, with Cynthia Baldwin and her counsel concerning her testimony or the prospect of her prosecution.

Bruce Beemer  
Page Three (3)  
April 1, 2014

9. Any communications, in whatever form, with Mike McQueary or his counsel concerning his testimony or the prospect of his prosecution.

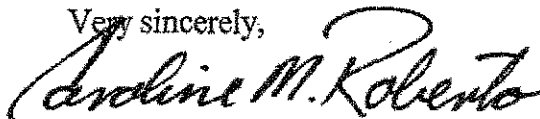
10. Any communications, in whatever form, with former Chief Thomas Harmon or his counsel concerning his testimony or the prospect of his prosecution.

11. Any communications, in whatever form, between former DAG Fina and Judge Feudale relating to the OAG petition to remove Judge Feudale as Grand Jury Supervising Judge.

We request that production of the material be made to counsel on or before May 1, 2014.

If you have any questions, please do not hesitate to contact me.

Very sincerely,



Caroline M. Roberto  
Attorney for Timothy M. Curley

CMR:geb

cc: Laura Ditka, Deputy Attorney General  
Thomas J. Farrell, Esquire (w/encls.)  
Elizabeth Ainslie, Esquire (w/encls.)

# Exhibit C





FARRELL & REISINGER, LLC  
ATTORNEYS AT LAW

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Telephone 412-894-1380  
Facsimile 412-894-1381  
[www.farrellreisinger.com](http://www.farrellreisinger.com)

April 2, 2014

Via Email and U.S. Mail

Bruce R. Beemer  
Senior Counsel  
Office of Attorney General  
16<sup>th</sup> Floor, Strawberry Square  
Harrisburg, PA 17120  
[bbeemer@attorneygeneral.gov](mailto:bbeemer@attorneygeneral.gov)

RE: Commonwealth v. Gary C. Schultz, No. 5164 CR 2011; 3616 CR 2013  
Request for Production.

---

Dear Mr. Beemer:

I write to join and supplement Ms. Robert's discovery letter of April 1, 2014. It has come to our attention that the Office of Attorney General has recently developed a recovery process to access emails and electronically stored information which were previously believed to have been destroyed. See, February 4, 2014, statement by Attorney General Katherine Kane. We have also learned that the former prosecutor(s) investigating Mr. Schultz's case may have "improperly taken from the office" certain memoranda which have now been discovered by searching the database of 20 million deleted emails. See, Public Statement by First Deputy Adrian R. King, Jr. regarding the Philadelphia corruption case, as reported in Brad Bumsted, State Sting Eyed Lobbyists, Philadelphia Lawmakers, Triblive, March 21, 2014, <http://triblive.com/news/editorspicks/5801753-74/memo-fina-attorney#axzz2xko7wAE3>. The recovered emails and memoranda span the relevant time period of the Penn State investigation and prosecution of Mr. Schultz's case.

On December 22, 2011, President Judge Todd Hoover entered an interim order granting defendants Curley and Schultz's motion to preserve all witness interviews, proffer statements, interview statements, and reports of investigation. On August 17, 2012, Judge Hoover entered a final order providing that:

The Commonwealth shall preserve all notes of witness interviews, proffer statements, interview statements, and reports of investigation related to the within captioned cases, to include any notes of interviews of any persons and any electronic communication with witnesses which were made in preparation of the Grand Jury investigation and instant cases.

We request that the recently recovered electronically stored information be searched and that production be made of the following:

1. Any evidence favorable to the accused that is material either to guilt or to punishment;
2. Any written confession or inculpatory statement or the substance of any oral confession or inculpatory statement by the accused and the identity of the person to whom the confession or inculpatory statement was made;
3. Any tangible objects, including documents, photographs, fingerprints, or any other tangible evidence;
4. Transcripts and recordings of any electronic surveillance and the authority by which the said transcript and records were obtained;
5. The names and address of eyewitnesses;
6. All written and recorded statements and substantially verbatim oral statements of eyewitnesses;
7. All written and recorded statements, and substantially verbatim oral statements, made by co-defendants and by co-conspirators or accomplices, whether such individuals have been charged or not;
8. Any communications, in whatever form, with Cynthia Baldwin and her counsel concerning her testimony or the prospect of her prosecution.
9. Any communications, in whatever form, with Mike McQueary or his counsel concerning his testimony or the prospect of his prosecution.
10. Any communications, in whatever form, with former Chief Thomas Harmon or his counsel concerning his testimony or the prospect of his prosecution.

11. Any communications, in whatever form, between DAG Fina and Judge Feudale relating to the OAG petition to remove Judge Feudale as Grand Jury Supervising Judge.

In addition, we request that you produce the following:

- A. The December 2010 subpoena to Mr. Schultz for his testimony.
- B. Any reports, notes, emails, text messages or other correspondence between Mike McQueary and the OAG or agents working on this case which report that Mr. McQueary stated or denied that he had a conversation with Joseph Paterno in which Mr. Paterno commented to Mr. McQueary along the lines that "Old Main screwed up." (See July 29, 2013, Preliminary Hearing Tr. at 62-63).
- C. Audio recording of Mr. Schultz' grand jury testimony. There are obvious errors in the transcription, one being the identification of the 1998 incident as "whatever we went through in 2003." (GJ Tr. at 24).
- D. Audio recordings of witness interviews, including but not limited to the agent interviews of victim 4 described in the Sandusky trial testimony of Officers Lieter and Rossman on June 19, 2012.
- E. Centre County's protocol regarding the investigation of child abuse allegations (described in Agent Sassano's preliminary hearing testimony).
- F. Notes, reports, or any documentation of the interviews of Wendell Courtney and Albert Horvath. Both are believed to have made significant exculpatory statements.

We request that production of the material be made to counsel on or before May 1, 2014.

If you have any questions, please do not hesitate to contact me.

Sincerely,

*Thomas J. Farrell / lca*  
Thomas J. Farrell

cc: Caroline Roberto, Esquire  
Elizabeth Ainslie, Esquire

## Exhibit D

CAROLINE M. ROBERTO

ATTORNEY AT LAW

429 FOURTH AVENUE

SUITE 500

PITTSBURGH, PENNSYLVANIA 15219

(412) 391-4071

FAX (412) 391-1190

May 13, 2014

Bruce R. Beemer  
Senior Counsel  
Office of Attorney General  
16<sup>th</sup> Floor, Strawberry Square  
Harrisburg, PA 17120  
[bbeemer@attorneygeneral.gov](mailto:bbeemer@attorneygeneral.gov)

RE: Commonwealth v. Timothy M. Curley  
No. 5165 CR 2011; 3614 CR 2013  
Request for Production

Dear Mr. Beemer:

I write to follow-up on our discussion on May 2, 2014, regarding the discovery requests. We agreed to submit our suggested "search terms" to search the electronically stored information (ESI) that had been recently recovered by your office. See April 1, 2014, letter from undersigned counsel. Please find our search requests below.

We have written the search phrases using the "dtSearch" syntax. (For example, the asterix (\*) functions as a wildcard and the tilde (~) signifies stemming). Please modify as necessary or let us know and we will be happy to translate the phrases to work with your technology.

**Searches:**

1. All documents related to Attorney Cynthia Baldwin and her representation of these defendants at the grand jury and her later testimony against them at the grand jury:

**baldwin AND (privilege OR represent~ OR (crime W/3 fraud) OR immun\*  
OR conflict)**

Bruce Beemer  
Page Two (2)  
May 13, 2014

2. All documents related to Attorney Cynthia Baldwin and her representation of these defendants at the grand jury and her later testimony against them at the grand jury, relating to her attorney, Attorney Charles A. DeMonaco:

**demonaco AND (privilege OR represent~ OR (crime W/3 fraud) OR immun\* OR conflict)**

3. All documents related to our clients or Penn State that deal with their representation at the grand jury by PSU's General Counsel, Attorney Baldwin:

**(spanier OR curley OR Schultz OR "PSU" OR "penn state" OR "pennsylvania state") AND (privilege OR represent~ OR (crime W/3 fraud) OR conflict)**

4. Any communications regarding Tom Bradley and his signing memorabilia on Coach Paterno's behalf:

**(bradley OR scrap) AND (autopen OR autograph OR (mini\* W/3 helmet) OR memorabilia OR immun\* OR (sign~ W/12 (coach OR paterno)))**

5. Any communication regarding Michael McQueary based on his gambling habits, infidelity and harassment:

**(mcqueary AND (affair OR infidel\* OR cheat~ OR gambl~ OR facebook OR ((pic~ OR photo~ OR picture) W/5 (text OR send OR mail\*)) OR harass\* OR stalk~))**

6. Any communications regarding Michal Kajak based on his financial interests in the case:

**(kajak OR kline OR kepinsk\* OR mietek OR miecz\* OR kazim\* OR (victim W/3 5) OR (victim W/3 five) OR michalk)**

7. Information regarding Joshua Culver (using his name and his foster parents' name):

**(culver OR joshuac OR bodley)**

Bruce Beemer  
Page Two (3)  
May 13, 2014

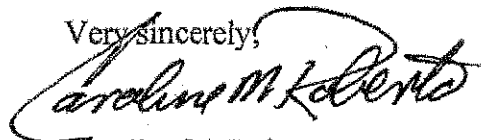
We would like to work together to make this process as effective and efficient as possible for all. Because we have not seen the document population that you are searching, we do not know the type of language used and how certain people were referred to (such as main witnesses and victims) in emails and memoranda. We are unaware of your retrieval process and if or how the retrieval contaminated the ESI. Therefore, we trust that you will modify or enhance the search terms to accommodate your system.

In accordance with our discussion, we request that production be made of all of the discoverable results of the above searches. Of course, we request as well that you disclose any other materials, not captured by our suggested searches, that fall within *Brady v. Maryland* and *Kyles v. Whitely*, etc.

Please let us know how soon you can reasonably accomplish these searches.

If you have any questions, please do not hesitate to contact me.

Very sincerely,



Caroline M. Roberto  
Attorney for Timothy M. Curley

CMR:geb

cc: Thomas J. Farrell, Esquire (w/encls.)  
Elizabeth Ainslie, Esquire (w/encls.)

# Exhibit E



May 14, 2014

Elizabeth K. Ainslie  
Direct Dial 215-751-2359  
Direct Fax 215-751-2205  
E-mail: eainslie@schnader.com

By Email and First Class Mail

Bruce Beemer  
Chief Deputy Attorney General  
Office of the Attorney General  
Strawberry Square  
Harrisburg, PA 17120  
bbeemer@attorneygeneral.gov

**RE: Commonwealth v. Graham B. Spanier, Dauphin County No. CP-22-0003615-2013**

Dear Bruce:

I write to join and supplement Carrie Roberto's May 13, 2014 letter providing suggested search terms for the electronically stored information (ESI) that was recently recovered by your office. In addition to Ms. Roberto's search requests, please find additional search requests below that are specific to Dr. Spanier's prosecutorial misconduct defense.

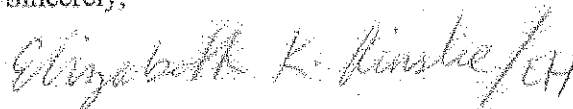
- fina and feudale and (baldwin or spanier)
- fina and (sassano or feathers) and (((PSU or (penn\* w/3 state)) w/3 (admin\* or president\*)) or spanier)
- fina and (memorand\* or report) and (PSU or (penn\* w/3 state) or spanier)
- fina and (fresh or paw or cloud or mcneill)

We request that production be made of all of the discoverable results of the above searches and the searches listed in Ms. Roberto's letter. We further request that you disclose any exculpatory materials within the recently-recovered ESI not captured by these suggested searches, pursuant to *Brady v. Maryland*. In addition, we reiterate our requests for the specific documents and document categories identified in our April 9, 2014 letter.

Bruce Beemer  
Deputy Attorney General  
May 14, 2014  
Page Two

Thank you for your attention to these requests. If you have any questions, please do not hesitate to contact me.

Sincerely,

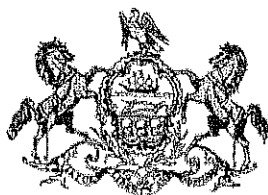


Elizabeth K. Ainslie

For SCHNADER HARRISON SEGAL & LEWIS LLP

cc: Caroline Roberto, Esq.  
Thomas Farrell, Esq.

# Exhibit F



COMMONWEALTH OF PENNSYLVANIA  
OFFICE OF ATTORNEY GENERAL

KATHLEEN G. KANE  
ATTORNEY GENERAL

June 17, 2014

Elizabeth K. Ainslie, Esquire  
1800 Market Street  
Suite 3600  
Philadelphia, PA 19103

Re: Commonwealth v Graham Spanier, No. CP-22-CR-0003615-2013

Dear Ms. Ainslie:

In response to your letter and our subsequent telephone conversation yesterday I have enclosed the subpoena you requested. Subpoena 108 seems to be the subpoena you were referring to in the Cynthia Baldwin letter. In regard to the Centre County protocol we are not in possession of any such document and I am unaware of its existence. There is no state wide "protocol". I hope our continued work and conversations get us closer to a trial date. If you need anything else please do not hesitate to call me.

Very truly yours,

A handwritten signature in black ink, appearing to read 'L. Ann Ditka', with a long, sweeping flourish extending to the right.

Laura Ann Ditka  
Chief Attorney General

# Exhibit G

**From:** Ditka, Laura A. <lditka@attorneygeneral.gov>  
**Sent:** Wednesday, August 06, 2014 12:16 PM  
**To:** Ainslie, Elizabeth; Beemer, Bruce R.  
**Cc:** Hanlon, Emily J.  
**Subject:** Re: Emails discovery

Liz Bruce and I are both on vacation I will check progress upon return

Sent from my BlackBerry 10 smartphone on the Verizon Wireless 4G LTE network.

Original Message  
**From:** Ainslie, Elizabeth  
**Sent:** Wednesday, August 6, 2014 11:19 AM  
**To:** Beemer, Bruce R.; Ditka, Laura A.  
**Cc:** Hanlon, Emily J.  
**Subject:** Emails discovery

Hi Bruce and Laura,

Back in May we sent you suggested search terms to help locate relevant emails (specifically those discovered in the Moulton investigation), and I believe we followed up some weeks later and were told that the IT guys should have something for us soon. What's the deal?

Regards  
Liz

The information transmitted is intended only for the person or entity to whom it is addressed and may contain confidential and/or privileged material. Any use of this information other than by the intended recipient is prohibited. If you receive this message in error, please send a reply e-mail to the sender and delete the material from any and all computers. Unintended transmissions shall not constitute waiver of any applicable attorney-client or any other applicable privilege. PA-OAG

# Exhibit H

**From:** Beemer, Bruce R. [<mailto:bbeemer@attorneygeneral.gov>]  
**Sent:** Friday, August 22, 2014 02:41 PM  
**To:** Ainslie, Elizabeth; Ditka, Laura A. <[lditka@attorneygeneral.gov](mailto:lditka@attorneygeneral.gov)>  
**Subject:** Re: Spanier discovery

Liz,

We will be responding by Friday September 5, 2014. I hope you have had an enjoyable summer. Please call me if you would like to discuss. Have a nice weekend.

Bruce

Sent from my BlackBerry 10 smartphone on the Verizon Wireless 4G LTE network.

---

**From:** Ainslie, Elizabeth  
**Sent:** Thursday, August 21, 2014 4:12 PM  
**To:** Beemer, Bruce R.; Ditka, Laura A.  
**Subject:** Spanier discovery

Dear Bruce and Laura,

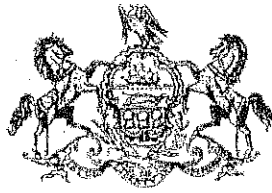
PLEASE respond to the attached letter of three months ago. We have, I think, been more than patient, and we need these emails.

Thanks,  
Liz

The information transmitted is intended only for the person or entity to whom it is addressed and may contain confidential and/or privileged material. Any use of this information other than by the intended recipient is prohibited. If you receive this message in error, please send a reply e-mail to the sender and delete the material from any and all computers. Unintended transmissions shall not constitute waiver of any applicable attorney-client or any other applicable privilege. PA-OAG



# Exhibit I



COMMONWEALTH OF PENNSYLVANIA  
OFFICE OF ATTORNEY GENERAL

KATHLEEN G. KANE  
ATTORNEY GENERAL

Elizabeth K. Ainslie  
Schnader, Harrison, Segal & Lewis LLP  
1600 Market Street, Suite 3600  
Philadelphia, PA 19103

Re: Commonwealth v. Graham B. Spanier No. CP-

22-CR-3615-2013  
September 4, 2014

Dear Ms. Ainslie:

In response to your request I have enclosed a number of emails that were recovered by the Office of Attorney General. I will try to make the September argument and I hope our continued work and conversations get us closer to a trial date. If you need anything else please do not hesitate to call me.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Laura Ditka".

Laura Ditka  
Chief Deputy Attorney General

**Ditka, Laura A.**

---

**From:** Sassano, Anthony  
**Sent:** Friday, December 16, 2011 3:48 PM  
**To:** Cook, Braden M.  
**Subject:** Re: PSU Developements

Frank should advise  
Agent Anthony L. Sassano PA Office of Attorney General  
2515 Green Tech Drive  
State College, PA. 16803  
814.863.1053 Office  
814.931.7422. Cell  
[asassano@attorneygeneral.gov](mailto:asassano@attorneygeneral.gov)

---

**From:** Cook, Braden M.  
**To:** Fina, Frank G.; Eshbach, Jonelle H.  
**Cc:** Sassano, Anthony; Feathers, Randy  
**Sent:** Fri Dec 16 10:45:07 2011  
**Subject:** PSU Developements

I just spoke with John Corro and this is the information from Cynthia Baldwin.

She has said that based on the verbal instructions by the Judge, the PSU IT staff is to make all copies of Email and hardware with only our presence to view the process. Additionally, there is supposed to be no release of items to our office until a review has been conducted for privileged content.

With the first part of that, the device copy, if they want to do it themselves, I am fine with that because then they will have to supply all the media to contain the copies.. I suggested to Mr. Corro that they could borrow, with my supervision, our copy devices to speed along the process.

I believe there is an issue, however, with the second aspect, the review for privilege. There is an inherent danger that items that may be of relevance will be withheld and claimed under privilege when there is none and there will be no way to substantiate the items.

If the judge sees that their claim is valid, one way to remove any items related to council would be to collect the names and E-mail address of their council and do a keyword search for those items. They could then segregated and not examined. Additionally, if the privilege claim is related to practices such as student recruitment, based on the limitation set forth for only items related to Sandusky, again the privilege would be intact because we would not be looking at those items based on our keyword searches.

Please call me if you would like to discuss this.

Braden M. Cook  
Special Agent  
PA Office of Attorney General  
Computer Forensics Unit  
North Huntingdon, PA  
Office (724) 861-3672  
Cell (717) 579-0824  
[bcook@attorneygeneral.gov](mailto:bcook@attorneygeneral.gov)

**Ditka, Laura A.**

---

**From:** Cook, Braden M.  
**Sent:** Friday, December 16, 2011 10:45 AM  
**To:** Fina, Frank G.; Eshbach, Jonelle H.  
**Cc:** Sassano, Anthony; Feathers, Randy  
**Subject:** PSU Developements

I just spoke with John Corro and this is the information from Cynthia Baldwin.

She has said that based on the verbal instructions by the Judge, the PSU IT staff is to make all copies of Email and hardware with only our presence to view the process. Additionally, there is supposed to be no release of items to our office until a review has been conducted for privileged content.

With the first part of that, the device copy, if they want to do it themselves, I am fine with that because then they will have to supply all the media to contain the copies.. I suggested to Mr. Corro that they could borrow, with my supervision, our copy devices to speed along the process.

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Braden M. Cook  
Special Agent  
PA Office of Attorney General  
Computer Forensics Unit  
North Huntingdon, PA  
Office (724) 861-3672  
Cell (717) 579-0824  
[bcook@attorneygeneral.gov](mailto:bcook@attorneygeneral.gov)

**Ditka, Laura A.**

---

**From:** John Corro <JohnC@psu.edu>  
**Sent:** Saturday, December 17, 2011 7:29 AM  
**To:** Cook, Braden M.  
**Cc:** Cynthia Baldwin; Fina, Frank G.; Eshbach, Jonelle H.; Sassano, Anthony; Feathers, Randy; Buckwash, David G.; Amy McCall; Kathleen Kimball  
**Subject:** Re: PSU Evidence Collection

Hello Braden,

I shared the plan that you detailed below with Judge Baldwin and she contacted me late Friday afternoon. There is another criminal attorney that is looking over the plan and I need to wait until everyone is okay with what we are about to do. Based on that, I would like to delay our start time until Tuesday morning.

I realize that another delay is hugely frustrating, but I thought it would be better to delay the start rather than have you waiting up here in State College.

Thank-you,  
John Corro  
The Pennsylvania State University  
ITS - Security Operations and Services

On Dec 16, 2011, at 12:54 PM, Cook, Braden M. wrote:

> Mr. Corro,

>

> Based on our conversations earlier, and the stance taken by PSU General Counsel and the orders from the Judge, the PSU IT staff will be making all the copies of hard drives and portable devices, and providing all E-mails related to persons of interest, their administrative assistants, and Mr. Jerry Sandusky. An outline of all items and persons of interest is attached.

>

> This process will be conducted solely by the IT staff of PSU under the direct supervision but with no assistance from Special Agent Braden Cook or Supervisory Special Agent David Buckwash of the PA Office of Attorney General's Computer Forensics Unit. Assistance in this matter was offered by the PA Office of Attorney General, utilizing qualified forensic examiners from the Attorney General's and the Pennsylvania State Police, but was rejected by the General Counsel from PSU.

>

> All items in their entirety are to be turned over to SA Braden Cook and the Office of Attorney General by the first week in January 2012 as per the direct orders of the presiding Judge. Any review of items for privilege must also be completed in this time frame. Any items deemed privileged must be submitted to the presiding judge, accompanied by a list of privileged items and a complete file list from the day the evidence collection was performed pertaining to the evidence item (hard drive or mailbox)the privileged item was identified on.

>

> Any failure to provide these items, in their entirety by the date specified, will be a matter to be addressed by the presiding judge.

>

> Please Contact me to schedule all the dates and times so we can plan on being there to observe. Also, no examiner will be available on the 24th or 25th of December.

>  
> Any questions or concerns should be addressed to myself and Mr. Frank Fina.

>  
>  
> Braden M. Cook  
> Special Agent  
> PA Office of Attorney General  
> Computer Forensics Unit  
> North Huntingdon, PA  
> Office (724) 861-3672  
> Cell (717) 579-0824  
> [bcook@attorneygeneral.gov](mailto:bcook@attorneygeneral.gov)

>  
> <PSU ITEMS TO BE COLLECTED.docx>

---

John D. Corro E-mail: [JohnC@psu.edu](mailto:JohnC@psu.edu) Telephone: +1 814 863 5677  
Pennsylvania State University-Information & Technology Services (ITS)  
Security Operations & Services  
E-mail: [Security@psu.edu](mailto:Security@psu.edu) Office Telephone: +1 814 863 9533

## Exhibit J

----- Original Message -----

From: Ditka, Laura A. [mailto:[lditka@attorneygeneral.gov](mailto:lditka@attorneygeneral.gov)]

Sent: Friday, September 05, 2014 01:38 PM

To: Ainslie, Elizabeth

Subject: RE: What????!!

Liz that is the discoverable material we found. Let's try to talk next week.

-----Original Message-----

From: Ainslie, Elizabeth [mailto:[EAinslie@schnader.com](mailto:EAinslie@schnader.com)]

Sent: Friday, September 05, 2014 11:51 AM

To: Ditka, Laura A.; Beemer, Bruce R.

Subject: What????!!

Three emails? Please explain why, after all this time and all of our search terms, this was all we got in response to our discovery request.

Is there more coming? I certainly hope so.

The information transmitted is intended only for the person or entity to whom it is addressed and may contain confidential and/or privileged material. Any use of this information other than by the intended recipient is prohibited. If you receive this message in error, please send a reply e-mail to the sender and delete the material from any and all computers. Unintended transmissions shall not constitute waiver of any applicable attorney-client or any other applicable privilege. PA-OAG