

## **DID FRANK FINA BREAK THE PA RULES OF CONDUCT IN CBS INTERVIEW?**

By-Eileen Morgan

### **The Interview**

Frank Fina, former Chief Deputy Attorney General, who conducted the investigation against Jerry Sandusky in 2009 and prosecuted the case in 2012, spoke with CBS's Armen Keteyian during an interview that was partially aired on September 3, 2013.

Frank Fina and co-prosecutor Joe McGettigan spoke to Keteyian about former Penn State officials Tim Curley, Gary Schultz, and Graham Spanier. These three men have been indicted on several charges relating to the Sandusky investigation. These charges were directed under then Chief Deputy Attorney General Fina.

During the discussion of these former Penn State officials, Fina said, "Of course we, we come to realize they're actively involved obstructing our investigation.

Keteyian responds, "They're obstructing justice."

"Yeah. And they had been for many years," replied Fina.

"Now they're going to be tried on that... But I investigated that case," Fina said of former University President Graham 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."

### **Pennsylvania Rules of Professional Conduct**

Rule 3.8 deals with Special Responsibilities of a Prosecutor. The rule states as follows:

The prosecutor in a criminal case shall:

(e) except for statements that are necessary to inform the public of the nature and extent of the prosecutor's action and that serve a legitimate law enforcement purpose, refrain from making extrajudicial comments that have a substantial likelihood of heightening public condemnation of the accused and exercise reasonable care to prevent investigators, law enforcement personnel, employees or other persons assisting or associated with the prosecutor in a criminal case from making an extrajudicial statement that the prosecutor would be prohibited from making under Rule 3.6 or this Rule.

Although it is unclear whether Rule 3.8 applies to former prosecutors, Fina's comments probably violate Rule 3.6.

Rule 3.6 states: "[a] lawyer who is participating or has participated in the investigation or litigation of a matter shall not make an extrajudicial statement that the lawyer knows or reasonably should know will be disseminated by means of public communication and will have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter."

The Comment to Rule 3.6 sets forth examples of “subjects that are more likely than not to have a material prejudicial effect on a proceeding, particularly when they refer to a civil matter triable to a jury, a criminal matter, or any other proceeding that could result in incarceration.” These comments relate to, among other things: (1) the character, credibility, reputation or criminal record of a party, suspect in a criminal investigation; (2) any opinion as to the guilt or innocence of a defendant or suspect in a criminal case or proceeding that could result in incarceration; and (3) information that the lawyer knows or reasonably should know is likely to be inadmissible as evidence in a trial and that would, if disclosed, create a substantial risk of prejudicing an impartial trial. The Comment also states that “[c]riminal jury trials will be most sensitive to extrajudicial speech.”

### **Comments Taint Jury Pool**

These comments by Fina and McGettigan obviously ‘have a substantial likelihood of heightening public condemnation of the accused’ and ‘have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter.’ No doubt this interview will further taint the jury pool and will prevent Curley, Schultz, and Spanier from receiving a fair trial.

This interview is yet another ploy for these men to be tried and convicted in the media. Where is the American Justice System? When it comes to Penn State and its former employees, it is nowhere to be found.

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